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**OLGA TELLIS AND ORS V/S BOMBAY MUNICIPAL CORPORATION 1985-
RECOGNITION OF RIGHT TO LIVELIHOOD AND RIGHT TO SHELTER.**- Soham M Sakpal¹**ABSTRACT**

Mumbai, Urbs Prima in Indis (India's Premier City), the de facto financial and commercial capital of the nation, is a contrast, while it is a home to most billionaires in the country, it is also home to Asia's largest slum, while the towering heights and glistening opulence of South Bombay skyline enthralls any onlooker, the poor, fatigued, malnourished and most importantly homeless pavement dwellers are equally conspicuous on the metropolis's streets. The constitution endows all fundamental rights equally to the rich and the poor alike, but when these rights are violated by the heavy hand of the state, the consequences of such infringement are more dire for the vulnerable sections of the country's citizenry than that for the more fortunate. In that moment of despair and gloom, these vulnerable sections look up to the court of the last resort to provide them relief and to lead them towards light from the darkness of their misfortunes. Olga Tellis vs Bombay Municipal Corporation is one such case where the most vulnerable sections of the society, the poor pavement dwellers and residents of a slum in Kamraj Nagar knocked on the doors of the highest court of the land to demand their constitutional right.

Olga Tellis & Ors vs Bombay Municipal Corporation & ... 10 July 1985

Equivalent citations: 1986 AIR 180, 1985 SCR Supl. (2) 51

Author: Y Chandrachud.

FACTS OF THE CASE

The petitioners in this case were the residents of a slum in Kamraj Nagar and pavement dwellers in Mahim who were supported by two civil rights committees namely The People's union for civil liberties and Committee for Protection of Democratic Rights, and two journalists, one of whom was Olga Tellis. In 1981 before monsoon, under the directives of the

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Maharashtra Government headed by A.R Antulay, the Bombay municipal corporation took a decision to demolish all slums in Mumbai and forcibly evict all pavement dwellers, and the inhabitants of these slums and pavement dwellings would be deported outside the city bounds to their respective places of origin. In fact, some of the slums were demolished by the corporation after this decision. The Petitioners challenged this decision in the High Court, but they conceded that they would not press their fundamental right to build huts on pavements and public streets. They also affirmed that they would vacate their dwellings before 15th October 1981. The Bombay Municipal Corporation also agreed to stop their demolition drive till 15th October 1981. The Petitioners then approached the Supreme Court under Article 32 challenging the Corporations decision.

PETITIONERS CONTENTIONS

The petitioner contended that the Corporation's decision violated their right to livelihood which was implied in Article 21 guaranteeing right to life and personal liberty, and by threatening their livelihood the corporation also violated their right to practice any profession, or to carry on any occupation, trade or business guaranteed under Article 19(1)(g) . The petitioners further contended that the corporation's decision directly contravened Article 19(1)(e), by denying them to reside in any part of the territory of India. They also contended that the procedure prescribed under section 314 of the BMC Act 1888 for removal of unauthorised structure by an order of the Municipal Commissioner without notice is arbitrary and unreasonable.

RESPONDENTS CONTENTIONS

The respondents contended (1) that the petition cannot be maintained since the petitioners themselves had given an undertaking before the High Court that they would vacate their dwellings before 15th October 1981. (2) That while the Constitution has enshrined the right to reside in any part of the country, this right could not be construed to mean that the petitioners could encroach and trespass on the public property. (3) That the Corporation under the BMC Act (passed in 1888) had under section 314 a duty to remove obstructions on pavements, public streets and other public places. (4) That the decision was taken under section 312, 313 and 314 of the BMC Act and it does not violate the constitution as much because the decision taken is in public interest and great care was taken to enforce the provisions.

JUDGMENT

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The Supreme Court held that the petition is maintainable since the action taken against any citizen is procedurally ultra vires. The Supreme Court enlarged the scope of Article 21 to include the right to livelihood within its purview. It observed that deprivation of the means of livelihood of the citizens will result in deprivation of life itself. Regarding the procedural validity of section 314, the court held that although the section provides that commissioner can exercise his discretion to cause the demolition of unauthorised structure, the commissioner's discretion in addition to being reasonable (by taking into consideration prevailing conditions) should also have the sanction of the constitutional mandate. While it held that the pavement dwellers have indeed been using public property for their private use and by that very fact they can be called 'encroachers' or 'trespassers', but they lack the intention to cause any inconvenience, they reside on the pavement only because that choice had been imposed upon them by their circumstance and not by their own will. The Court ordered the government to give the petitioners alternate sites for resettlement, it also directed the government to implement Low Income shelter programme (funded by the World Bank) and Slum Upgradation Programme. As an interim relief the court ordered not to remove or demolish any dwellings until after the end of current monsoon season i.e. October 31st, 1984.

ANALYSIS

The state had condemned the citizens without so much as giving a notice or an opportunity of being heard. The court rightly noted that the constitution is the highest law of the land, and all other laws are subservient to the constitution. In other words, even if the provisions of BMC act empower the Commissioner to order demolition of unauthorised construction on pavements without any prior notice, these provisions cannot neglect the principles of natural justice which are envisaged in Article 14 and 21 of the Constitution.

The supreme court had come a long way since the 40's and 50's era, when the court stuck to the dead letter of the fine print, by enlarging the scope of Article 21 the court breathed new life to soulless articles in the constitution thereby giving expression to the spirit of the law and the intention of the constituent assembly. It observed that '*The sweep of the right to life conferred by Article 21 is wide and far reaching*', the implications of these words are wide and far reaching as if the court had unchained Article 21 from its own bonds, it went on to expound that the right to life and personal liberty does not merely mean detaining a person or executing a person, they are only one facet of the Article. It is ironic to note that Article 39(a) imposes a duty upon the state to secure adequate means of livelihood, but actions of the state had been in

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contrast to its duty, the Supreme Court remedied this by incorporating the right to livelihood within the meaning of Right to Life and Personal liberty.

CONCLUSION

Back in 1981 when the Commissioner had ordered the demolition of the dwellings of those poor shelter less citizens, it was as if the colonial era hangover of excess power had not worn off from the state machinery. It was audacious of the commissioner and the government of the day to have relied on a pre- Independence law which was drafted in 1888 when the colonists enjoyed unbridled powers, who were notorious for its unabashed indifference towards the principles of natural justice, but what is more disappointing is that our own elected government should show the same indifference to the principles of our constitution. But the court came through for the citizens when they needed it the most. For the very first time the court recognized the Right to livelihood, for the first time it recognized the duty of the state to provide shelter to the poor sections of the society. Olga Tellis judgement was a milestone in recognition of the second generation right¹, the supreme court for the first time in its history had brought socio economic rights within the sweep of Part III of the Constitution. The real victory in Olga Tell is lay in the undertakings given by the BMC, the undertakings that signified the states acceptance of the fact that slum dwellers were indeed entitled to alternative accommodation.

Olga Tellis was a case where state, the protector of the welfare of the citizens failed in its duty, but the Court of the last resort followed through on its constitutional duty as the defender of the rights of the citizens.

1. Ten Judgements that changed India – Zia Mody.
2. Ten Judgements that changed India – Zia Mody.
3. <https://main.sci.gov.in/jonew/judis/9246.pdf>.