



ADJUDICATING THE HUMAN RIGHT TO ADEQUATE HOUSING

**Analysis of Important
Judgments from Indian
High Courts**



HOUSING AND LAND RIGHTS NETWORK

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Conceptual Framework, Analysis, and Editing:

Shivani Chaudhry and Miloon Kothari

Legal Research and Analysis:

Aishwarya Ayushmaan [with inputs from Ikshaku Bezbaroa for the initial draft]

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G-18/1 Nizamuddin West

Lower Ground Floor

New Delhi – 110 013, INDIA

+91-11-4054-1680

contact@hlrn.org.in

www.hlrn.org.in

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PREFACE

“The arc of the moral universe is long, but it bends towards justice.” ~ Theodore Parker

While justice should be an inherent component of the law and, incontestably, is its end, in many parts of the world, law and justice, unfortunately, are not synonymous. Even where just laws exist, they are often not implemented, or selectively used. The judiciary, too, does not always ensure the uniform administration of justice. However, for the poor and marginalized, who find their rights being violated by state and non-state actors, the judiciary, at times, is the only hope for the pursuit of justice.

With regard to protection of the human right to adequate housing in India, this is even more significant as India does not have a law—either at the state or national level—that explicitly safeguards the human right to adequate housing. Laws deal with land acquisition, land revenue, tenancy. They cover rights of home and land-buyers. Multiple laws exist to “clear slums,” to zone city spaces, and to govern property and real estate development, but not to respect, protect, and fulfil the right to adequate housing as a human right in India.

International laws, which India has ratified—including the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities—recognize and guarantee the right to housing as a human right. It is, thus, binding on the Government of India to implement its international legal obligations by ensuring that all its schemes and housing-related interventions are grounded in the ‘human right to adequate housing’ framework. India, however, has not adopted a human rights approach to housing. On the contrary, the state is responsible for multiple violations of the right to housing, especially of marginalized and low-income groups.

India’s housing crisis is marked by the lack of state investment in social and low-cost housing, which is further exacerbated by forced evictions, real estate speculation, and market-driven solutions to meet the national housing shortage. In the absence of the provision of legal security of tenure, self-constructed housing of the urban and rural poor continues to be viewed by the state as an ‘encroachment’ and is routinely demolished, without due process, and in violation of international human rights standards. Human rights are also violated when people’s land is forcibly acquired or appropriated, when they are forcefully relocated to remote settlements without basic services and adequate housing, or when they are displaced from their homes and habitats and rendered homeless. The vast majority of the affected population has limited access to justice and effective remedy for violations of the right to housing. Against this backdrop of impunity for state and non-state actors, and the absence of a rights-based legal framework to uphold the right to housing in India, the judiciary’s role is critical.

The Indian judiciary, however, has not been consistent in safeguarding the right to housing as a human right and in ensuring its fulfilment for the most marginalized. Judgments from the Supreme Court of India, High Courts, and district courts have often ordered demolitions of low-income settlements and the forced eviction of marginalized communities, thereby disregarding their fundamental rights. On several occasions, the judiciary has also created artificial conflicts of rights, for instance pitting the rights of local communities against the rights of the environment, thus failing to uphold the principle of ‘indivisibility of human rights.’ On the other hand, the Supreme Court of India and several other courts have expanded the Fundamental Right to life, guaranteed by Article 21 of the Constitution of India, to include the right to housing, and endorsed it on numerous occasions.

Rationale for this Publication

While landmark Supreme Court judgments related to the right to housing are cited widely, including internationally, important judgments from states are not known. As an organization that strives to ensure the realization of everyone’s right to a safe and secure home to live in peace and dignity, **Housing and Land Rights Network, India** (HLRN)

decided to compile and analyse progressive judgments from High Courts that have upheld the human right to adequate housing— either directly as guaranteed by international law or through an expansive interpretation of the right to life, or indirectly by recognizing key elements of adequate housing essential for the realization of the right to an adequate standard of living and the right to live with dignity.

We have used a human rights lens to shortlist cases that have dealt with housing and related rights of the marginalized. Some of these cases have interpreted the right to housing as a human right with auxiliary directions and also reinforced the positive obligation of the state to protect the right. In other instances, though the final orders may not reflect a positive protection of the right, if the judgment has recognized the right to housing as an independent right or upheld its elements, we have included it in our analysis. This publication, however, does not cover cases related to disputes over private property or land acquisition, unless they have referred to important and interlinked rights of resettlement, compensation, consent, and procedural rights. While we have made efforts to select key judgments, this compilation is not exhaustive; neither does it encompass the entire body of Indian case law on the right to housing. It is intended to demonstrate trends and reflect the judiciary’s treatment of the human right to adequate housing, which though linked to the realization of several economic, civil, social, political, and cultural rights, is not explicitly protected in national law.

Structure of this Publication

The first section of this publication provides the reader with an overview and analysis of the nature of judgments and relief provided by courts, while also highlighting the often contradictory and inconsistent role of the judiciary when adjudicating the right to housing. The prevalent polarity in society between those who view the poor as “encroachers” and those who recognize them as equal citizens with equal rights also percolates to decisions of judges; this trend, to some extent, is reflected in this compilation of case law.

The second section briefly presents landmark Supreme Court of India judgments that have upheld and recognized housing as a human right, essential to the fulfilment of the fundamental right to life. Several of these judgments have been referred to and used as precedent by High Courts, thereby strengthening Indian jurisprudence on the right to housing.

The final section of the publication presents a summary and analysis of significant judgments from Indian High Courts that are related to the right to housing.

We hope that this publication will be a useful resource for lawyers, academics, independent institutions, non-government organizations, human rights defenders, judges, and anyone interested in the positive role of the Indian judiciary in adjudicating the human right to adequate housing. Housing and Land Rights Network believes that publications of this nature could be helpful in publicizing positive court orders, even among different levels of the judiciary, and that could be a powerful means to strengthen the use of legal precedent, especially in promoting human rights of the most marginalized. We also hope this will help the judiciary realize its incontestable importance and moral responsibility in furthering social justice, reducing poverty and deprivation, and strengthening the realization of human rights in the country, especially when national law and policy fail to do so.

Ultimately, we turn to the courts to uphold the rule of just law and to deliver justice. And positive judgments reinforce our faith in the judiciary and give us the hope to pursue justice within the judicial system.

It is, however, important to keep in mind that just because a court does not uphold human rights, they do not cease to exist. In this regard, Mahatma Gandhi’s words serve as a powerful reminder: “There is a higher court than the courts of justice. It is the court of conscience. It supersedes all courts.”

Shivani Chaudhry

Executive Director, Housing and Land Rights Network

New Delhi, April 2019

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1

SECTION

**OVERVIEW AND
ANALYSIS OF
JURISPRUDENCE
FROM HIGH COURTS
OF INDIA ON THE
HUMAN RIGHT
TO ADEQUATE
HOUSING**

Introduction

The right to adequate housing has been recognized and upheld as a human right in international law and finds its legal basis in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (1966), which declares that: “The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.”¹

The scope of the right is elaborated in General Comment 4 of the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR), which states that regardless of context, certain elements are essential for housing to be considered ‘adequate.’ These include: the legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy.² This list of adequacy has been further expanded by Housing and Land Rights Network and the Special Rapporteur on Adequate Housing to include the additional elements of: physical security; participation and information; access to land, water, and other natural resources; freedom from dispossession, damage, and destruction; resettlement, restitution, and compensation; *non-refoulement* and return; access to remedies; education and empowerment; and, freedom from violence against women.³

General Comment 7 of CESCR further lays down the obligations of State Parties with regard to forced evictions.⁴

In consonance with these international instruments, the first Special Rapporteur on Adequate Housing, in 2006, aptly defined the human right to adequate housing as: “The right of every woman, and man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”⁵

Thus, the right to adequate housing, as enumerated in international law, can be understood as a guarantee of certain freedoms and entitlements, such as, the ability to choose where to live; freedom from arbitrary interference with one’s home, privacy, and family; protection against forced evictions and the arbitrary demolition of one’s home; security of tenure; equal and non-discriminatory access to adequate housing; restitution of housing, land, and property; and, participation in housing-related decision-making at the national and community levels.⁶

The Special Rapporteur on Adequate Housing, in her report on the access to justice for the right to housing has outlined the normative framework within which relief may be provided for violation of the human right to adequate housing.⁷ Access to justice for the right to housing includes “recognizing the inherent dignity” of those whose right has been violated and “providing a human rights space in which the claim to a right to live in dignity and security is clearly heard, valued and responded to.”

However, the justiciability of the human right to adequate housing has been limited in India due to the absence of strong and rights-based laws and policies related to housing. Although India has ratified several international human rights instruments, which mandate the guarantee and protection of the human right to adequate housing, it has not independently recognized or defined the right within its legislative or constitutional framework. The courts have often been inconsistent and even contradictory in their interpretation and treatment of the right to adequate housing, not necessarily recognizing it as an independent human right or providing human rights-based remedies. The Indian judiciary has elaborated several aspects of the right to adequate housing, deriving primarily from the right to life and personal liberty. The ‘right to life’ is a Fundamental Right guaranteed under Article 21 of the Constitution of India, which states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

1 ‘International Covenant on Economic, Social and Cultural Rights’ (1966). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

2 United Nations Committee on Economic, Social and Cultural Rights, General Comment 4: ‘The Right to Adequate Housing’ (Art. 11 (1) of the Covenant), 1991. Available at: http://hlrn.org.in/documents/CESCR_General_Comment_4.pdf

3 See, ‘Questionnaire on Women and Housing’, Annex 3 of the report of the Special Rapporteur on Adequate Housing, A/HRC/4/18, February 2007. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

4 See, General Comment 7 (‘The Right to adequate housing: Forced evictions’) of the United Nations Committee on Economic, Social and Cultural Rights, 1997. Available at: http://hlrn.org.in/documents/CESCR_General_Comment_7.pdf

5 Report of the Special Rapporteur on Adequate Housing, E/CN.4/2006/41, March 2006. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

6 See, *The Right to Adequate Housing*, Fact Sheet No. 21/Rev.1, Office of the United Nations High Commissioner for Human Rights and UN-HABITAT. Available at: https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

7 Report of the Special Rapporteur on Adequate Housing, A/HRC/40/61, January 2019. Available at: <http://www.unhousingrapp.org/user/pages/04.resources/Access%20to%20justice%20Report.pdf>

The ‘Right to Adequate Housing’ or the ‘Right to Shelter’

The human right to adequate housing is recognized in international law, as opposed to the right to shelter, and provides wider legal protection and entitlements. However, in the majority of cases related to housing rights, Indian courts have referred to the ‘right to shelter’ instead of the ‘right to adequate housing.’ In a few of the cases reviewed in this compilation such as in *Ajay Maken v. Union of India*,⁸ *Millennium Educational Trust v. State of Karnataka*,⁹ *Shivaji Krishna Zunjare v. State of Maharashtra*,¹⁰ and *Joseph Bain D’Souza v. State of Maharashtra*,¹¹ the judiciary has used language of the ‘right to housing.’

‘Adequate housing’ is not merely the provision of shelter in the form of four walls and a roof but also includes fundamental elements necessary for individuals, groups, and communities to live adequately, and with peace, safety, security, and dignity, as elaborated by the Special Rapporteur on Adequate Housing and the General Comments of the UN Committee on Economic, Social and Cultural Rights, cited above. The human right to adequate housing is also integrally linked to a range of other human rights, including those required for the fulfilment of an adequate standard of living.

In some instances, the term ‘right to shelter’ has been used by courts in a narrow sense, which diminishes the more-encompassing meaning of the human right to adequate housing. However, while usage of the terminology of the ‘right to shelter’ in Indian jurisprudence is not consistent, it also does not necessarily preclude the recognition of various aspects of the human right to adequate housing. In many cases, courts have implicitly recognized components of adequate housing by relying on the right to life, right to equality and equal treatment before law,¹² right to settle or reside in any part of the country,¹³ and other concomitant rights while using the language of ‘right to shelter’ as opposed to ‘right to housing.’ For instance, in a few cases, the courts’ usage of the ‘right to shelter’ reflects a broader rights-based approach, more in line with the human right to adequate housing as protected and elaborated in international law.

In the case of *Millennium Educational Trust v. State of Karnataka*, the High Court of Karnataka stated that:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being.

Congruent and Competing Rights

While adjudicating the right to housing, courts have frequently emphasized the ‘indivisibility of human rights’ as well as recognized other concomitant rights such as the human rights to water and food. In *Ajay Maken v. Union of India*, the High Court of Delhi held that:

The right to housing is a bundle of rights not limited to a bare shelter over one’s head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport facilities.

For example, courts have also implicitly recognized, as an essential component of housing, the fundamental right to food and water in *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation*,¹⁴ the rights to clean drinking water and sanitation in *Fashion Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co.*¹⁵ and *R. Krishnasamy Gounder v. The State of Tamil Nadu*,¹⁶ and, the right to privacy in *Bibhuti Bhusan Chakraborty v.*

8 W.P. (C) 11616/2015, High Court of Delhi.

9 ILR 2013 KARNATAKA 1452.

10 2004 (6) BomCR 133.

11 2005 (6) BomCR 543.

12 Article 14, Constitution of India.

13 Article 19(1)(d), Constitution of India.

14 MANU/MH/2705/2014.

15 AIR 2009 Cal 87.

16 2008 8 MLJ 1037.

Deputy Registrar.¹⁷ Courts have also established the right to electricity as an independent right linked to the right to housing in the cases of *Abhimanyu Mazumdar v. Superintending Engineer*¹⁸ and *Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board*.¹⁹

In the cases of *T.M. Prakash v. District Collector and Tamil Nadu Electricity Board*,²⁰ and *Mirza Sanaulla v. Davanagere Urban Development Authority*,²¹ the judiciary has linked the right to housing with the fulfilment of the right to livelihood and the right to reside in any part of the country.

