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CRITICAL ANALYSIS OF OLGA TELLIS VERSUS BOMBAY MUNICIPAL CORPORATION CASE

~ Kshema Sangam

1. NAME OF THE JUDGMENT AND DATE OF CITATION:

Full Title: Olga Tellis and ors verses Bombay Municipal Corporation and ors.

Citation: AIR 1986 SC 180

Court: Supreme Court of India (Constitution Bench -Five Judges)

Date of Decision: 10 July 1985

This case is also commonly known as the Pavement Dwellers Case of the Indian constitutional jurisprudence. It became a landmark case in the interpretation of Article 21 of the Constitution of India which has completely changed the meaning¹ of the right to life as perceived by the courts and governments. The tension in the case that surfaced clearly highlighted the urban government, the power of cities and the survival of the urban poor which is a tension that is still debated in policy and legal circles even today.

2. NAME OF THE JUDGES:

A Constitution Bench of five judges of the Supreme Court of India decided the case. The Bench was composed as follows:

1. Chief Justice Y.V. Chandrachud- Presiding Judge and Principal Judge of the verdict.
2. Justice P.N. Bhagwati
3. Justice R.S. Pathak
4. Justice A.N. Sen
5. Justice V.D. Tulzapurkar

¹ M.P. Jain, Indian Constitutional Law 1350–52 (8th ed. 2018).

3.BRIEF FACTS:

3.1 Background and Context:

Even in the early 1980s the city of Bombay (now Mumbai) was struggling with a migrant population that had thronged it in search of a livelihood flooding in in large numbers out of the rural Maharashtra and rest of the states. Most of these migrants were left with no choice rather than building temporary shelters on sidewalks and in open areas. Through decades, large numbers of them had established semi permanent settlements, families, and become part of the economic life of the city as domestic workers, vendors, construction labourers, and small-scale tradespeople. Their settlement on government land, not only constituted an economic survival strategy but an indicator of failure of the state to offer affordable housing to the poor citizens living in the cities.

In the years before this case the Maharashtra government together with the Bombay Municipal Corporation (BMC) resolved to adopt a strident approach to what they termed as encroachment to the walkways and pavements. The given reason was the fact that pavement dwellers were blocking the main avenues, posing health/sanitary threats and rendering certain portions of the city uncontrollable. Based on this, the state government brought a directive that all the pavement and slum dwellers would be forced out of Bombay through force itself, if the need arose and be re-established either in their native home districts or in some cases in remote resettlement areas outside Bombay.

3.2 The Immediate trigger:

Serious eviction drives began in 1981². Pavement inhabitants were being forcefully displaced, their properties taken down and they were herded on buses and trucks and driven back to their home villages, most of which they had left many years or even decades ago and to which they had no real attachment. Olga Tellis, a newspaper reporter with Bombay magazine paper and other petitioners such as the Journalists Union took the case before the Supreme Court under Article 32 of the Constitution relating such evictions. Most importantly, petitions aided in representing a vast number of pavement dwellers personally, who could not address the court one by one.

The petitioners claimed that eviction without any prior notice, being unable to afford a hearing opportunity, and not having an alternative arrangement to stay put attacked right to life in Article 21 with its very core. They contended that the right to life cannot be reduced to mere survival instead, it must include the ability to live with basic human dignity, which necessarily requires access to livelihood and shelter.

² Olga Tellis, A.I.R. 1986 S.C. at 182.

The respondents, BMC and the State of Maharashtra on the other hand argued that they were operating within the statutory framework of Bombay Municipal Corporation Act and that no fundamental right granted any person to interfere with the use of the land of the people.

3.3 Issues in the case:

- (i) Does the right to life under Article 21 of the Indian Constitution include the right to livelihood?
- (ii) Is there any constitutionally guaranteed right to live and establish residence on public land on the part of pavement dwellers?
- (iii) Does the authority of Section 314 of the Bombay Municipal Corporation Act to evict encroachments without giving notice adhere to the principles of natural justice and can it be held to be constitutionally valid?
- (iv) What is the responsibility of the state, prior to carrying out evictions of the urban poor?

4. LAW APPLIED:

4.1 Constitutional Provisions:

Article 21 - Protection of the Life and the Personal Liberty: This was the main provision of the constitution in the case. The court was requested to find out what the scope of 'life' was when the word was in this article. The petitioners contended, and the court later agreed that the word life should not be construed in a biological sense, which is small. With the safeguard of Article 21 being there, life implies a life that is lived with a certain level of human dignity. The way of life is happiness through livelihood as life is maintained, meaning, livelihood is the deprivation of life.

Article 19(1) 2(e) - Right to Reside and Settle: This provision was also appealed to by the petitioners who claimed that the right to reside in Bombay was covered by this provision. This argument was accepted by the court, but it pointed out that the right under Article 19(1)(e) is not absolute that can be limited by the reasonable restrictions in the interest of the general people under Article 19(5). Nevertheless, even where limitation is provided, it has to be reasonable, non restrictive and must be fair in terms of procedure.

