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Case Comment: *Olga Tellis v Bombay Municipal Corporation*

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INTRODUCTION

The *Olga Tellis v Bombay Municipal Corporation*¹ is one of the landmark cases in which the right to livelihood is discussed. Here petitioners are the pavement dwellers who have come from different districts to Bombay in search of work. In the wake of heavy prices, they found their home on pavement dwellers which created obstruction for other pedestrians as it made it quite difficult for them to move or use it for their daily purpose. Then the case goes around the clock and discusses the right livelihood to be concluded in right to life basically Article 21². Due to circumstances Article 19³ and subsection have been discussed. It also talks about Section 312, 313⁴ of Bombay Municipal Corporation Act, 1888.

¹ *Olga Tellis v Bombay Municipal Corporation* (1986) AIR 180

² Constitution of India, 1950, art 21

³ Constitution of India, 1950, art 19

⁴ Bombay Municipal Corporation Act, 1888, s 312, 313

ABOUT THE CASE

The case was in front of 5 judge bench presided by former Chief Justice of India Y.V. Chandrachud, A.V. Varadarajan, O. Chinnappa Reddy, Syed Murtazafazl Ali, and V.D. The petitioners were represented by Miss Indira Jaisingh, Miss Rani Jethmalani, Anand Grover, Sumeet Kachhwaha, V.M. Tarkunde, Miss Darshna Bhogilal, Mrs. Indu Sharma, and P.H. Parekh for the Petitioners. L.N. Sinha Attorney General, P. Shankaranarayanan, and M.N. Shroff for Respondent Nos. 2 & 3 and for Respondent Nos. 1 and 3 K.K.Singhvi, F.N.D. Mollo and D.N. Mishra for Respondent No. 1.

FACTS

There were 3 petitioners namely P. Angamuthu who came from Tamil Nadu to Bombay, the second petitioner came from Ahemadnagar Nagar to Bombay. They both were pavement dwellers and the third petitioner was a journalist. On July 13, 1981, the then CM of Maharashtra Shri A.R. Antulay gave an order that all the pavement dwellers of Bombay will be forcibly evicted and deported to their various places of origin or relocated outside of Bombay. These orders were given to the Commissioner of Police in order to bring them into action. On July 23, 1981, all the pavement dwellers were sent back home to their native town and the slums were evicted. Petitioner came back to rebuild his dwelling as in early 1980 dwellings were destroyed and recreated. This case was simultaneously heard with another case of Kamraj Nagar where there were 12 petitioners fighting on behalf of 500 huntsmen. After hearing the order given by CM, writ petitions were filed in the High Court of Bombay for an injunction prohibiting officers of the State Government and the Bombay Municipal Corporation from carrying out the Chief Minister's directive. An ad-interim injunction was obtained by the High Court, which was to last until July 21, 1981. Respondents agreed on that day that the huts would not be dismantled until October 15, 1981. But it was said that on July 23 slum dwellers were forcibly tried to be deported back to their own town. After the petitioner stated what was their issue V.S.Munje, Under Secretary in the Department of Housing filed a counter-affidavit on behalf of Government of Maharashtra stating they were properly deported to home state & no person had a legal right to encroach upon public

property like footpath or any place where the public had right for way and use for themselves as they desired. As most of the slum dweller lives on footpaths, they perform all the activities in public which should be done in private. There was a lack of a healthy environment it promotes antisocial behavior and environment. This affidavit denies the provision of sections 312, 313, and 314⁵ of the Bombay Municipal Corporation Act violating the Constitution.

Seeing to this Prafulla Chandra Bidwai, a journalist filed a rejoinder contending that Kamraj Nagar is not built on the pavement. According to him, Kamraj Nagar is a basti off the highway where the huts are numbered and the Road Development Department and the Bombay Municipal Corporation keep track of them. He reiterates that people have no right of way as pavement dwellers are residing there for more than 20 years. He also refutes the fact that these basti cause any hindrance to BMC or pedestrians who walk on the path. Pavement dwellers population is equivalent to that of half of Greater Bombay and they also act the workforce of Bombay. They have a quid pro quo relationship wherein Bombay gets services and they get income and stay. The right claimed by them is the right to live, at least to exist. A counter-affidavit was filed against the Government of Maharashtra by Ms. Olga Tellis stating that there is no proper population distribution in Bombay. The population is dense in the southern region as the State government office has not been shifted towards the northern region and thus has created an imbalance of jobs. The only effective cures for reducing population congestion in the city center are the improvement of living conditions in slums and the geographical dispersal of work possibilities. It was also denied in this counter-affidavit that there were criminal propensities of the pavement dweller. The 5-year plan has also been modified focusing on the growth of the large metropolitan city. And lastly, it says that there is enough land to absorb a population of 20 million people which is expected to reach by the year 2000 A.D.