In some cases, courts have highlighted that the protection of land and property rights is crucial to ensuring that certain groups are able to enjoy the full realization of their human right to adequate housing. For example, in *S. Shangreikhai v. Union of India*,²² the Gauhati High Court recognized land as an essential resource linked to the right to life, right to housing, right to livelihood, and the right to dignity. In doing so, the Court acknowledged the indivisibility of human rights and the conception of land as not merely a physical resource but as a bundle of rights.

Similarly, in the case of *Peerless Tea and Industry Ltd. v. State of Tripura*,²³ the Gauhati High Court relied on the judgment of the Supreme Court in *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation*,²⁴ which had stated that:

The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension.

Moreover, in *Ajay Maken v. Union of India*, the High Court of Delhi recognized the ‘right to the city’ as an extension of the core elements of the human right to adequate housing and held that the housing needs of the urban poor must be prioritized in urban policies. It stated that:

The right to the city (RTTC) acknowledges that those living in JJ clusters in jhuggis/slums continue to contribute to the social and economic life of a city. These could include those catering to the basic amenities of an urban population, and in the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life. Many of them travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life. Prioritising the housing needs of such population should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution. The RTTC is an extension and an elaboration of the core elements of the right to shelter and helps understand the broad contours of that right.

In matters related to environmental protection, courts have often disregarded the rights of local communities to housing, land, and natural resources. Courts have frequently ordered evictions as a means of conserving wildlife and aiding environmental protection, failing to recognize the sustainable lifestyle of local communities and their historical role in conservation and protection of the environment, thereby causing a direct deprivation of their human right to adequate housing. Data compiled by Housing and Land Rights Network reveals that, in 2017, nearly 14 per cent of the total cases of forced eviction occurred for reasons of environmental protection and wildlife conservation, many of which were carried out under court orders. In particular, orders by the Madras High Court in W.P. 19465/2017 and Gauhati High Court in PIL 27/2017, among others, led to the forced eviction of indigenous communities under the guise of environmental and wildlife protection.

17 AIR 1997 Cal 374.

18 AIR 2011 Cal 64.

19 MANU/TN/0369/2016.

20 (2014) 1 MLJ 261.

21 ILR 2010 KARNATAKA 2956.

22 AIR 2011 Gau 171.

23 MANU/TR/0147/2015.

24 (2013) 1 SCC 353.

A more reasonable approach, however, was adopted in *Sri Zakir Khan v. State of Orissa*,²⁵ where the Cuttack High Court tried to strike a balance between the right to property of individuals and environmental rights, when it recognized that the right to property of individuals, is not merely a constitutional right but also a human right that cannot be abrogated except in accordance with the provisions of a statute. It used this understanding of the right to prevent the arbitrary eviction of local villagers from the vicinity of a protected area, until actual harm could be proved.

Positive Obligations of the State

In a remarkable case of the recognition of the right to housing, the Bombay High Court in *Shivaji Krishna Zunjare v. State of Maharashtra*, outlined the positive obligations of the state when it invoked Article 26 of the South African Bill of Rights, which provides that the human right to adequate housing exists for all persons; that the state must take reasonable legislative and other measures within its available resources; and that no one may be evicted without an order of the court considering all circumstances.

In *Sudama Singh v. Government of Delhi*,²⁶ the High Court of Delhi, not only recognized the right to housing for all, including pavement and settlement-dwellers, but also gave procedural directions for its implementation which, in the absence of statutory provisions, could be used as precedent in similar cases.

Similarly, in the cases of *Millennium Educational Trust v. State of Karnataka* and *Jagdish v. Delhi Development Authority*,²⁷ the courts adopted a human rights approach to specify the duties of the state with respect to the right to adequate housing, which include protection from arbitrary and forced evictions and illegal acquisition, but also extend to the responsibility of the state to provide adequate housing to people belonging to economically weaker sections.

In some cases, courts have restricted the enforceability of the positive aspects of the human right to adequate housing, subject to the availability of resources, quite similar to the treatment of the Directive Principles of State Policy in the Constitution of India. For example, in *Millennium Educational Trust v. State of Karnataka*, the High Court of Karnataka stated that:

Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting.

However, the “availability of resources” as clarified by CESCR, does not alter the immediacy of the state’s obligation, nor can the lack of resources justify inaction.²⁸ Even in cases when available resources are demonstrably inadequate, the state is obligated to ensure the widest possible enjoyment of economic, social, and cultural rights under the prevailing circumstances and protect the most disadvantaged and marginalized groups of society.

The judgment in the case of *P.K. Koul v. Estate Officer*²⁹ seems to follow this line of reasoning, where the High Court of Delhi relied on international law and standards to strengthen the positive aspects of the right to housing and held that financial stringency cannot be used as an excuse by the state to not undertake steps to ensure adequate housing facilities. Moreover, the Court held that where the state fails to comply with its constitutional obligations, the aggrieved would not only be entitled to restitution, but also compensation in the form of damages.

Protection from State and Private Incursions

The adjudication of the human right to adequate housing in domestic law has most frequently occurred in instances when courts have been approached to seek protection from forced eviction, land acquisition leading to displacement, and discrimination, among other issues.

25 O.J.C. 5038/2002, Orissa High Court.

26 168 (2010) DLT 218.

27 115 (2004) DLT 391.

28 See, ‘An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant,’ UN Committee on Economic, Social and Cultural Rights, E/C.12/2007/1, May 2007. Available at: https://www2.ohchr.org/english/issues/escr/docs/e_c12_2007_1.pdf

29 ILR (2010) Supp. (1) Delhi 657.

i) Forced Evictions

In *Sudama Singh v. Government of Delhi*, the High Court of Delhi highlighted the deprivation of human rights caused by forced evictions and held that:

What very often is overlooked is that when a family living in a Jhuggi is forcibly evicted, each member loses a “bundle” of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity.

In certain cases of eviction, courts have provided relief against arbitrary and forced evictions by emphasizing due process requirements (*Mala Pentamma v. Nizamabad Municipality*³⁰) and by directing the state to provide alternative accommodation (*Yamkhomang Haokip v. State of Manipur*,³¹ *Zubair Malik v. Municipal Corporation of Greater Mumbai*,³² and *Shantha Mary v. State of Karnataka*³³). In the case of *C. Ponnusamy v. Government of Tamil Nadu*,³⁴ the High Court of Madras highlighted the importance of procedural safeguards, such as providing notice and conducting public hearings in advance, to prevent any arbitrary and forced evictions.

In *Ajay Maken v. Union of India*, the High Court of Delhi held that forced eviction of settlement dwellers, without adequate notice, adherence to due process established in the case of *Sudama Singh v. Government of Delhi*, and without adequate rehabilitation would be considered illegal. It held that:

Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law...

(...) unless it is possible for the JJ dwellers to be rehabilitated upon eviction, the eviction itself cannot commence.

In a few cases, courts have also provided immediate relief and closely monitored the situation of people affected by evictions. For example, in *Ajay Maken v. Union of India*,³⁵ the High Court of Delhi recognized the human rights crisis that had arisen as a result of forced eviction without due process, and acknowledged the vulnerable condition of women and children who were especially affected. The Court issued specific directions to state agencies for provision of basic facilities, including toilets and electricity to the evictees.

Similarly, in *Udal v. Delhi Urban Shelter Improvement Board*,³⁶ the High Court of Delhi questioned the administrative and procedural technicalities based on which alternative housing was denied to evicted families. The Court acknowledged that the affected persons may not be in a position to maintain records, hence, relief could not be denied on the failure to produce certain specific documents, as long as there was some proof of residence.

Several judgments, including *Sudama Singh v. Government of Delhi*, *Ajay Maken v. Union of India*, and *Shivaji Krishna Zunjare v. State of Maharashtra*, have relied extensively on international law, guidelines, and standards, and have cited international case law to strengthen the argument in favour of the human right to adequate housing as well as to provide adequate relief.

ii) Land Acquisition and Displacement

In matters related to land acquisition, the judiciary has generally given primacy to the notion of “eminent domain,” which has been described in *Sharadamma v. State of Karnataka*,³⁷ as, “the right of the State to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it.”

Courts, however, have established that due process must be followed in cases of land acquisition to ensure natural justice (*The Commissioner, Bangalore Development Authority v. State of Karnataka*,³⁸ *Jagdish v. Delhi Development*

30 2005 (6) ALD 488.

31 (2003) 3 GLR 409.

32 2015 (1) ALLMR 543.

33 2014 (4) AKR 513.

34 1997 (1) CTC 212.

35 W.P. (C) 11616/2015, High Court of Delhi.

36 MANU/DE/2288/2017.

37 2005 (4) KarLJ 481.

38 2006 (1) KarLJ 1.

Authority, *State of M.P. v. Amar Kaur*,³⁹ *McLeod Russel India Ltd. v. State of Assam*⁴⁰). In *State of M.P. v. Amar Kaur*,⁴¹ the High Court of Madhya Pradesh held that:

It is true that under the provisions contained in Article 300-A of the Constitution of India and the provisions of the Land Acquisition Act 1894, the State can exercise its power of “eminent domain” to deprive a person of his right to property. However, this can only be done when there is a public purpose and a reasonable amount of compensation is offered in exchange for the land. It is also a requirement that procedure must be scrupulously complied with.

In *Sharadamma v. State of Karnataka*, the High Court of Karnataka held that acquisition proceedings would be considered void if the government did not adhere to the principles of natural justice. The Court recognized that the acquisition of land causes significant problems to the persons displaced, including loss of their livelihood, and hence, adequate consideration must be given before the acquisition proceedings are initiated. The Court also drew a distinction between constitutionally elected legislative bodies like the Parliament which can exercise the power of “eminent domain” and those that enjoy only a limited or qualified jurisdiction (in this case the Bangalore Development Authority).

Moreover, courts have emphasized the provision of adequate compensation, mostly in cases where the statute already provides for the same (*Phongseh Misao v. Collector of Land Acquisition*⁴²).

In some cases related to displacement, courts have established that the right to housing includes the right to resettlement of persons who are displaced (*Dev Nath Yadav v. State of U.P.*⁴³ – Allahabad High Court), and have provided relief in the form of alternative accommodation (*Sudama Singh v. Government of Delhi* – High Court of Delhi, *Shantha Mary v. State of Karnataka* – High Court of Karnataka, and *Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council*⁴⁴ – Bombay High Court).

Courts have also addressed the loss of housing resulting from internal displacement caused by armed conflict and situations of generalized violence in a few cases, such as *P.K. Koul v. Estate Officer* (persons affected by the militancy in Jammu and Kashmir) and *Yamkhomang Haokip v. State of Manipur* (persons affected by violence near the Indo-Bhutan border), and provided adequate relief to protect the right to housing of internally displaced persons.⁴⁵

iii) Discrimination

In matters related to discrimination in housing, especially in the case of co-operative societies, jurisprudence from High Courts has largely been contradictory. For example, in *St. Anthony's Co-operative Society v. Co-operation and Textile Department*,⁴⁶ the Bombay High Court treated the right to housing as a statutory right, thus, allowing the state to mandate exclusion of certain members through legislation, and denying the evicted members any constitutional protection. However, in *Delhi Dayalbagh Coop. House Building Society Ltd. v. The Registrar Cooperative Societies*,⁴⁷ the High Court of Delhi relied on the right to housing to hold that membership to a housing society cannot be restricted to members of a particular community. As land is a natural resource, restricting its transfer to only certain people, would violate the constitutional principle of equality before law.

Security of Tenure and ‘Legality’ of Urban-dwellers

The human right to adequate housing addresses rights not just limited to the ownership of property and of property-owners but also guarantees the right of everyone, including non-owners, to a safe and secure place to live in peace and dignity. Security of tenure is an essential element of the human right to adequate housing, as elaborated in General Comment 4 of CESCR. It includes rental accommodation, cooperative housing, leased housing, emergency

39 MANU/MP/1969/2013.

40 2014 (1) GLT 315.

41 MANU/MP/1969/2013.

42 AIR 1977 Gau 47.

43 2010 6 AWC 5742 All.

44 2005 (3) BomCR 210.

45 The Guiding Principles on Internal Displacement (2004) define ‘internally displaced persons’ (IDPs) as: “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.” Available at: <http://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf>

46 2001 (1) BomCR 730.

47 195 (2012) DLT 459.

housing, and informal settlements.⁴⁸ The need to fulfil the right to adequate housing, for all those lacking such protection, including in the context of resettlement and compensation for those who do not have property titles or ownership/tenure claims over the land on which they live, has also been stressed in the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.⁴⁹

This aspect of the right to adequate housing can be gleaned in many cases such as *Abhimanyu Mazumdar v. Superintending Engineer, Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board, Fashion Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co., R. Krishnasamy Gounder v. The State of Tamil Nadu*, and, *Bibhuti Bhusan Chakraborty v. Deputy Registrar*, which deal with access to essential services. In all these cases, the courts have established that the concomitant human rights to water, electricity, sanitation, and privacy, should be fulfilled regardless of the nature of tenure and legality of the settlement, and would even extend to “unauthorized or illegal occupants.”

In *Ajay Maken v. Union of India*, the High Court of Delhi relied on the human right to adequate housing and right to the city to unequivocally hold that the urban poor cannot be viewed as “encroachers” and their housing needs must be prioritized in policies. The Court affirmed that:

The decisions of the Supreme Court of India on the right to shelter and the decision of this Court in *Sudama Singh* require a Court approached by persons complaining against forced eviction not to view them as ‘encroachers’ and illegal occupants of land, whether public or private, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy.

Despite this understanding, the judiciary’s view of low-income urban residents as “encroachers” or “trespassers,” in many instances, seems antithetical to the jurisprudence on the right to adequate housing and ignores not just the positive duties of the state to ensure inclusive urban planning and provide affordable housing for all but also violates fundamental constitutional principles. For example, in *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation*,⁵⁰ the Bombay High Court held that while supplying drinking water to occupants of “illegal settlements,” the Municipal Corporation could charge higher rates than the rate charged for water supply to “authorized” constructions, thus reinforcing discrimination against the urban poor.