Article 14 - Equality Before Law: The petitioners expressed the issue that the discriminatory and arbitrary application of eviction drives to the most destitute layers of society, without damaging other encroachments by the powerful interests, was akin to the compliance with the clause of equality before the law in this particular article.

Article 32 - Right to Constitutional Remedies: The petitions were filed directly before the Supreme Court under its jurisdiction to enforce fundamental rights. The court listened to these petitions and accepted them as a representation of a real constitutional crisis of one of the weaker sides of the society.

4.2 Statutory Provisions:

Section 314 of Bombay municipal corporation act, 1888: This section allowed BMC to clear the streets and footways that were being encroached. The important one was that Section 314 also did not stipulate that the municipal corporation was obligated to make any kind of prior notice before it could exercise this power of removal. This section was very crucial in the eviction drives of the BMC. The issue that the court reviewed was regarding the constitutionality of this statutory power granted without procedural protection in Articles 14 and 21.³

4.3 Directive Principles of State Policy:

Under the constitution, the central and state governments have some directive principles of the state policy, which should be followed by the legislature, except in extraordinary circumstances.

The court also resorted to the Directive Principles, especially Articles 38 and 39 which imposed a liability on the state to uphold the welfare of the populace and provide a sufficient means of earning livelihood to all citizens. Although the Directive Principles have no binding force in the courts, in *Olga Tellis* case, the Supreme Court adopted the same as a way of interpreting the purposive meaning of Article 21 by approaching them in a harmonious manner.

4.4 Precedents Relied Upon:

Maneka Gandhi v. Union of India (1978)⁴ - This case built on this precedent that had radically extended the meaning of Article 21 by implicating it with the demands of substantive due process, and the requirement that any process that deprived a person of his life or liberty should be fair, just and reasonable.

³ Bombay Municipal Corporation Act, No. 3 of 1888, § 314 (India).

⁴Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597.

Francis Coralie Mullin v. Union Territory of Delhi (1981)⁵ - This had seen that the right to life entails the right to live with human dignity and everything that accompanies with it, including bare necessities of life like food, clothing, shelter.

5. JUDGEMENT:

5.1 In regard to the Right to Livelihood:

The most significant contribution that was posed by the Supreme Court in this case was the determination that the right to live incorporates the right to livelihood in Article 21. The court noted that the pavement dwellers did not live on pavements as a result of choice or a need to break the law since the city provided them with work and that was the only way they made a living by feeding themselves and their family. Rejecting them in the city would take away their means of livelihood hence will deprive them of life in the meaning of Article 21.

Here it was not a holding such that the state could never evict pavement dwellers. Instead, it was a preclusion that any such eviction, since it involved the importantly fundamental right to life, must be affected with those procedural protections which Article 21 requires. The privilege not to be deprived of something so fundamental before being heard was non-negotiable right.⁶

5.2 On the Merits of Subsection 314 of BMC Act:

Section 314 of Bombay Municipal Corporation Act was not struck down by the court. Rather, it construed into the section the need of a notice and a hearing subsequent to eviction. The court considered that even though the power to remove encroachment was real and legitimate, it cannot be applied in a manner that undermined natural justice in a case where the effects of such action included deprivation of the primordial right to livelihood and by implication, life. The court effectively constitutional worked out an omitted procedural protection that the legislature had omitted.

5.3 Directions Issued:

The court provided a series of practical guidelines, which put the interests of the pavement residents and the responsibility to the municipal authority into balance. These included:

⁵Francis Coralie Mullin v. Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746.

⁶ Olga Tellis, A.I.R. 1986 S.C. at 185–86.

(i) The Court directed that pavement dwellers who had been recorded in the 1976 census should not be removed from their places of residence without following certain procedural safeguards.

(ii) A guideline that no evictions would take place during the monsoon season (around the months of July to October) in which the urban poor would be recognised as being especially vulnerable in the rainy season.

(Liii) A prerequisite that requires prior to any eviction, they must provide a reasonable notice and must accord people involved with opportunity to make representations.

6. ANALYSIS:

6.1 Evolving the Meaning of Article 21:

The constitutional significance of this judgment lies to a large extent in the manner in which the Supreme Court dealt with the textual scope of Article 21. The court's conclusion that the right to livelihood is part of the protection of "life" was therefore not self-evident, it required a deliberate and reasoned act of constitutional interpretation. The court based this expansion on a simple proposition of sound logic that the deprivation of livelihood leads, with inevitable results, to the deprivation of life. A person deprived of means of earnings cannot sustain himself. The right to life if it is to have any practical meaning should therefore extend to those conditions without which life itself cannot be maintained. This reasoning was supported by the earlier decision made in *Francis Coralie Mullin vs. Union Territory of Delhi*, (1981) where it was already held that the right to life includes the right to live with basic human dignity. What the court did in *Olga Tellis* case was to go one step further attached to it a specific socioeconomic dimension that drew directly on the circumstances of the urban poor. In doing so, it induced persons who would, thus far with the fact that they were not before within the meaningful protection of fundamental rights, was dropped right within of Article 21.