⁵ Bombay Municipal Corporation Act, 1888, s 312, 313, 314

ISSUES BEFORE THE COURT

- Whether the steps taken by BMC are derogatory with the provision of Articles 19 and 21⁶ of the Constitution of India?
- Whether eviction of pavement dwellers is an infringement of their right to livelihood, as defined under Article 21 of the Constitution?
- Whether Sec 314⁷ of BMC Act is arbitrary and unreasonable?
- Question of Estoppels against fundamental rights or Waiver of Fundamental Rights?

ARGUMENTS PUT FORTH BY THE PETITIONER

Eviction of pavement and slum dwellers will initiate a circle wherein if they are deprived of their employment, they will be deprived of their livelihood and eventually right to life (Article 21). It can be said that the right to live and right to work is tangled between each other similar to that of humans and oxygen without the other the person may not survive and there would be a threat to life. Under certain conditions state is under an obligation to provide citizens with essential items and a court may order the state by affirmative action to promote & protect life. The essence of our Constitution, which outlines the conditions under which liberty must be enjoyed and justice must be administered, is social commitment. If seen in this context it can be said that the order given was impugned and violative of Article 19(1)(e), 19(1)(g), and 21⁸ of the constitution.

Pavement dwellers live in Bombay because they earn their livelihood here & there is no place where they can live. Hence, they have a right to claim right under Articles 19(1)(e) and (g) and Article 21 of the Constitution. Section 314 does not talk about removing or demolition of dwellers on pavement and according to this section no warning or notice is given hence it can be said to be unreasonable and arbitrary. It also offends against the guarantee of equality as if the pedestrian has the right to walk on pavements, then the pavement dwellers have the right to dwell upon them.

⁶ Constitution of India, 1950, art 19, 21

⁷ Bombay Municipal Corporation Act, 1888, s 314

⁸ Constitution of India, 1950, art 19(1)(e), 19 (1)(g), 21

ARGUMENTS PUT FORTH BY THE RESPONDENT

The freedom to dwell and establish in any region of India guaranteed by Article 19(1)(e) of the Constitution cannot be interpreted as a license to infringe and trespass on public property. The B.M.C. Act defines “Street” and “Public Street” as a highway, a footpath, or a passage on which the general public has a right of passage or access. All pavements and public streets belong to the Corporation and are under the Commissioner's authority under section 289(1)⁹ of the Act. In terms of Article 21, the removal of slum and pavement inhabitants from public locations does not include any deprivation of life, either directly or indirectly. Section 314 of the B.M.C. Act requires the Municipal Corporation to remove obstacles from sidewalks, public streets, and other public areas. The Corporation does not even have the authority to allow someone to occupy a public space on a permanent or semi-permanent basis. The petitioners have broken not just the B.M.C. Act, but also sections 111 and 115¹⁰ of the Bombay Police Act. These sections make it illegal to hinder another person's use of a street or public area, as well as to cause a nuisance. Violations of these sections are punishable under Section 117¹¹ of the Police Act. The petitioners in the High courts had contended that they will not create any type of hindrance in the execution of the order of demolition of huts on October 15, 1981, hence they are estopped by their own order and cannot take up the defense that if the pavement dwelling is demolished it will affect their right to livelihood which is enshrined in Article 21 of the Constitution's fundamental right to life.

JUDGEMENT & IT'S REASONING

As it was asserted by the respondent that the petitioners are estopped against the order and cannot take up the defense in the form of the right to livelihoods. The doctrine of estoppel is there for the constituency in the decision. Basically, the older one is more supreme in power than the newer one. It was contended by judges that petitioners are not estopped to use fundamental rights as a defense against the demolition of huts. There is no estoppel against the constitution. The constitution is not only a paramount law of the land rather it is a source

⁹ Bombay Municipal Corporation Act, 1888, s 289(1)

¹⁰ Bombay Police Act, 1951, s 111, 115

¹¹ Bombay Police Act, 1951, s 117

of all law. This concept cannot be applied to statements made in support of or in opposition to the assertion or enforcement of fundamental rights. For e.g., if a person has freedom of speech but does not exercise it, that does not mean he is deprived of his rights. Any order which may or may not be made under the mistake of law, during the proceeding, that he may not exercise his fundamental right as a defense as there had been estoppel will be wrong, it will shake the spirit of the constitution. And such contention where Bombay High Court said those pavement dwellers have no fundamental right to build hutment will violate the constitutionality of the constitution. The case of *Bheshar Nath v The Commissioner of Income Tax Delhi*¹² was referred wherein it was held that fundamental right mentioned in part III¹³ of the constitution cannot be waived. The next best question which was pondered by a judge in practice is that if the pavement dwellers are evicted would they be really deprived of their livelihood?