Nature of Judicial Relief and its Limitations

The most common forms of relief, for violations of the human right to adequate housing, provided by courts include stay orders to halt forced evictions⁵¹ and directions to provide alternative accommodation and compensation (for example, in the case of *P.K. Koul v. Estate Officer*). In most cases, the remedies are limited as in the absence of a well-defined human right to adequate housing in national law, courts either rely on government schemes and policies or the principles of natural justice to implicitly protect some aspect of the human right to adequate housing.

Courts have also used interim orders as an effective means to provide immediate relief and remedy as well as monitor instances where the human right to adequate housing is violated. For example, in *Court on its own Motion v. Government of NCT Delhi*,⁵² the High Court of Delhi, through interim orders, administered the setting-up and functioning of homeless shelters in Delhi to ensure improved access of the city’s homeless to shelters and other facilities. Similarly, in *Ajay Maken v. Union of India*, the High Court of Delhi used interim orders to monitor living conditions in the aftermath of a demolition, and to provide essential services and facilities to affected persons.

However, in many of these cases while there is an implicit recognition of the human right to adequate housing, the final relief provided is not adequate or commensurate with the human rights approach. In many of the cases involving forced evictions, “relief” is limited to mere stay orders or interim relief measures, leaving the affected with no real remedy or justice. In *Ajay Maken v. Union of India*, although the High Court of Delhi strongly recognized

48 See, ‘Guiding Principles on Security of Tenure for the Urban Poor,’ presented in the report of the Special Rapporteur on Adequate Housing, A/HRC/22/46, December 2013. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/54

49 Basic Principles and Guidelines on Development-based Evictions and Displacement, presented in the report of the Special Rapporteur on Adequate Housing, 2007, A/HRC/4/18. Available at: https://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

50 MANU/MH/2705/2014.

51 See, for example, the orders of the High Court of Delhi in *Asha Devi v. Delhi Urban Shelter Welfare Board* (W.P. (C) 617/2017, 20 January 2017) and *Mayawati v. Delhi Development Authority* (W.P.(C) 734/2018, 31 January 2018) [not included in this compilation].

52 NCT refers to National Capital Territory of Delhi.

53 W.P. (C) 29/2010 and W.P. (C) 641/2013, High Court of Delhi.

the human right to adequate housing and right to the city, the relief provided was limited to the procedure laid down in the DUSIB policy and did not extend to mandating *in situ* rehabilitation or providing compensation to the affected families for the multiple human rights violations and extensive losses suffered during the forced eviction and its aftermath. Although the High Court of Delhi recognized the right to housing, the relief through interim orders focused only on provision of toilets and electricity, and not on recognition and protection of the residents' positive entitlements under the human right to adequate housing, including restitution.

In some cases, courts have moved beyond providing statutory relief and have extended orders to directing the state to ensure adequate planning and make suitable policies to provide affordable housing for all. In *Joseph Bain D'Souza v. State of Maharashtra*, the Bombay High Court examined the housing situation in the city in the aftermath of the 2005 Mumbai floods. The Court engaged with the state government and urged it to examine the nature of urban planning, the need to create affordable spaces for the urban poor, and the dilapidated condition of existing housing facilities. The Court's approach reflected an implicit understanding that the right to housing not only signifies protection from illegal eviction, but also requires the state to actively ensure accessibility of affordable housing. Similarly, in *Junjamma v. Bangalore Development Authority*,⁵⁴ the High Court of Karnataka, while recognizing the realities of the urban poor, directed the government to formulate adequate policy to ensure adequate housing for all people.

Contradictory Judgments and Inconsistent Jurisprudence

As shown above, the judiciary's approach has not been consistent with regard to the human right to adequate housing, and the recognition of the right to housing does not necessarily lead to effective relief. For example, in *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation*, the Bombay High Court held that the 'right to water' is integral to the 'right to adequate housing' and its provision does not depend on the legality of the settlement. However, in the same breath, the Court also declared that the Municipal Corporation could charge higher water rates while supplying drinking water to occupants of 'illegal settlements,' thus paving the way for a discriminatory policy in contravention to the components of the human right to adequate housing.

In a similar manner, courts have adopted contradictory approaches, especially with respect to the provision of alternative accommodation, resettlement, compensation and the 'legality of urban settlers.' This could be attributed to the absence of an independently recognized human right to adequate housing in domestic law as well as the lack of a strong precedential value in the existing judgments of High Courts. In certain cases, such as in *Udal v. Delhi Urban Shelter Improvement Board*, the High Court of Delhi restricted the citation of relief provided as precedent in other cases. This trend results in stand-alone judgments, which do not pave the way for substantive relief or provide for the legal recognition of the human right to adequate housing in future housing-related litigation.

Implementation of Court Orders

In cases where the judiciary does provide relief, implementation of orders is often weak and delayed. The favourable directives of the High Court of Delhi in *Sudama Singh v. Government of Delhi* (2010) have not been implemented, even nine years after the judgment, leading to continued deprivation and marginalization of the affected petitioners. In a subsequent contempt petition to implement the judgment (C.A. Nos. 21806–21807/2017), the Supreme Court of India held that, "the judgment was not complied with in its letter and spirit," and directed the authorities to implement the same within three months. However, more than a year after the contempt order, the judgment has not been complied with making the relief practically ineffective. Similarly, administrative reluctance in implementing court orders is highlighted in *Ajay Maken v. Union of India*, where despite directions from the High Court of Delhi to the authorities for the immediate provision of essential services, several orders document the inaction of authorities and the failure to implement the remedy measures.

Moreover, in many cases there is a long time-lapse between the first hearing of the case and the final judgment, which is significant as in the case of housing, timing is of key importance and such delayed orders are often ineffective, as people have to seek their own solutions. Courts also have the tendency to simply dispose cases after a while, without passing positive final orders, leaving only 'stay orders' as relief for the affected persons, thus diluting the human rights dimension of housing.

54 ILR 2005 KARNATAKA 608.

Conclusion

A human rights-based approach to housing, consistent with international human rights laws and standards, requires the recognition of adequate housing as a universal and independent but also indivisible, interdependent, and inter-related human right (linked with all other human rights), which guarantees to every individual, security of tenure, access to affordable housing and essential services, and protection from forced and arbitrary incursions. Although, Indian jurisprudence does not consistently and unequivocally recognize an independent human right to adequate housing, it does acknowledge shelter/housing as an essential component of the right to life, and protects many aspects of the right to adequate housing by relying on other concomitant rights and state policy.

Most of the cases dealing with the right to adequate housing in India pertain to the negative obligations of the state, specifically the protection against forced and arbitrary evictions. The relief provided in such cases is often limited to invalidating the eviction, if certain conditions related to due process are not met. In some cases, courts have directed the provision of alternative accommodation before carrying out the eviction. However, the limited understanding of the right has also resulted in decisions that deny the provision of alternative accommodation and adequate rehabilitation as a pre-requisite for evictions, when the settlers are deemed “illegal.” The reliance on ‘legality’ to determine the rights of affected persons goes against the conception of the human right to adequate housing, which suggests that security of tenure should be ensured regardless of the nature of the settlement or ownership status. It also contravenes the principles of natural justice and the fundamental right to equality under Article 14 of the Constitution of India.

The judiciary’s engagement with the positive obligations of the state to fulfil the right to adequate housing is mostly recommendatory and does not always result in commensurate relief and remedy. For example, even though, in some cases, courts acknowledge the conditions of the urban poor and the homeless, the relief provided does not necessarily secure their right to adequate, affordable housing in the city. Only in cases where there already exists a state policy to provide affordable housing, courts have provided relief using the policy as the basis. Even in cases where courts have directed the state to fulfil its positive obligations to ensure the right to adequate housing, the implementation of these directives is uncertain, without any monitoring mechanism. Moreover, in select cases where courts have provided relief going beyond the already existing policy, the decisions do not hold much ground as precedents, as each case is treated uniquely based on the facts. The judicial treatment of the right to adequate housing in India has not been adequate or fully consistent with the conception of the right, as articulated in international law, policy, and standards including, *inter alia*, General Comments 4 and 7 of the Committee on Economic, Social and Cultural Rights, the Basic Principles and Guidelines on Development-based Evictions and Displacement, the Guiding Principles on Security of Tenure for the Urban Poor, the Habitat Agenda,⁵⁵ the New Urban Agenda,⁵⁶ and other UN declarations, as well as reports of the Special Rapporteurs on Adequate Housing.⁵⁷ The trajectory of cases reveals that although courts recognize some aspects of the right to housing as part of Article 21 of the Constitution of India (‘right to life’), judicial intervention to effectuate the right is limited. To some extent, the lack of a strong policy framework outlining the contours of the right could be attributed to the inconsistent treatment of the right by the judiciary.

55 The Habitat Agenda, 1996. Available at: http://www.un.org/en/events/pastevents/pdfs/habitat_agenda.pdf

56 New Urban Agenda, 2016. Available at: <https://habitat3.org/the-new-urban-agenda/>

57 For reports of the Special Rapporteurs on Adequate Housing, see: <https://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

2

SECTION

**LANDMARK
JUDGMENTS
FROM THE
SUPREME COURT
OF INDIA ON THE
HUMAN RIGHT
TO ADEQUATE
HOUSING**

The Supreme Court of India, on several occasions, has held that the right to adequate housing is a human right emanating from the fundamental right to life protected by Article 21 of the Constitution of India. In several important judgments, the apex court has clearly established the relationship between the right to housing and the right to life, as guaranteed by Article 21.

While this publication focuses on the compilation and analysis of important judgments related to the right to housing from High Courts across India, this section lists some of the landmark judgments from the Supreme Court of India, most of which have been cited as legal precedent in High Court orders.

In its earliest conception of the right to shelter, the Supreme Court of India in *Francis Coralie v. Union Territory of Delhi*⁵⁸ stated that:

8. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.

Subsequently, in *Olga Tellis v. Bombay Municipal Corporation*,⁵⁹ the Supreme Court of India considered forced evictions as a violation of the rights to life and livelihood, and held that:

32. (...) An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.

Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages.

36. (...) **the eviction of the Petitioners from their dwellings would result in the deprivation of their livelihood** [emphasis added].

Similarly, in the case of *Consumer Education and Research Centre v. Union of India*,⁶⁰ the Supreme Court held that the 'right to shelter' would mean and include the right to livelihood, a better standard of living, hygienic conditions in the work place, and leisure.

In *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*,⁶¹ the Supreme Court further established that:

7. (...) **The right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1)(e) and the right to life under Article 21** [emphasis added].

In *State of Karnataka v. Narasimhamurthy*,⁶² the Supreme Court affirmed the positive obligation of the state to fulfil the right to shelter/housing. It held that:

7. **Right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house.** Acquisition of the land to provide house sites to the poor houseless is a public purpose as **it is a constitutional duty of the State to provide house sites to the poor** [emphasis added].

In *Chameli Singh v. State of Uttar Pradesh*,⁶³ the Court elaborated the components of the right to adequate housing:

8. **In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed**

58 (1981) AIR SC 746 753.

59 (1985) 3 SCC 545.

60 1995 (3) SCC 42.

61 (1996) AIR 114 1995 SCC.

62 AIR 1996 SC 90.

63 (1996) 2 SCC 549.

from restrictions which inhibit his growth. All human rights are designed to achieve this object. **Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.** These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. **Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.** As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. **In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy.** The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. **Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself** [emphasis added].

The Supreme Court has also directed the state to meet its positive obligations to fulfil the right to adequate housing. For example, in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,⁶⁴ the apex court stated that:

13. (...) In *P.G. Gupta v. State of Gujarat*,⁶⁵ the Supreme Court **considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution** and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. **The aforesaid principles have been expressly embodied and in-built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person.** Article 22 of the Declaration of Human Rights envisages that **everyone has a right to social security and is entitled to its realisation as the economic, social and cultural rights are indispensable for his dignity and free development of his personality.** It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, **the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the Constitutional objectives** [emphasis added].

In *Shantistar Builders v. Narayan Khimalal Totame*,⁶⁶ the Supreme Court of India also recognized the right of children to adequate housing and observed that:

9. Basic needs of man have traditionally been accepted to be three – food, clothing and shelter. **The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.** The difference between the need of an animal and a human being for shelter has to be kept in view. For the

64 (1997) 11 SCC 121.

65 1995 (1) SCALE 653.

66 (1990) 1 SCC 520.

animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect – physical, mental and intellectual. **The Constitution aims at ensuring the full development of every child. That would be possible only if the child is in a proper home** [emphasis added].

In *PUCL v. Union of India*,⁶⁷ the issue of homelessness which is a serious violation of the human right to adequate housing, was brought to the notice of the Supreme Court of India through the intervention of special commissioners. The Court ordered that shelters must be sufficient to meet the need of the homeless, in the ratio of at least one shelter per lakh (100,000) population, in every major urban centre. It also stated that shelters should be functional throughout the year and not as a seasonal facility only during the winter.

In an order dated, 23 January 2012, the Supreme Court of India stated that:

1. Article 21 of the Constitution states that no person should be deprived of his life or personal liberty except according to the procedure established by the law. Over the years, this Court's jurisprudence has added significant meaning and depth to the right to life. **A large number of judgments interpreting Article 21 of the Constitution have laid down right to shelter is included in right to life.**
5. **The State owes to the homeless people to ensure at least minimum shelter as part of the State obligation under Article 21** [emphasis added].

Similarly, in *E.R. Kumar v. Union of India*,⁶⁸ the Supreme Court addressed the right to shelter of homeless persons in urban areas, by establishing a committee to examine the slow progress with regard to the creation of shelter homes by states/union territories across India, and directing the government and its authorities to ensure that at least temporary shelters are provided for the homeless to protect them during the winter season.

The Supreme Court has also established the right to property as a human right, in the context of adverse possession. In *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation*,⁶⁹ the apex court declared that:

9. **The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right.** Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension [emphasis added].

Similarly, in *P.T. Munichikkanna Reddy v. Revamma*,⁷⁰ the Court held that:

40. There is another aspect of the matter, which cannot be lost sight of. **The right of property is now considered to be not only a constitutional or statutory right but also a human right** [emphasis added].
41. Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17: Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.
42. Moreover, the Universal Declaration of Human Rights, 1948 under Section 17(i) and 17(ii) also recognizes right to property:
 - 17 (i) Everyone has the right to own property alone as well as in association with others.
 - (ii) No one shall be arbitrarily deprived of his property.
43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.