6.2 Constitutional Significance of Procedural Safeguards:

An important part of the judgment is the way the Court treated procedural fairness as a constitutional requirement. The court decided that people must be given notice⁷ and a chance to speak even though the law does not clearly say so. By doing this the court made sure that the government cannot just do what it wants without following the rules. Just because the law does not say what to do it does not mean that the government can just do whatever it wants. This part of the decision was important for more than this one case. It meant that cities and governments cannot just evict people or tear down their homes without following the rules. They must still be fair. Listen to people. This is especially important, for people who are poor and do not have a lot of power. They are often the ones who are most affected by these kinds of actions.

⁷ S.P. Sathe, *Judicial Activism in India* 210–12 (2d ed. 2002).

6.3 The Scope and Limits of the Court's Intervention:

When you read the *Olga Tellis v. Bombay Municipal Corporation* judgment carefully you can see that the Court was very careful about what it said. The Court was mainly worried about making sure that the rights of people who live on pavements are protected when they are being evicted. The Court did not say that everyone can live wherever they want. The *Olga Tellis v. Bombay Municipal Corporation* judgment also did not say that the government has to give a house to every person who moves to a city. The *Olga Tellis v. Bombay Municipal Corporation* judgment did not stop the government from removing people who live on pavements from land completely. Instead, the help that the Court gave was specific. Had some conditions. The Court said that people who live on pavements must be told before they are evicted. The Court also said that the people in charge should think about giving them another place to live before they remove them. The Court said that evictions should not happen during the monsoon season because that would be very hard for people. In the years following the judgment, the directions relating to rehabilitation were not always implemented consistently. However, this does not reduce the importance of the decision. Rather, it highlights the practical limits of what courts can achieve on their own. The *Olga Tellis* judgment remains significant because it illustrates both the power and the limitations of judicial action. Judicial decisions can establish important legal principles and respond to specific injustices, but complex social issues such as housing shortages ultimately require sustained action from the legislature and the executive.

6.4 A Doctrinal Question Left Open:

The judgment raised, but did not conclusively rule on, a question that has continued to cause debate in subsequent Indian constitutional law, namely that if livelihood is constitutionally protected as an element of life, and if this livelihood is necessarily bound up with residence in a particular city, does the Constitution thereby protect the right to remain in this city? The court engaged with Article 19(1)(e) - the right to reside and settle in any part of India but ended on the ground of Article 21 without whatsoever working through the implications of the holding of livelihood as holding the cause of dismissal. This gap has not escaped the notice of. Successive cases on forced evictions, slum demolitions and urban displacement have brought issues of forced eviction back to *Olga Tellis* for doctrinal support amidst the paradoxical query of whether the obligation of the state goes beyond ensuring procedural fairness in matters of mere compliance to providing substantive duty with regard to the state's obligation. Indian courts have signalingly stepped in this direction recognising for instance, rights to food, as well as to shelter in certain situations and to dignified conditions of living but there is certainly still no resolution in sight.

6.5 Contribution to the Public Interest Litigation:

The case is also important as one of the earliest and useful examples of how public interest litigation served as a constitutional mechanism to extend the reach of judicial protection to those who lacked the means to approach the court individually⁸. The petitioners, a journalist and a union filed the issue with the Supreme Court on behalf of thousands of pavement dwellers who had no formal standing in the issue and had no personal legal representation.

⁸ S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149.

The court was not slow to entertain these petitions and accepted the deprivation of these fundamental rights as a group of rights as a sufficient ground for intervention under the constitution. This part of Olga Tellis had established, in practise if not in explicit doctrine, that the procedural requirements of locus standi would give way when the rights of large numbers of economically disadvantaged persons were at stake. It helped to solidify the new character of the Supreme Court as one available not simply to those with the resources to do so, but to those whose vulnerability was the subject of the constitutional complaint itself.

CONCLUSION:

The Olga Tellis v. Bombay Municipal Corporation decision is not about the people who lived on pavements in Bombay in 1985. It is about the kind of India we want to be. A place where everyone is treated fairly the poorest people. The Supreme Court said that people have a right to earn a living and this is connected to the right to life. This was a deal because it meant that the government had to think about the people who are often ignored. The decision was not perfect. Some of the things the Court said aspirational and hard for the government to make them happen. There were also some questions that were not fully answered. These problems do not make the decision less important. They just show that the Court has to deal with the world and that means working with the government and the resources we have.

What really matters about the Olga Tellis decision is that it said something about what it means to be alive. It is not about eating and breathing. It is about being able to live with dignity. This means having a job, a place to live and being treated fairly. This decision has had an impact on how the law works in India and it is still one of the most important decisions made by the Supreme Court of India and is still remembered today because it was a step forward, for the people of India. This case will always be an important part of Indian constitutional and judicial progress.