It was contended by the judges that the main reason for the emergence of pavement dwellers was employment which they didn't get in rural areas. If they were sent back to their town, they would be under poverty as the planning commission has mentioned half of the population which resides in rural areas are below the poverty line, and the average landholding is 0.4 hectares and sufficient for the farmer order to sustain their livelihood. They may find local jobs such as washing pots but may get evicted at any point in time and the income is not adequate. And parallel to that industrial house ensures long time employment with a good amount of wage and most of these are located around the city so these people migrate to cities in order to get the job and some may even find jobs in hospital in form of nurses. Hence, they stay on the pavement as they cannot afford a place in the city. If a person has to be deprived of his fundamental right, then it must be according to the norms and procedures established by law. Any action that is taken by the public authority under the prescribed sites must pass 2 conditions i) The act done should be within the authority conferred by law ii) it must be reasonable. If the act done by the authorities without the sanction of states is unreasonable then it can be said that the procedure established by law is in itself unreasonable. It can be seen that Sec 314 is an enabling provision rather than a compulsive

¹² *Bheshar Nath v The Commissioner of Income Tax Delhi* (1959) AIR 149

¹³ Constitution of India, 1950, Part III

provision. In the appropriate circumstances, it helps the police commissioner to dispense off the earlier notice which likely affects the person. It does not require, and cannot be interpreted to suggest, that the Commissioner must compel the removal of an encroachment without prior notice, regardless of the relevant facts in a given scenario. Section 314 states that the Commissioner has the authority to remove an encroachment without notice. It does not mandate that an encroachment be removed without notice by the Commissioner. To put it another way, section 314 gives the Commissioner the authority to remove an encroachment with or without notice.

It must also be assumed that, by giving the Commissioner the right to act without notice, the Legislature intended for the power to be used sparingly and only in circumstances of extreme urgency. In every case, it is always seen that the rule of audi alteram partem prevails and is not revoked by any party. But Section 314 is written in such a way that natural justice principles are only excluded as an exception, not as a general norm. There are times when the norms of natural justice must be suspended due to a variety of variables such as the passage of time, the location of the feared harm, and so on. Hence from the above discussion, it was concluded that Sec 314 BMC Act which looks after the removal of pavement dwellers is not arbitrary or unreasonable. As these 4 issues were discussed and as per the direction given by the court, the judges dismissed the appeal.

ANALYSIS BY THE AUTHOR

The *Olga Tellis v Bombay Municipal Corporation* is one of the landmark cases which has been encountered by the Indian Judiciary. In this case, the court has taken proper care and given respect to the helpers' situation of pavement dwellers. The court took due notice to accommodate the dwellers at another place and also prescribed time until which they should not be evicted. The problem of unequal distribution of the population was discussed where the petitioner Olga tells argued that due to not shifting of state office to northern part there has been concentration at southern part hence affecting the jobs and people residing near to it. In this decision, the Court attempted to find a suitable balance between pavement dwellers' interests and public rights. If the Court had granted the petitioners the right to live on the

sidewalks, it would have hampered development efforts and caused significant hardship to pedestrians. In addition, the State Government's plan to develop inexpensive public homes would have been a deterrent. This would have occurred because the government may then appeal the Court's ruling, claiming that the Court has acknowledged the right of individuals to live on the streets, and so they are relieved of their commitment to providing cheap housing. On the other hand, if the Court had refused any waiting period during which the pavement dwellers should not be removed, it would have been a flagrant infringement of their right to a living and, by extension, their right to life. In an attempt to balance the interest of both parties it created a lacuna in the judgment and its procedure. The court ignored the mismanagement of government in the context of jobs, population, and employment which in the first place led to the creation of dwellings. Even if the dwellers were provided with time but it was not enough and reasonable as they could not arrange another place to stay and find new jobs around their living location. Even after admitting that pavement dwellers need a fair hearing, no attempt was made to recognize that the absence of a notice requirement, no matter how sparingly utilized, undermines the principle of audi alteram partem.

The justification of the Court thus seems less appropriate than its remedial powers in the judicial review to place great importance on the written and positive law. Another reason for this is because the BMC Act is a colonial-era act, and when it was passed, there was no such massive problem of pavement and footpath squatters. As a result, there was a chance that the Court may have separated the current situation from what the Legislature intended to be covered by the Act and so granted some relief to the residents. The judgment seems entirely concerned and sympathetic to the awful conditions of pavement inhabitants but does not provide fair solutions to reduce them.

CONCLUSION

In the current situation, when the higher judiciary is showing clear signs of weakening its core and allowing its essence to fade, it is important to recollect the ruling as well as its spirit. The goal of the ruling in *Olga Tellis and Others v Bombay Municipal Corporation*, handed down on July 10, 1985, was to ensure that slum people may be rehabilitated in their homes.

According to the ruling, assigning alternative residence locations far away from where they had pitched their shanties would force them to commute long distances to their places of work, denying them the ability to earn a living. This judgment was passed when the Indian economy was on a verge of change, as in 1991 LPG policy would have been implemented and there would have been a surge of rural people in metropolitan cities in search of livelihood which was the core of the judgment and which was now considered to inevitable and full of growth opportunities. To argue, as several High Courts have recently done, that slum dwellers deserve to live in comfort and that it is only fair to rehabilitate them even if it is far away from where they lived is not only judicial indiscipline but also goes against the empathy that was central to the *Olga Tellis* decision. This new trend of sanctioning rehabilitation in faraway locations rather than in situ is motivated by a mindset that believes it is acceptable to relocate slum residents far away from their places of work because they will be able to live in comfort there rather than in filth and poverty.