67 (2013) 14 SCC 368.

68 2016 (10) SCJ 467.

69 (2013) 1 SCC 353.

70 (2007) 6 SCC 59.

Thus, the Supreme Court of India has unequivocally established the human right to adequate housing as an integral aspect of the 'right to life' guaranteed under Article 21 of the Constitution of India. Moreover, the Supreme Court has expounded the various facets of adequate housing not limited merely to shelter, and also emphasized the positive duties of the State towards fulfilling the right.

3

SECTION

**COMPILATION
AND ANALYSIS:
JUDGMENTS ON
THE HUMAN RIGHT
TO ADEQUATE
HOUSING AND
RELATED RIGHTS
FROM HIGH COURTS
ACROSS INDIA**

INDEX OF KEY ISSUES

This Index is intended to assist the reader in locating cases related to various aspects of the human right to adequate housing. All the cases in this compilation have been arranged thematically in this Index, based on the key issues they address. Many of the cases cover several overlapping issues, and have accordingly been listed under multiple categories. The following Index also illustrates which aspects of the right to housing have been more prominent in the adjudication of the human right to adequate housing by High Courts in India.

HUMAN RIGHTS-BASED APPROACH

Cases which discuss the human right to adequate housing and its essential components, link it to the right to life, right to land, right to property, right to livelihood, right to the environment, right to electricity, right to water, right to privacy, rights of the child, and emphasize the indivisibility of human rights

Right to Housing:

- Sudama Singh v. Government of Delhi
- P. K. Koul v. Estate Officer
- Delhi Dayalbagh Coop. House Building Society Ltd. v. The Registrar Cooperative Societies
- Delhi Development Authority v. Abhay Prakash Sinha
- Udal v. Delhi Urban Shelter Improvement Board
- Ajay Maken v. Union of India
- Shivaji Krishna Zunjare v. State of Maharashtra
- Joseph Bain D'Souza v. State of Maharashtra
- Bibhuti Bhusan Chakraborty v. Deputy Registrar
- Abhimanyu Mazumdar v. Superintending Engineer
- Millennium Educational Trust v. State of Karnataka
- Gopiram Agarwalla v. Smt. Bina Agarwalla
- Yamkhomang Haokip v. State of Manipur
- Dev Nath Yadav v. State of U.P.
- Mala Pentamma v. Nizamabad Municipality
- Chander Bhushan Anand. v. Union of India

Security of Tenure:

- T.M. Prakash v. District Collector and Tamil Nadu Electricity Board
- Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board

Right to Life:

- Sudama Singh v. Government of Delhi
- Ajay Maken v. Union of India
- St. Anthony's Co-operative Society v. The Secretary (Co-operation and Textile Department)
- Shivaji Krishna Zunjare v. State of Maharashtra
- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Pani Haq Samiti v. Brihan Mumbai Municipal Corporation
- T.M. Prakash v. District Collector and Tamil Nadu Electricity Board
- 'Fashion' Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Company
- Abhimanyu Mazumdar v. Superintending Engineer
- Gopiram Agarwalla v. Smt. Bina Agarwalla
- Yamkhomang Haokip v. State of Manipur
- Mala Pentamma v. Nizamabad Municipality
- Chander Bhushan Anand. v. Union of India

Right to Water:

- Pani Haq Samiti v. Brihan Mumbai Municipal Corporation

Right to Property:

- Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa
- Peerless Tea and Industry Ltd. v. State of Tripura

Right to Land:

- S. Shangreikhai v. Union of India

Right to Electricity:

- T.M. Prakash v. District Collector and Tamil Nadu Electricity Board
- Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board
- 'Fashion' Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Company
- Abhimanyu Mazumdar v. Superintending Engineer

Right to Livelihood:

- Millennium Educational Trust v. State of Karnataka
- Gopiram Agarwalla v. Smt. Bina Agarwalla
- Yamkhomang Haokip v. State of Manipur

Right to Privacy:

- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Bibhuti Bhusan Chakraborty v. Deputy Registrar

Rights of the Child:

- Millennium Educational Trust v. State of Karnataka

Indivisibility of Human Rights:

- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Pani Haq Samiti v. Brihan Mumbai Municipal Corporation
- T.M. Prakash v. District Collector and Tamil Nadu Electricity Board
- Millennium Educational Trust v. State of Karnataka
- Abhimanyu Mazumdar v. Superintending Engineer
- 'Fashion' Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Company
- S. Shangreikhai v. Union of India
- Mala Pentamma v. Nizamabad Municipality

'Legality' of Urban Settlements:

- Sudama Singh v. Government of Delhi
- Udal v. Delhi Urban Shelter Improvement Board
- Ajay Maken v. Union of India
- Pani Haq Samiti v. Brihan Mumbai Municipal Corporation

VIOLATIONS

Cases which address the violation of the human right to adequate housing caused by forced evictions, land acquisition, internal displacement, homelessness, arbitrary or illegal administrative action, and in furtherance of administrative orders for environmental protection

Forced Evictions:

- Sudama Singh v. Government of Delhi
- Udal v. Delhi Urban Shelter Improvement Board
- Ajay Maken v. Union of India
- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Zubair Malik v. Municipal Corporation of Greater Mumbai
- Junjamma v. Bangalore Development Authority
- Gopiram Agarwalla v. Smt. Bina Agarwalla
- Mala Pentamma v. Nizamabad Municipality
- Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa

Land Acquisition:

- Jagdish v. Delhi Development Authority
- Delhi Dayalbagh Coop. House Building Society Ltd. v. The Registrar Cooperative Societies
- C. Ponnusamy v. Government of Tamil Nadu
- Junjamma v. Bangalore Development Authority
- Sharadamma v. State of Karnataka
- Phongseh Misao v. Collector of Land Acquisition
- Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa

Internal Displacement:

- P. K. Koul v. Estate Officer
- Yamkhomang Haokip v. State of Manipur

Homelessness:

- P. K. Koul v. Estate Officer
- Court on its own Motion v. Government of National Capital Territory of Delhi
- Ajay Maken v. Union of India
- Millennium Educational Trust v. State of Karnataka

Legality of Administrative Action:

- Sharadamma v. State of Karnataka
- Mirza Sanaulla v. Davanagere Urban Development Authority

Environmental Protection:

- Yamkhomang Haokip v. State of Manipur
- Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa

REMEDIES

Cases which provide remedies in the form of access to essential services, compliance with due process, provision of alternative housing, rehabilitation, resettlement, and compensation

Due Process:

- Jagdish v. Delhi Development Authority
- C. Ponnusamy v. Government of Tamil Nadu
- Ajay Maken v. Union of India
- Sharadamma v. State of Karnataka
- Yamkhomang Haokip v. State of Manipur
- Mala Pentamma v. Nizamabad Municipality
- Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa

Provision of Essential Services:

- Court on its own Motion v. Government of National Capital Territory of Delhi
- Ajay Maken v. Union of India

Resettlement:

- Sudama Singh v. Government of Delhi
- Udal v. Delhi Urban Shelter Improvement Board
- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Shivaji Krishna Zunjare v. State of Maharashtra
- Zubair Malik v. Municipal Corporation of Greater Mumbai
- Junjamma v. Bangalore Development Authority
- Sharadamma v. State of Karnataka

- Shantha Mary v. State of Karnataka
- Yamkhomang Haokip v. State of Manipur
- Dev Nath Yadav v. State of U.P.

Compensation:

- Steel Plant Employees Union, Salem v. Steel Authority of India Limited
- Phongseh Misao v. Collector of Land Acquisition
- Mala Pentamma v. Nizamabad Municipality
- Peerless Tea and Industry Ltd. v. State of Tripura

POSITIVE OBLIGATIONS OF THE STATE

Cases which discuss the positive obligations of the state to fulfil the human right to adequate housing, including the provision of affordable housing, inclusive urban planning, and rent control laws

Positive Obligations of the State:

- Jagdish v. Delhi Development Authority
- Delhi Development Authority v. Abhay Prakash Sinha
- P. K. Koul v. Estate Officer
- Ajay Maken v. Union of India
- Shivaji Krishna Zunjare v. State of Maharashtra
- D.B. Realty Ltd. v. State of Maharashtra
- Junjamma v. Bangalore Development Authority
- Millennium Educational Trust v. State of Karnataka

Affordable Housing:

- Jagdish v. Delhi Development Authority
- Delhi Development Authority v. Abhay Prakash Sinha
- Shivaji Krishna Zunjare v. State of Maharashtra
- Joseph Bain D'Souza v. State of Maharashtra
- D.B. Realty Ltd. v. State of Maharashtra
- Junjamma v. Bangalore Development Authority

Urban Planning:

- Joseph Bain D'Souza v. State of Maharashtra
- Junjamma v. Bangalore Development Authority
- Sharadamma v. State of Karnataka

Rent Control Laws:

- Chander Bhushan Anand. v. Union of India

INTERNATIONAL LAW

Cases which cite international laws/treaties, United Nations guidelines and declarations, and international case law

- Sudama Singh v. Government of Delhi
- P. K. Koul v. Estate Officer
- Ajay Maken v. Union of India
- Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council
- Shivaji Krishna Zunjare v. State of Maharashtra
- Junjamma v. Bangalore Development Authority
- Millennium Educational Trust v. State of Karnataka

I. HIGH COURT OF DELHI

1. Jagdish v. Delhi Development Authority

KEY ISSUES	Land Acquisition, Due Process, Affordable Housing, Positive Obligations of the State, Resettlement
Case Number	W.P. (C) 5007/2002
Case Citation	MANU/DE/9327/2006
Decided on	14 July 2006
Petitioners	Residents of a settlement in Delhi (Arjun Camp) who were given notice about acquisition of their land
Respondent	Delhi Development Authority (DDA)

Facts

The settlement at Arjun Camp, adjoining Pocket B-9, in Vasant Kunj, Delhi consisted mostly of families who worked on construction of housing in Vasant Kunj and surrounding areas. Social, political, and religious ties were established over the years, and the community made the area their home. All children were going to school in the neighbourhood.

The Delhi Development Authority approached some of the residents and delivered offer and demand letters in July 2002, stating that their land would be acquired, and that they were to deposit Rs 7,000 or Rs 5,000 respectively for alternative plots of land of 18 square metres (sq. m.) or 12.5 sq. m. at an alternative site whose location was not known or described. However, other residents were not given such a notice and it became apparent that their homes would be demolished anyway. The settlement was demolished by the Respondent (DDA) on 19 May 2003. The Petitioners claim that areas earmarked for construction of Low Income Group (LIG) housing were being utilized for a higher category with the result that no appropriate accommodation was available for allotment to the LIG category.

Relief Sought

Restrain the Respondent DDA from shifting the Petitioners from Arjun Camp in violation of the Master Plan for Delhi – 2001, and further to direct the Respondent not to shift the Petitioners unless and until they have ready plots in a scheme as per Master Plan norms on a low-income housing site within Vasant Kunj, as per the approved layout plan.

Issue

The basic issue in these petitions concerns the failure of the Respondent (DDA) to construct adequate housing for LIG or for Economically Weaker Sections (EWS) as per the Master Plan for Delhi 2001 (MPD) norms, which had created a housing shortage and implementation backlog.

Ruling

1. Reading Section 2 (d) and 2 (f) of the Protection of Human Rights Act 1993, the Court declared that the right to adequate housing guaranteed by Article 11.1 of the International Covenant on Economic, Social and Cultural Rights is part of the law of the land in India.

16. (...) Thus, by virtue of Section 2 (d) and 2 (f) of the Protection of Human Rights Act, 1993 the right to adequate housing guaranteed by Article 11.1 of the (ICESCR) is part of the law of the land in India. Other international instruments, namely, Universal Declaration of Human Rights, 1948, International Convention on Elimination on All Forms on Racial Discrimination, 1965, Declaration of Social Progress and Development, 1969, Vancouver Declaration of Human Settlements, 1976 and Declaration of the Right to Development also inform the interpretation of the Right to Adequate Housing accordingly. **These international instruments provide for right to adequate shelter, housing services and access to land on equitable basis to all. Thus, these instruments cast a positive obligation on the state to take reasonable measures to ensure progressive realization of the right to adequate housing, particularly to the low income/least advantaged groups of the society** [emphasis added].
2. The judge also read the international instruments that recognize the human right to adequate housing, services, and access to land on an equitable basis to all.
 3. The international laws, declarations, and standards referred to by the Court include:
 - i) Article 25.1 of the Universal Declaration of Human Rights, 1948;
 - ii) Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, 1966;
 - iii) Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965;
 - iv) Part II of the Declaration of Social Progress and Development, 1969;
 - v) Section 1 (8) and Chapter 2 (A.3) of the Vancouver Declaration of Human Settlements, 1976;
 - vi) Article 8.1 of the Declaration on the Right to Development, 1986; and,
 - vii) General Comment 7 dated 20 May 1997 of the UN Committee on Economic, Social and Cultural Rights.
 4. Relying on the South African judgment in the case of *Republic of South Africa v. Grootboom*,⁷¹ the Court recognized the positive obligation of the state to take reasonable measures to ensure progressive realization of the right to adequate housing, particularly to low-income/least advantaged groups of the society. In that case, the Constitutional Court of South Africa had held that:

93. (...) this case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. **The obligation is to provide access to housing, health care, sufficient food and water, and social security to those unable to support themselves and their dependents. The state must also foster conditions to enable citizens to gain access to land on an equitable basis** [emphasis added].
 5. The Court consistently used interim orders. Though these were not directed at stopping any imminent demolitions, they repeatedly required better and more detailed affidavits from the Respondents to justify why the entitlements of the Petitioners under MPD 2001 were not being realized.
 6. The Court also made explicit, through the citing of legal precedent, that a plan prepared in terms of statute concerning the planned development of a city attains a statutory character and is enforceable as such, hence MPD 2001 is not just a guideline but is binding on the DDA:

26. (...) The position in law is therefore that the MPD is of a statutory character and is enforceable as such. The provisions of the MPD are binding on the Respondent DDA and will have to be complied with fully by the Respondent DDA in order to ensure the planned development of Delhi.
 7. The Court relied on the objectives of MPD 1962, stating that:

28. The MPD 1962 anticipated growth of slum clusters and projected targets on the basis of such anticipated growth. The MPD 1962 envisaged earmarking of plots as well as construction of dwelling units to meet the housing demand. Further it emphasized the integration of low-income housing such as EWS and LIG into the composite neighbourhood. The MPD 1962 noticed that the scheme drawn up at that time by the Municipal Corporation of Delhi proposed relocation of the Basti inhabitants 'in suitable areas not too far away from major work centres.

71 [2001] 3 LRC 209.

8. Therefore, the Petitioners are:

43. (...) owed a statutory duty by the Respondent DDA to be provided with low income housing as per the MPD norms. If they further demonstrate that Respondent DDA has in fact failed to perform its statutory duty, they can certainly seek a mandamus from this Court in exercise of its writ jurisdiction asking the Respondent DDA to perform its statutory duty.

9. Upon an assessment of the data and evidence, the Court ruled that:

48. (...) There is an implementation backlog in the area of low-income housing in the F Zone and that Respondent DDA is squarely responsible for this failure on its part to fulfill its statutory obligation.

10. On the issue of resettlement, the Court said:

58. (...) Any resettlement scheme of the Respondent DDA will have to both comply with the MPD norms and also be based on some rational and intelligible criteria.

59. Whatever may be the components of the resettlement plan, it will have to satisfy the basic requirement of an integrated community spelt out in the MPD itself. **Also the basis of eligibility of persons to low income housing will have to be evolved in a transparent manner with the participation and consultation of the persons who are to benefit from such a scheme. Unless housing that is relevant and useful to the working classes is provided, there are bound to be situations where such housing will be transferred illegally and the original slum residents come back to squatter colonies. The discussion on this point is concluded by observing that Respondent DDA will have to be issued directions to evolve a meaningful resettlement scheme in a time bound and transparent manner consistent with the MPD 1962 and 2001 norms [emphasis added].**

Relief Granted

A writ of mandamus was issued to the Respondent (DDA) to take the following steps:

- 1) Frame a resettlement scheme in accordance with the MPD norms, within six weeks from the date of the order.
- 2) Include reasonable criteria for determination of the eligibility of the Petitioners for allotment of an EWS plot or a LIG housing unit in the draft scheme.
- 3) Publish and give wide publicity to the draft scheme.
- 4) Provide Petitioners an opportunity to file objections in court and be heard again.
- 5) Give Petitioners the benefit of making applications for EWS and LIG housing, if they so wished.
- 6) File an interim compliance report along with progress reports to the court. These reports were to include time frames and full details of shortfalls in providing LIG housing.

Analysis

The Court recognized the right to housing and consequently, laid down a procedure to establish and ensure that due process is followed during an acquisition proceeding, to safeguard the right to housing.

2. Delhi Development Authority v. Abhay Prakash Sinha

KEY ISSUES

Right to Housing, Affordable Housing, Positive Obligation of the State

Case Number	LPA 179/2008 & CM 5449/2008, 1324/2007, 373/2006, 1032/2006, 459/2006, 468/2006, 469/2006, 470/2006, 679/2006, 682/2006, 776/2006, and 2325/2006
Case Citation	Not available
Decided on	6 June 2008
Petitioner /Appellant	Delhi Development Authority (DDA)
Respondents	The allottees of affordable housing scheme in Delhi

Facts

Delhi Development Authority (Appellant) devised a scheme for allotment of affordable flats in 1979, known as New Pattern Registration Scheme (NPRS) and offered flats in the Middle-Income Group, Lower-Income Group, and 'Janta'⁷² categories. The Respondents registered themselves with DDA under the said Scheme and paid the registration amount in 1979. Between 1986 and 1989, the Respondents were allotted the specific flats, which they did not accept. The Scheme provided for the Respondents being considered for future allotment upon payment of cancellation charges of 20 per cent of the registration amount. Delhi Development Authority carried out a fresh draw of lots in March 2004 for tail-end priority, in which a specific flat was allotted to each of the Respondents. However, a formal letter of allotment was not issued to the respondents, as they had not deposited the cancellation charges of 20 per cent of the registration amount. The Respondents filed the Writ Petition claiming the issuance of the demand-cum-allotment-letters and for possession of the flats in question. The single judge allowed the petitions by directing DDA to issue demand-cum-allotment-letters to the Respondents. In the present appeal, DDA challenged the judgment of the single judge on the ground that DDA was under no obligation to issue demand-cum-allotment letters to the Respondents as they had failed to pay 20 per cent of the registration amount as the cancellation charges.

Issue

Whether the Respondents are entitled to allotment of a flat by DDA.

Ruling

1. The Court sympathized with the plight of the Respondents and agreed with the judgment of the single judge, which had stated that:

18. (...) since 1979, petitioners⁷³ waited to be allotted a flat. Unfortunately, by the time their priority matured, the phenomenal price rise in the disposal cost of the flat coupled with the fact that quite a few got retired, put the cost beyond reach. To somewhat mitigate the hardship, DDA permitted restoration of allotment at the tail end priority, but subject to payment of cancellation charges. Unfortunately, as of today the only default is that the petitioners did not pay the cancellation charges.

2. The Court relied on the human right to adequate housing, and emphasized on the positive obligations of the State, specifically the Delhi Development Authority, to provide low cost and affordable housing:

From the judgment of the learned Single Judge, it is clear that though the learned Single Judge found that there was some breach on the part of the respondents herein in not making the payment in time, at the same time, the learned Single Judge was persuaded to allow the Writ Petitions filed by the respondents herein by balancing the equities **and reminding the DDA that it was not to act as mere property developer, like a private entrepreneur, and in view of the fact that DDA is a public authority** [emphasis added].

⁷² 'Janta' flats refer to single-room houses constructed under the New Pattern Registration Scheme 1979.

⁷³ In the present case, the Respondents.

(...) we are of the opinion that the view taken by the learned Single Judge is in tune with the obligation cast upon the statutory bodies like the DDA. **The Constitution of India makes it obligatory for the State to provide the right to adequate housing to all its citizens. There have been several important judgments that have clearly established the relation between the right to housing and right to life as guaranteed by Article 21. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human right emanating from this provision** [see U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. AIR 1996 SC 114, Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746 and Chameli Singh and others v. State of UP (1996) 2 SCC 549].

...

The main purpose with which DDA is created, as is clear from the provisions of Section 6 of the said act, is to promote and secure the development of Delhi according to plan and for that purpose it is given power to acquire, hold, manage and dispose of land and other property as well as carrying out building, operations, amongst others. **One of the public duty thus cast upon the DDA is to provide residential and other types of accommodations to the people of Delhi at reasonable cost.** The Supreme Court reminded DDA of this duty more eloquently in the case of Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats 2008 (2) SCC 672 [emphasis added].

Relief Granted

The Court dismissed the appeal by DDA and upheld the judgment passed by the single judge. It also directed DDA to hand over the possession of the allotted flats to the Respondents within six weeks subject to the Respondents furnishing an undertaking to DDA that they would not transfer or sell the allotted flats for a period of five years from the date of taking possession.

Analysis

In this case, the Court relied on the human right to adequate housing to emphasize the positive obligations of the State and its agencies to provide low-cost and affordable housing.

3. Sudama Singh v. Government of Delhi

KEY ISSUES	Right to Housing, Right to Life, Elements of Adequate Housing, Forced Eviction, Legality of Urban Settlement, Resettlement, International Law
Case Number	W.P. (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009
Case Citation	168 (2010) DLT 218
Decided on	11 February 2010
Petitioners /Appellant:	Residents of low-income settlements (<i>jhuggis</i> ⁷⁴) in Delhi
Respondents	Government of NCT (National Capital Territory) of Delhi and Slum & JJ Department, Municipal Corporation of Delhi

Facts

The Petitioners were residing in various clusters situated beside roads; many of their settlements had been in existence for decades. Some of them belonged to nomadic and Scheduled Tribe communities.

The Respondents claimed that many of these clusters threatened pedestrians and traffic, and justified clearing up these areas on the basis that ‘beautification’ of the city was necessary in lieu of the Commonwealth Games (October 2010). They further claimed that the sites were unsuitable for habitation for the residents’ own well-being.

With the intention of resettling these residents, the Respondents identified areas where low-income settlements exist, but excluded roads and pavements from their assessment. A detailed process followed, wherein the Respondents framed a three-pronged strategy, which included the relocation of clusters situated on land that was state-owned. The plan also included the upgradation of clusters where land-owners had no objections as well as the extension of basic civic amenities. The policy for relocation provided, however, that settlements would be removed only from project sites where requests were specifically received from land-owning agencies. The land for relocation was to be identified by the Delhi Development Authority (DDA), and targets were set for how many clusters would be relocated. Subsequently, the state-initiated demolitions of the clusters.

The Petitioners contested these actions by writ petitions vide Article 226 of the Constitution of India, in the High Court of Delhi. They claimed that they have a fundamental right to shelter/housing under Article 21 of the Constitution and that the action of the Respondents in demolishing their clusters without ensuring adequate rehabilitation violates this right. The Petitioners also argued that they constitute the service personnel who clean households and neighbourhoods, and are thus indispensable to the city, especially for resident upper-class populations.

The Respondents, however, contended that the Petitioners occupied land that affected the ‘right of way’ of other persons, and because of this fact were not eligible for alternative land under any government policy or scheme of rehabilitation or relocation.

Relief Sought

Rehabilitation and relocation of Petitioners in Delhi to a suitable place and provision of alternative land with ownership rights pursuant to demolition of their *jhuggies* (homes).

Issues

1. Whether the state government’s policy for relocation and rehabilitation excludes the persons obstructing the ‘right of way,’ although they are otherwise eligible for relocation/rehabilitation as per the state scheme.
2. Whether any policy regarding persons living on the ‘right of way’ exists, and if yes, what its true import could be.

⁷⁴ In Delhi, the terms *jhuggi* and *jhuggi jhopri* (JJ) bastis refer to houses/hutments of low-income communities as well as to ‘informal settlements.’

3. Whether the manner in which the alleged policy was being implemented by the Respondents is arbitrary, discriminatory, and in violation of Articles 14 and 21 of the Constitution of India and various international covenants which India has ratified.

Ruling

1. The judges recognized that human well-being and development are closely linked to the provision of adequate housing:

26. **Adequate housing serves as the crucible for human well-being and development, bringing together elements related to ecology, sustained and sustainable development.** It also serves as the basic unit of human settlements and as an **indicator of the quality of life** of a city or a country's inhabitants. It reflects, among other things, the **mobilization of resources and the distribution of space, as well as varied social and organizational aspects of the relationship between Government and society** [emphasis added].

2. The Court provided a holistic understanding of the right to housing by stating that:

29 ... **international declarations on the implementation of housing rights would include emphasis on the physical structure such as the provision of drinking water, sewer facilities, access to credit, land and building materials as well as the de jure recognition of security and tenure and other related issues** [emphasis added].

3. The judgment cites several international covenants and global standards, thereby reminding the Government of India of its international legal obligations and reiterating its duty to respect, protect, and fulfil the right to adequate housing as a human right. In particular, the judgment mentions the following international instruments and guidelines that protect the human right to adequate housing: Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), General Comment 7 of the UN Committee on Economic, Social and Cultural Rights (1991), Habitat I Vancouver Declaration (1976), Global Strategy for Shelter to the Year 2000, Habitat Agenda, Commission on Human Rights Resolution on Forced Evictions, Agenda 21, and Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (2008) (paragraphs 27–34).

The Court quoted Article 25 (1) of the Universal Declaration of Human Rights, which affirms that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services.⁷⁵

It also cited Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.⁷⁶

4. Quoting General Comment 7 of the Committee on Economic, Social and Cultural Rights, dated 20 May 1997, the Court recognized that all persons deserve protection from forced evictions.
5. The judgment refers to the report of the UN Special Rapporteur on Adequate Housing containing the Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)⁷⁷ in order to indicate the responsibilities of state and non-state actors in following due process, in particular in providing compensation, alternative accommodation, and restitution. While stressing that evictions must only take place in “exceptional circumstances,” the Guidelines outline due process to be followed and human rights standards to be adhered to, before, during, and after evictions. They highlight the adequate requirements and standards for resettlement, the human rights of affected persons, the avoidance of any detriment and discrimination, and the need for full information, participation, and consent. The judgment cites relevant paragraphs of the Guidelines (52–56) related to adequate resettlement, which includes protection of the human rights to health, adequate housing,

⁷⁵ Article 25 (1) of the Universal Declaration of Human Rights, 1948.

⁷⁶ Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966.

⁷⁷ Basic Principles and Guidelines on Development-based Evictions and Displacement, presented in the report of the Special Rapporteur on Adequate Housing, 2007, A/HRC/4/18. Available at: https://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

work/livelihood, water, sanitation, food, participation, information, security of the person and home, with a special focus on the rights of women and children.

6. The Court mentioned the Concluding Observations on India, issued by the UN Committee on Economic, Social and Cultural Rights in 2008, which in paragraph 70 affirm the need for a national housing policy with a focus on disadvantaged and marginalized individuals; measures to address “rising homelessness;” and disaggregated data on homelessness and inadequate housing. The Court also quoted paragraph 71 in which the Committee calls upon India to: “...effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and/or offered alternative accommodation in accordance with the guidelines adopted by the Committee in its General Comment 7 on forced evictions (1997). The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its General Comment 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.”
7. The judgment elaborates constitutional perspectives related to the right to shelter/housing and cites judgments of the Supreme Court of India that have upheld the right to housing/shelter as an inalienable component of the right to life under Article 21 of the Constitution of India, including *Shantistar Builders v. Narayan Khimalal Totame*,⁷⁸ *PG Gupta v. State of Gujarat*,⁷⁹ *Chameli Singh v. State of Uttar Pradesh*,⁸⁰ and *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*.⁸¹
8. Recognizing the severity of urban poverty in India, the judgment cited the ‘India: Urban Poverty Report 2009’ that acknowledges that people living in urban settlements face challenges of inadequate housing and lack basic civic amenities including clean drinking water, sanitation and health facilities.
9. Commenting on the reasons for the existence of inadequate settlements in urban areas and on their indispensable role, the Court said:
 44. In the last four decades, on account of pressure on agricultural land and lack of employment opportunities in the rural areas, a large number of people were forced to migrate to large cities like Delhi. However, **in cities, their slender means as well as lack of access to legitimate housing, compelled them to live in existing jhuggi clusters or even to create a new one.** They turned to big cities like Delhi only because of the huge employment opportunities here but then they are **forced to live in jhuggies because there is no place other than that within their means.** These **jhuggi clusters constitute a major chunk of the total population of the city.** Most of these persons living in the slums earn their livelihood as daily wage labourers, selling vegetables and other household items, some of them are rickshaw pullers and only few of them are employed as regular workers in industrial units in the vicinity while women work as domestic maid-servants in nearby houses. Their children also are either employed as child labour in the city; a few fortunate among them go to the municipal schools in the vicinity. The **support service provided by these persons (whom the Master Plan describes as ‘city service personnel’) are indispensable** to any affluent or even middle class household. The city would simply come to halt without the labour provided by these people [emphasis added].
10. The Court adopted a human rights-based approach recognizing the inherent human rights violations related to the act of forced eviction. It asserted:
 44. **Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted. Even though their jhuggi clusters may be required to be legally removed for public projects, but the consequences can be just as devastating when they are uprooted from their decades long settled position. What very often is overlooked is that when a family living in a jhuggi is forcibly evicted, each member loses a ‘bundle’ of rights – the right to livelihood, to shelter, to**

78 (1990) 1 SCC 520.

79 1995 Supp. (2) SCC 182.

80 (1996) 2 SCC 549.

81 (1997) 11 SCC 121.

health, to education, to access to civic amenities and public transport and above all, the right to live with dignity [emphasis added].

11. The Court mentioned Delhi government's initiative for relocation of 'slum-dwellers' citing the provision that, "No large scale removal of jhuggis should be resorted to without any specific use for the cleared site."

12. It discussed the relocation provisions of the Master Plan for Delhi (MPD) – 2021 by emphasizing:

46. The Master Plan for Delhi (MPD) – 2021 envisages rehabilitation or relocation of the existing squatter settlement/jhuggi dwellers. It provides for relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for public purpose, in which case, the jhuggi dwellers should be relocated/resettled and provided alternative accommodation. It also provides that resettlement whether in form of in-situ upgradation or relocation should be based mainly on built-up accommodation of around 25 sq.mtrs. with common facilities.

13. The Court further established the legality of the Master Plan, by citing relevant judgments and stating that: "A plan prepared in terms of a statute concerning the planned development of a city attains a statutory character and is enforceable as such."

14. The Court rejected the argument that the Petitioners were not entitled to any compensation or alternative land under any policy or scheme as they were occupying land which comes under the category of 'Right of Way.' It stated that:

50. In our opinion, the stand of the Respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the "Right of Way" is completely contrary to the State's policy which governs relocation and rehabilitation of slum dwellers. **State's policy for resettlement nowhere exempts persons, who are otherwise eligible for benefit of the said policy, merely on the ground that the land on which they are settled is required for "Right of Way"**. The Respondents' have failed to produce any such policy which provides for exclusion of the slum dwellers on the ground that they are living on "Right of Way." We find force in the submission of the Petitioners that even if there is any such policy, it may be for those jhuggi dwellers, who deliberately set up their jhuggies on some existing road, footpath etc, but **surely this policy cannot be applied to jhuggi dwellers who have been living on open land for several decades and it is only now discovered that they are settled on a land marked for a road under the Master Plan though when they started living on the said land there was no existing road** [emphasis added].

15. The Court also cited judgments from the South African Constitutional Court to illustrate the duties and responsibilities of the state, as well as the procedural rules to be followed for rehabilitation and relocation. The ruling in the *Government of the Republic of South Africa v. Irene Grootboom* case averred that:

The State must take reasonable legislative and other measures, within its available resources, to a progressive realization of this right. ...The state is obliged to take a positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.

The Court also referred to the case of *Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes and Others* [CCT 22/08(2009) ZACC 16 (10 June 2009)] where the Constitutional Court held that:

"Any government decision taken, and consequent order made regarding the forced eviction of a group of people cannot ignore the enormous impact that a potential forced removal will have on the individual, family, and community at large. No matter how commendable the government's intentions are regarding the intended use of the land from which the community has been removed without the solid promise of alternative housing, evictions may turn out to be a method of brutal state-control and a far cry from the progressive realisation of the socio-economic rights our Constitution guarantees. Courts must remain vigilant to ensure that when the government seeks to evict a community in pursuit of commendable housing plans, the plans must include the guarantee that those who are evicted and relocated have a reasonable opportunity of accessing adequate housing within a reasonable time in relation to the housing projects concerned."

16. The judges ordered the Respondents to engage meaningfully with the Petitioners, and to identify adequate spaces, and to develop a protocol ensuring due process, including for surveys of affected persons:
55. We find no difficulty in the context of the present case, and in the light of the jurisprudence developed by our Supreme Court and the High Court in the cases referred to earlier, to require the Respondents to engage meaningfully with those who are sought to be evicted. It must be remembered that the MPD–2021 clearly identifies the relocation of settlement-dwellers as one of the priorities for the government. Spaces have been earmarked for housing of the economically weaker sections. The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction.
56. The Respondents in these cases were unable to place records to show that any systematic survey had been undertaken of the jhuggi clusters where the Petitioners and others resided. There appears to be no protocol developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation etc.
17. The Court ruled that the settlement-dwellers are not to be treated as “secondary citizens.” It emphasized the state’s obligation to provide adequate resettlement:
57. This Court would like to emphasise that the context of the MPD, **jhuggi dwellers are not to be treated as ‘secondary’ citizens. They are entitled to no less an access to basic survival needs as any other citizen. It is the State’s constitutional and statutory obligation to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller is not worse off. The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such jhuggi dweller** [emphasis added].
18. The judges recognized the difficulties faced by the urban poor, including with regard to establishing proof of residence in a city in order to qualify as ‘eligible’ for state schemes. The Court said:
58. It is not uncommon to find a jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the jhuggi dweller resided at that place. **These documents are literally a matter of life for a jhuggi dweller, since most relocation schemes require proof of residence before a ‘cut-off date’.** If these documents are either forcefully snatched away or destroyed (and very often they are) then the jhuggi dweller is unable to establish entitlement to resettlement. Therefore, **the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility keeping in view the desperate need of the jhuggi dweller for an alternative accommodation.** A separate folder must be preserved by the agency or the agencies that are involved in the survey for each jhuggi dweller with all relevant documents of that jhuggi dweller in one place. Ideally if these documents can be digitalized then there will be no need for repeated production of these documents time and again whenever the jhuggi dweller has in fact to be assigned a place at the relocated site [emphasis added].
59. **Each member of the family of the jhuggi dweller is invariably engaged in some livelihood from morning to night.** It is, therefore, not uncommon that when a survey team arrives at a jhuggi camp, some or the other member may not be found there. By merely stopping with that single visit, and not finding a particular member of that family, it may not be concluded that no such member resides in that jhuggi. Such an exercise, if it has to be meaningful, has to be undertaken either at the time when all the members of the family are likely to be found. Alternatively there should be repeated visits by the survey team over a period of time with proper prior announcement. **If jhuggi dwellers are kept at the centre of this exercise and it is understood that the State has to work to ensure protection of their rights, then the procedure adopted will automatically change, consistent with that requirement** [emphasis added].

19. The Court, while condemning the lack of services and poor quality of life in resettlement sites, firmly asserted:

60. The further **concern is the lack of basic amenities at the relocated site. It is not uncommon that in the garb of evicting slums and ‘beautifying’ the city, the State agencies in fact end up creating more slums the only difference is that this time it is away from the gaze of the city dwellers.** The relocated sites are invariably 30-40 kilometres away from a city centre. **The situation in these relocated sites, for instance in Narela and Bhawana, are deplorable. The lack of basic amenities like drinking water, water for bathing and washing, sanitation, lack of access to affordable public transport, lack of schools and health care sectors, compound the problem for a jhuggi dweller at the relocated site.** The places of **their livelihood invariably continue to be located within the city.** Naturally, therefore, their lives are worse off after forced eviction [emphasis added].

20. In conclusion, the judges upheld the right of everyone to live with dignity and stressed:

61. Each of the above factors will have to be borne in mind before any task for forceful eviction of a jhuggi cluster is undertaken by the State agencies. **It cannot be expected that human beings in a jhuggi cluster will simply vanish if their homes are uprooted and their names effaced from government records. They are the citizens who help rest of the city to live a decent life they deserve protection and the respect of the rights to life and dignity which the Constitution guarantees them** [emphasis added].

21. The specific directions of the Court in this judgment were:

- i) The decision of the Respondents holding that the Petitioners are on the ‘Right of Way’ and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.
- ii) In terms of the extant policy for relocation of jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the Petitioners will be considered for relocation.
- iii) Within a period of four months from today, each of those eligible among the Petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021, subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a meaningful manner, as indicated in this judgment.
- iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at the site of relocation.

Analysis

This landmark judgment is significant because the High Court of Delhi, not only recognized and upheld the human right to housing and the state’s legal obligation to fulfil it, including for low-income residents, but also gave procedural directions for its implementation, which, in the absence of statutory provisions, could be used as precedent for similar cases. The judges examined the housing crisis of the urban poor in a holistic manner and recognized their indispensable role in the functioning of the city. The High Court of Delhi adopted a human rights-based approach to hold that forced evictions violate multiple human rights, while also recognizing the right to resettlement and offering an expansive interpretation of the right to life to include the right to adequate housing and the right to live with dignity. The judgment was upheld by the Supreme Court of India in C.A 21806–21807/2017, wherein the Court also clarified that the relief granted in *Sudama Singh* would be applicable to all affected parties, and not merely the Petitioners.

4. P.K. Koul v. Estate Officer

KEY ISSUES	Right to Housing, Internal Displacement, Homelessness, Positive Obligations of the State, International Law
Case Number	W.P. (C) 15239/2004
Case Citation	ILR (2010) Supp. (1) Delhi 657
Decided on	30 November 2010
Petitioners	P.K. Koul and other displaced persons who were central government employees seeking protection against forcible eviction from the quarters occupied by them
Respondents	(1) Estate Officer; and, (2) Deputy Director of Estate (Lit.) Directorate of Estates, Nirman Bhawan, New Delhi

Facts

P.K. Koul and the other Petitioners were permanent residents of the state of Jammu and Kashmir who were representing the central government in the Kashmir valley, and hence, became prime targets of ‘militants’ in the state. The family members and friends of such government employees were killed, and their properties were destroyed, leaving them in a pitiable condition, including inadequate living conditions, uncertainty, and the absence of security.

As a result, immediate steps for evacuation of such officials, on an emergency basis, were taken by the Government of India in order to protect their lives. They were shifted from Jammu and Kashmir to Delhi, and posted in the local offices of the central organizations and departments where they were employed. All the Petitioners upon being brought to Delhi were allotted government accommodation to reside in, not only by virtue of their employment but also their extreme need for shelter. These allottees of the quarters, superannuated from service on different dates over the period of time.

The Petitioners submitted representations, seeking permission from the Respondent to retain their accommodation on payment of the existing normal license fee setting out the above facts. Despite permitting retention of accommodation by other similarly placed persons, the request of the Petitioners was rejected. Respondent Number 2 further referred the case for eviction of the Petitioners, treating them as unauthorized occupants of public premises under the Public Premises (Eviction of Unauthorised Occupants) Act 1971.

Relief Sought

Cancellation of the orders of eviction against the Petitioners.

Issue

Whether the cancellation of the allotments to the Petitioners was justified and valid and whether the Petitioners’ occupancy thereafter could be brought within the meaning of the expression “unauthorised” under Section 2 (g) of the Public Premises Act 1971.

Ruling

1. Discussing the various causes of homelessness, the Court held that:

34. The above narration shows that homelessness may result from several causes including natural disasters; development projects, economic deprivation as well as human rights violations. International law terms persons who stand displaced from their countries as “refugees” and recognizes that they are entitled to protection from being returned to places where their lives or freedom could be threatened.
194. Experience and examples abound in this city and the aforementioned judicial precedents of forcible evictions relating to slums and jhuggi dwellers. Defenceless and disadvantaged citizens are forcibly evicted from their shelters which are then destroyed.

2. The Court drew a distinction between the present case and other instances of unlawful occupation:
 110. The significant difference between the cases of the Petitioners and that of an unauthorised occupant of public premises is that the writ Petitioners have continued to occupy the public premises only on account of the inability of the state to protect the fundamental and basic human rights of the Petitioner. It, therefore, has to be held that the occupation by Petitioners cannot be construed as “unauthorized occupation” of the quarters within the meaning of the expression in Section 2 (g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.
3. Emphasizing the state’s international obligations related to prevention of forced evictions, the Court said that:
 228. (...) The UN Commission on Human Rights has unequivocally stated that forced evictions are a gross violation of human rights. The International Community has long recognised forced eviction as a serious matter and it has been reported repeatedly that clearance operations should take place only when conservation arrangements and rehabilitation are not feasible, relocation measures stand made. United Nations Human Rights Commission Resolution 2004/28, recognised the provisions on forced evictions contained in the Habitat Agenda of 1996,⁸² and recommended that, “All Governments ensure that any eviction that is otherwise deemed lawful is carried out in a manner that does not violate any of the human rights of those evicted”⁸³
4. The Court relied on the ‘test of proportionality’ which suggests the striking of a fair balance between the rights of the individual and the interests of the community:
 132. Having regard to the drastic violation which results from the impugned action and orders, it has to be held that the decision of the authorities to cancel the allotments and proceed for eviction as well as the impugned orders against the Petitioners are not in accordance with law even on reasonable assessment of proportionality viz-a-viz the object of eviction of unauthorised occupants of the Public Premises Act, 1971.
5. Responding to the argument that the action of the state in the present case violates the ‘right to equality’ under Article 14 of the Constitution of India, the Court held that:
 158. No explanation is rendered or reason given by the Respondents for the rejection of identical requests of some of the Petitioners or for not favourably considering the said requests of the Petitioners. The failure to even consider these requests despite the specific directions in P.K. Koul’s previous writ petition reflect highhandedness, unreasonableness and arbitrariness on the part of the Respondents. The Respondents have granted approval to similarly situated persons. Denial thereof to the equally placed Petitioners certainly tantamounts to hostile discrimination against them which is impermissible and as observed above ‘an antithesis to the equality clause’. The action of the Respondents in not favourably considering the Petitioners’ representations; in cancelling the allotments of the Petitioners and proceeding against them under the Public Premises Act, 1971 as well as the impugned orders are, therefore, not sustainable also being in violation of Articles 14 and 16 of the Constitution.
6. The Court elaborated the duty of the state vis-à-vis the right to housing/shelter:
 169. So far as ensuring the right to shelter is concerned, the Supreme Court has held that the state is deemed to be under an obligation to secure the same to its citizens [Ref: (1996) 2 SCC 549 Chameli Singh and Ors. v. State of U.P. (supra), that it is imperative for the state to provide permanent housing accommodation to the deprived.
 171. The Supreme Court has repeatedly reiterated the well settled position that **the state has the constitutional duty to provide adequate facilities and opportunities to all including the disadvantaged and the displaced, by distributing its wealth and resources for the settlement of life** and erection of shelter over their heads. The court has emphasized the constitutional right of every citizen to migrate and settle in any part of India for better employment opportunity and it would be the duty of the state to provide

82 The Habitat Agenda, Istanbul Declaration on Human Settlements, June 1996. Available at: http://www.unhabitat.org/downloads/docs/2072_61331_ist-dec.pdf

83 United Nations Commission on Human Rights Resolution 2004/28, ‘Prohibition of Forced Evictions’, April 2004.

right to shelter to the disadvantaged in society. (Ref: Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors.)

172. **The forcible removal of pavement and slum dwellers by the agencies of the state without their resettlement or rehabilitation has been repeatedly deprecated by the courts in the plethora of judgments on the subject. In case they have to be evicted from the place they are occupying, state authorities are bound to formulate schemes and policies** [emphasis added].
7. The Court held that the state would also be culpable if it fails in its duty to protect the fundamental rights of its citizens:
182. The expansion and interpretation by the courts has **affirmatively established a positive right to housing and shelter for every person as part of the fundamental right. Human rights and fundamental rights are inalienable; their violations are infeasible. The state is under a constitutional obligation and duty to protect these rights.** When violated, a citizen is entitled to their enforcement. The constitutional mandate upon it, is coupled with the statutory duty and public law obligations to ensure the protection of the fundamental and basic human rights to all, in addition to its obligation under the several international instruments noticed above. This essentially remains in the exclusive domain of state functions. **Failure to protect the citizens from eminent loss of life and property as well as maintenance of public order, implicates the state for culpable inaction** [emphasis added].
204. Unlike the several cases noted hereinabove including cases of Rudul Shah, D.K. Basu, Leelawati Behura, Sheela Barse (supra) etc. in the instant case, the state or its instrumentalities itself have not harmed or punished the Petitioners. However, the state has totally failed to protect the fundamental right to life of the Petitioners and to protect them from violence, harassment and pogroms. This is in clear abdication of the constitutional responsibility of the State. Responsibility for the violence in the State is not the question before this Court. The issue before this Court is restricted to the question of the rights of the Petitioner.
8. The Court reiterated that the argument of financial stringency cannot be used to justify state inaction:
191. The principle reiterated by the Supreme Court was that financial difficulties of the institution or the state cannot be above the fundamental rights of the citizen. It has also been observed that in a situation of the nature which was before the court, it was obliged to issue necessary directions to mitigate the extreme hardship of the employees involving of human rights of the citizens of the country at the hands of the state government and companies and corporations owned and controlled by it.
9. The Court discussed that the remedy in such cases of violation of fundamental rights could not be restricted to mere declarations:
203. Where infringement of fundamental rights is established, the duty of the court does not stop at giving a mere declaration. In 1997 (1) SCC 416 D.K. Basu v. State of West Bengal, it was laid down that in such a case, the court must proceed further and give compensatory relief, not by way of damages as a civil action but **by way of compensation under the public law jurisdiction for the wrong done, due to breach of the public duty by the State of not protecting the fundamental right to life of the citizens. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience** [emphasis added].
218. The Petitioners in the present cases have complained of violation of their right to life in their home state. This situation has come to be despite the 1984 riots, which mark an unfortunate watershed in Indian history, when examined from any aspect. The threatened **breach of primarily of their right to shelter, a basic human right and an integral part of the guarantee under Article 21 of the Constitution of India**, even at their displaced location at the hands of the Respondents has compelled invocation of this Court's extra-ordinary jurisdiction under Article 226 of the Constitution [emphasis added].
219. The pleadings in the case would show that there is no dispute to the facts pleaded by present Petitioners. There cannot be and there is not even a suggestion that the right to shelter of the Petitioners in their home state has been abridged by any procedure established by law. **Such infraction of their rights is purely on account of the inability of the Respondents to discharge their constitutional obligation;**

duty and responsibility of protecting the life and property of the Petitioners. The Respondents have a positive duty to provide basic necessities to its citizens. It certainly defies commonsense and all notions of human dignity to permit the Respondents to exclude such facilities as bare shelter which is essential and necessary to encourage the self-respect and dignity of these displaced persons in a human manner consistent with well recognized modern standards thereof. The courts have a constitutional duty and international legal obligations to ensure the right of every person to be free from want of basic essentials [emphasis added].

Relief Granted

The Court called for the quashing of the eviction orders, rehabilitation, and the provision of compensation to the Petitioners. The judgment stated:

- i) The impugned orders cancelling the allotment of the Petitioners; the orders of eviction passed in the proceedings held against the Petitioners under the Public Premises (Eviction of Unauthorised Occupants) Act and the appellate orders which are detailed in para 13 are hereby set aside and quashed.
- ii) A direction is issued to the Respondents to make all endeavours to adequately, effectively and reasonably rehabilitate and resettle the Petitioners, making provisions for appropriate accommodations for them.
- iii) Till such time, the Respondents are able to provide alternative accommodation to the Petitioner and his/or her family anywhere in Delhi, the Petitioners shall be allowed to retain and occupy the allotted accommodation (also detailed in column No. 2 of para 13 above) subject to payment of normal license fees.
- iv) Each of the Petitioners shall be entitled to costs of Rs 25,000/- which shall be paid within a period of six weeks from the date of passing the order.

Analysis

In one of India's landmark cases on the human right to adequate housing, the High Court of Delhi examined the causes of homelessness and acknowledged the injustice caused as a result of forced eviction and displacement. Relying on international laws and standards, the Court held that forced evictions lead to gross human rights violations and elaborated the constitutional obligations of the state to ensure the right to housing/shelter for all. The Court further strengthened the positive aspects of the right to housing by stating that financial stringency could not be used as an excuse by the state to not undertake steps to ensure adequate housing facilities. In cases where the state fails to comply with its constitutional obligations, the Court held that the aggrieved would not only be entitled to restitution, but also compensation in the form of damages.

5. Delhi Dayalbagh Coop. House Building Society Ltd. v. The Registrar Cooperative Societies

KEY ISSUES Right to Housing, Co-operative Society, Land Acquisition, Transfer of Property

Case Number	W.P. (C) 3868/201
Case Citation	195 (2012) DLT 459, 2013 (133) DRJ 513
Decided on	5 December 2012
Petitioner	House-building society in Delhi
Respondent	The Registrar of Co-operative Societies

Facts

The Petitioner was a house-building society, with the stated objective of acquiring land for its members on which to build houses. Membership was restricted to those who followed the Radha Soami faith and were members of Radha Soami Satsang affiliated to Radha Soami Sabha, Dayalbagh, Agra. The bye-laws of the house-building society had restrictive clauses that prevented members of the society from transferring ownership or shares from the society to anyone outside the same sect.

Upon a request by the society, the state government proceeded under Part VII of the Land Acquisition Act 1894 and held an enquiry to satisfy itself that land was needed for construction of housing for members of the society and other buildings for all facilities and amenities necessary for life in a colony. The work was “likely to prove useful to the public.” Since under Section 41 of the said Act, the society was required to enter into an agreement with the Chief Commissioner, an Agreement was executed. The terms and conditions of this Agreement stipulated payments by land-owners in return for which the Chief Commissioner would convey and grant land. The land was to be used only for the purpose for which it was acquired, the condition applicable on the housing society, its successors, and assignees. In case of failure to comply with the terms of the Agreement, the society was to relinquish the land in favour of the Chief Commissioner.

One of the members who had bought a plot of land, subsequently, proceeded to sell it to another individual, who in turn handed it over to private builders. The Petitioner housing society then objected to this, claiming that the bye-laws of the society were being violated.

Relief Sought

To set aside the orders of the Delhi Co-operative Tribunal which were in favour of the Respondents and thereby, restrict the members of the housing society from transferring their land to persons outside the Radha Soami sect.

Issue

Whether a member is precluded from selling his/her property acquired through the housing society, as per the bye-laws of the society.

Ruling

The Court provided a ruling on the facts of this case, but also expounded certain principles, which would apply to group housing societies. These would particularly apply when such housing societies place restrictive covenants on the ownership and enjoyment of flats or plots by the legal heirs and successors of the members.

The important points discussed are as follows:

1. With regard to the nature of title of the members of the Petitioner society, the Court stated:

33. (...) The members may have originally satisfied the test for membership as envisaged by the society, i.e., a certain group of people by reason of a sect or a social belief, but with passage of time, the ownership devolves on their legal heirs or is transferred further to third-parties.

Reading from the Articles of Agreement dated 12.04.1955, as published in the Gazette vide Notification dated 13.05.1955, it was inferred by the Court that:

36. The covenants of the Agreement itself show that they are not restrictive in nature, as was sought to be made out by learned counsel for the petitioner society. This is so as the restriction burdened as per the Agreement only required that the land should be utilized for purposes for which it was acquired within 15 years and the society and its successors and assignees should use the land for purposes set out therein and for no other purpose. The purpose has been set out as construction of houses. It is nobody's case that something else, other than houses/flats, has been constructed. There has been no failure of the society or its members to carry out the terms of that Agreement, which would have required surrender of land by the society. In fact, there is no surrender of land by the society, but the rights being claimed by the society are quite different from what was set out qua the terms and conditions inter se the State and the society.
37. Both the Agreement and the Sale Deed leave no manner of doubt that the interest is absolute and it is not a lease or a restrictive covenant, which operates. No doubt, the Sale Deed contains certain restrictive covenants as a right of first purchase and the successor to become a member of the society, but then it is a cache-22 situation - where the society is not admitting such members who do not follow their sect, as is apparent from the rejection of the request of membership of Respondent No. 7. Once an absolute right is transferred, clause 2 of the Sale Deed would be a clog on the title. The society cannot bind down the seller for six months as per that clause whereafter only the seller/owner would be at liberty to sell and dispose of the property. The market situations can change, and the property would not get a proper value. Such a condition would be unconscionable and would be in violation of Section 10 of the Transfer of Property Act, 1882 (hereinafter referred to as, 'the TP Act') being a condition restraining alienation. In our view, it would also, in a sense, be violative of Section 73 of the Indian Contract Act, 1872 (hereinafter referred to as, 'the Contract Act'), as the object is to discriminate between the citizens of India qua the entitlement to own any property in the land of the petitioner's society with the unlawful object of restricting it to only a religious sect, which is not permissible. This would, in fact, be contrary to the constitutional scheme itself.

Consequently, the Court held that:

38. We have no hesitation to hold that the title in the property given to the members was 'freehold' with the absolute right of alienation, subject to the provisions of the said Act and the said Rules, which is the governing law at present.
2. On the issue of the Co-operative Principles, the Court said that:
39. The Co-operative Principles were set out by Mahinder Narain, J. in *Navjivan Co-operative House Building Society Ltd.'s case* (supra) as far back as in the year 1987. The six Principles include 'Voluntary and Open Membership'. Thus, there can be no artificial restriction on admission of member and there would be no social, political, rational or religious discrimination against persons, who wish to join. This aspect has again been emphasized by Dr. D.Y. Chandrachud, J. in *St. Anthony's Co-operative Society Ltd., Mumbai's case* (supra). The Co-operative Principles have not just remained under the status of principles, but have acquired a statutory force under the said Act. The said Act of 2003 was enacted to bring into force a modern Co-operative Societies Act. This was further amended by the Amending Act of 2006 w.e.f. 13.01.2007. The Co-operative Principles have been defined under Section 2(g) of the said Act as those specified in the First Schedule to the said Act. The very first Principle in the First Schedule is 'Voluntary and Open Membership'. Thus, such voluntary and open membership has acquired a statutory character and it is not open for the petitioner society to claim that it is entitled to certain rights in the teeth of these Principles.

42. We are, thus, of the view that it is the provisions of the said Act and the said Rules embodying the Co-operative Principles, which would be applicable.
43. (...) The right, title and interest in the plot of land, thus, has been made heritable and transferable. This itself, thus, leaves very little doubt over the entitlement of the member to deal with the property in question.
3. The Court relied on the right to housing, and further stated that:
52. The right to have housing has been recognized as part of Article 21 of the Constitution as already observed aforesaid. The citizens, thus, have a right to housing and they have a right to reside in any part of the country. The association formed in the form of the cooperative society was only with the objective of providing housing to its members. This is set out in the objects of the Bye-Laws of the society itself. Once that task was performed, really the objects have worked themselves out. The various members become absolute owners of their properties in question with the right to transfer them. The primary object for formulation of the society was; thus, house building, which is not a religious activity.
54. Learned Amicus Curiae has rightly emphasized that in view of right of housing being recognized as a Fundamental Right under Article 21 of the Constitution and the land being a natural resource of limited nature, any restriction on transfer of the nature as one in the present case would not pass the constitutional test.
56. In the facts of the present case, there would be a limited number of persons, who would be members of the religious sect in question. If the right to transfer is restricted to only such persons or people with such belief, it would, thus, be unreasonable restraint. The seller would never be able to get an appropriate price when the zone of the purchaser is so restricted. It is of no use for the society to state that it is willing to give market price, but then the market price itself is dependent on as to whom the property can be sold. Not only that, it is not the business of the petitioner society to indulge in sale and re-sale of property, but the objective was to develop the land and transfer rights in the plot. The society, in fact, wants to become a property broker and earn profit from the land, which is not permissible.
58. A member may originally be a believer in the Radha Soami Sect, it is not necessary his children may be so. Is their right of inheritance to be denied on account of their belief or non-belief! The answer of the petitioner would be in the affirmative, but this would amount to depriving inheritance to heirs according to statutory and traditional laws of succession as applicable. If this cannot be done, then similarly, the right of the original member or the successor-in-interest, including an heir, cannot be curtailed by restricting the right of transfer.

Relief Granted

The Court dismissed the claim of the Petitioners.

Analysis

In this case, which deals with the acquisition of land for the development of a housing society whose ownership is restricted to a certain sect, the Court used the fundamental right to adequate housing to hold that the membership to the housing society cannot be restricted to members of a community. As land is a natural resource, restricting its transfer to only certain people, would violate constitutional principles.

6. Court on its own Motion v. Government of National Capital Territory (NCT) of Delhi

KEY ISSUES	Homelessness, Urban Shelters, Essential Services
Case Number	W.P. (C) 29/2010 and W.P. (C) 641/2013
Case Citation	Not available
Decided on	29 April 2015
Petitioners	The Court on its motion. ‘Shahri Adhikar Manch: Begharon Ke Saath’ (SAM:BKS/Urban Rights Forum: With the Homeless)—a Delhi-based collective of organizations and community groups—also participated in the proceedings as intervenor
Respondents	Government of NCT Delhi; Delhi Urban Shelter Improvement Board (DUSIB); Delhi Cantonment Board; Central Railways; New Delhi Municipal Council (NDMC); Delhi Development Authority (DDA); and, Municipal Corporation of Delhi (MCD)

Facts

The High Court of Delhi took *suo moto* notice of the death of a homeless person on the streets of Delhi, resulting from exposure to the bitter cold after the demolition of a temporary shelter in the winter, and the lack of sufficient shelters despite the provision under the Master Plan for Delhi – 2021. The Court also attached the petition in W.P. (C) 641/2013, which was filed to highlight the lack of facilities and amenities for pregnant and lactating women in the shelter home at Motia Khan, New Delhi, and the resultant loss of life of a child. Moreover, the intervenor, Shahri Adhikar Manch: Begharon Ke Saath (SAM:BKS) also raised grievance about the insufficient number of shelters in Delhi, compelling the homeless to continue living in the open in the bitter cold.

Relief Sought

1. Directions to provide shelter to as many homeless persons as possible, including by providing temporary shelters and constructing permanent shelters under the Master Plan for Delhi – 2021.
2. Suitable directions and compensation for the demise of a two-month-old girl child, resulting from the lack of proper amenities in the Motia Khan shelter.

Issue

Whether demolition of the homeless shelter in the winter by the Delhi government was legal and whether homeless persons are able to access entitlements, including shelter.

Relief Granted

1. In its order dated 13 January 2010, in W.P. (C) 29/2010, the Court held that:

(...) in paragraph 4.3 of the Master Plan the provision for night shelter has been specifically mentioned. In fact the requirement of night shelters has been indicated to be one shelter per one lac population. ... **No citizen should have to die because he or she is poor and does not have roof over his or her head and because of cold or heat and other weather conditions. It is the prime responsibility of the State to provide shelter for the homeless and we are only issuing directions so as to remind the State of this responsibility.** ... We are of the view that till further orders and in the absence of alternative arrangements no person should be evicted from a temporary or a permanent night shelter [emphasis added].

2. In the order, dated 1 February 2013, in W.P. (C) 641/2013, the Court directed the Government of NCT to ensure that:
 - (i) The blowers/heaters as well as geysers are provided in the aforementioned shelter homes.
 - (ii) In case, anyone of the inhabitants of the shelter homes is due to deliver within next three weeks, or thereafter, intimation will be given to the nearest MCD hospital. The Manager of the shelter homes shall ensure that such a person is transported, if necessary, to the nearest hospital where medical facilities are available, as advised by the doctor of the MCD hospital.
 - (iii) The respondent shall ensure adequate provision is made for food keeping in mind the population of inhabitants in each of the shelter homes. The provisioning would factor in that the inhabitants will have to be provided three meals a day, that is, breakfast, lunch and dinner.
3. In the order, dated 26 March 2014, in W.P. (C) 641/2013, the Court directed the Respondents to dedicate a proper space with curtains to ensure that check-ups of pregnant women and lactating mothers can be carried out with adequate privacy.
4. In the order, dated 14 October 2014, in W.P. (C) 29/2010, the Court directed that 13 temporary night shelters be set up immediately at the sites where DUSIB also agrees that there is need thereof. In a subsequent order dated 19 November 2014, the Court directed the Deputy Director (Night Shelters) of DUSIB to personally check the state of the blankets available at the shelters and to satisfy himself whether the quality thereof provides protection from the cold to those sleeping on the floor/ground and also on the aspect of hygiene, and report the same to the Court. He was to also personally verify whether the blankets were sufficient in number and also explore the possibility of, by Public Notices, inviting the citizens of Delhi to donate blankets. The Court also directed for arrangements to be made for protecting such tents from incidents of fire.
5. In the order dated 12 December 2014, the Court directed DUSIB, to explore public places and buildings, such as parking lots and offices, which could be used as homeless shelters and to approach the New Delhi Municipal Council (NDMC) in this regard.
6. The Court disposed the petition on 29 April 2015 stating that:
 5. Though we cannot say that the issues of public interest entailed in W.P. (C) No. 29/2010 stand fully addressed but considerable progress has been made. We have in each winter season endeavoured to provide shelter to as many homeless as possible including by providing temporary shelters. Certain steps have also been taken for having permanent night shelters in accordance with the provisions therefor in MPD 2021.

Analysis

Although this case does not explicitly discuss the right to housing, it is a remarkable example of the judiciary exercising its power of judicial review to take *suo moto* cognizance of the issue of homelessness, which is a serious violation of the human right to adequate housing. The Court considered the plight of the homeless population in the winter and issued directions to ensure access to shelter and healthcare, as well as improved living conditions. Through a series of orders, the Court virtually administered the implementation and maintenance of homeless shelters in Delhi, thereby, implicitly protecting the human right to adequate housing of the most marginalized.

7. Udal v. Delhi Urban Shelter Improvement Board

KEY ISSUES

Right to Housing, Forced Evictions, Legality of Urban Settlement, Resettlement

Case Number	W.P. (C) 5378/2017 & CM 22718/2017
Case Citation	MANU/DE/2288/2017
Decided on	1 August 2017
Petitioners	Residents of an urban settlement in Delhi (Rajiv Camp) who were forcefully evicted without rehabilitation or resettlement
Respondents	Delhi Urban Shelter Improvement Board (DUSIB); Government of National Capital Territory (NCT of Delhi); and, National Highway Authority of India (NHAI)

Facts

The Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 (R&R Policy 2015) governs the process of removal, settlement, rehabilitation, in situ improvement, and redevelopment of *jhuggis* (hutments/informal housing) and *jhuggi jhopri* (JJ) *bastis* ('informal settlements') in Delhi. As per the policy, it is required that the name of the JJ dweller must appear in one of the voter lists of the years 2012, 2013, 2014, and 2015 (prior to 01.01.2015 which was declared as the 'cut-off' date for Delhi) and also in the year of survey, for the purposes of rehabilitation. The Policy also stipulates in Clause 1 (vi) of Part-B that the JJ dweller must possess any one of the 12 documents mentioned therein, issued before 01.01.2015.

The Petitioners had been living in a settlement known as Rajiv Camp, near National Highway (NH) 24, behind a fire station in Mandawali, Patparganj, Delhi, from 1995 onwards. In lieu of a project for the widening of NH-24, a joint survey was conducted by the officers of DUSIB and the officers of NHAI to assess the eligibility of the occupants of Rajiv Camp for relocation under Delhi's R&R Policy 2015. The documents of the Petitioners and 28 other persons were scrutinized by DUSIB, which rejected them as being "ineligible" primarily for the reason that their names did not feature in the electoral rolls of the years 2012, 2013, 2014, 2015, and 2016. On 13 January 2017, DUSIB issued a notice for demolition of the settlement, directing the residents to vacate their homes, failing which they would be demolished and ownership of the land would be handed over to NHAI.

The Petitioners filed a representation dated 16 January 2017 with the Director (Resettlement) of DUSIB but on 9 February 2017, DUSIB demolished 77 houses, rendering the Petitioners homeless in the cold. As a result, the Petitioners along with others, were forced to install make-shift tents/shelters in the vicinity of Rajiv Camp near NH-24. The Petitioners challenged the rejection of their entitlement primarily on the ground that they had multiple documents establishing that they were residents of Rajiv Camp prior to 1 January 2015 which was the cut-off date as per DUSIB's R&R Policy 2015.

Relief Sought

Cancellation of letters issued to the Petitioners holding them ineligible for resettlement under the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015.

Issue

Whether Clauses 1 (iii), 1 (vi) and 2 of (Part B) of the R&R Policy 2015 are in violation of Articles 14 and 21 of the Constitution of India, on the ground that they are arbitrary.

Ruling

1. The Court highlighted the importance of the right to housing, stating that:
 14. It is trite that the right to housing is an essential part of Right to Life and a fundamental right ensured by Article 21 of the Constitution of India. It has also been held that the right to life is not right to merely

an animal existence but an entitlement to reasonable accommodation (Ref.: (1996) 2 SCC 549, Chameli Singh & Ors. v. State Of U.P. & Anr. and (1990) 1 SCC 520, M/s Shantistar Builders v. Narayan Khimalal Totame). The contours of this right were further expanded by a pronouncement of the Supreme Court reported at (1997) 11 SCC 123, Ahmadabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors. wherein the court held that when slum dwellers have been residing at a place for some time, it became the duty of the government to make schemes for housing these jhuggi dwellers.

2. Recognizing the housing crisis for the urban poor and the socio-economic context behind the R&R Policy 2015, the Court stated that:

15. Judicial notice can be taken of the fact that the National Capital Territory of Delhi attracts people, especially poor people, from all over the country who come to the city in search of work and must reside reasonably near to their place of work. In recognition of the responsibility to house the poor in a permanent humane manner, the Government of NCT of Delhi announced, “Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015”. Under Clause 2(a), Delhi Urban Shelter Improvement Board (‘DUSIB’ hereafter) was appointed as the nodal agency for implementation of the policy.

3. The Court observed that the very fact that the documents submitted by the Petitioners covered a long period prior to 2015 and even thereafter, would *ipso facto* establish their continuity of occupancy in Rajiv Camp.
4. The Court also found substance in the submission that the loss of documents and gap had occurred on account of the Petitioners’ extreme poverty, illiteracy, and inability to preserve and maintain proper records.
5. The Court emphasized a harmonious construction of the clauses and held that:

32. (...) it has been observed that they have been able to inter alia produce the documents, including the National Food Security Card, Ration Card, Gas/Oil Bill, Electricity Bill, BSES Meter Change Report, School Leaving Certificates, School Progress Report of Children, Report Cards of Children, Aadhar Cards, Driving Licences, Passbooks, PAN Card, Death Certificate of the Spouse of one of the parties, LIC Policy, etc. for broadly the period between 2002- 2017. Additionally, these Petitioners were able to produce documentation from the schools where their children were studying. Therefore, even though these Petitioners could not produce the record of their names featuring in the electoral rolls over the period prescribed in the policy, however, if a holistic view is undertaken of the documentation as produced, it would amply establish the residence and existence of these persons at the Rajiv Camp for the periods from 1998 till 2016.

6. The Court aptly rejected the contention that the requirement of Clause 1 (iii) of Part B of R& R Policy 2015— stipulating that the name of the person must feature in the electoral roll for any of the prescribed five years— is mandatory and the failure for the person’s name to appear in such electoral roll must be fatal, so far as consideration for allotment of alternative flat for rehabilitation under the R&R Policy is concerned. It stated that:

36. (...) In the given facts and circumstances, we are unfortunately unable to agree with this submission. The records placed by these persons include National Food Security Cards, Ration Cards, Oil/Gas Bill, SC/ST Certificates, Electricity Bill, LIC Policies, Gas Connection Records and Bills, Driving Licences, Passbooks, Birth Certificate of Children as well as records of School Admission of Children, their Progress Report Cards, all of which show their continued existence on the spot. A realistic view has to be taken in this regard. We find that the persons who were found ineligible were in possession of public identification including Voter ID cards. The failure of the names of such persons to feature in the electoral roll could be for any number of reasons. The same could happen, if the person was not at home at the time the Booth Level Officer visited Jhuggi of the person concerned. This could be on account of the occupation of the person or for the person and adults of the family having left the Jhuggi for work. Obviously, the Booth Level Officer or any persons conducting the survey would not have met the adult members of the family. There would thus not be any adult members of the family to give the information for names to be included in the electoral rolls.

7. The Court also held that the requirement to appear in the joint survey conducted by DUSIB and the land-owning agency, and to possess “any one” of the prescribed 12 documents, could not be held arbitrary or unconstitutional but had to be read harmoniously with other clauses of the 2015 Policy.
 5. Though we cannot say that the issues of public interest entailed in W.P. (C) No. 29/2010 stand fully addressed but considerable progress has been made. We have in each winter season endeavoured to provide shelter to as many homeless as possible including by providing temporary shelters. Certain steps have also been taken for having permanent night shelters in accordance with the provisions therefor in MPD 2021.

Relief Granted

The Court held that the specified Petitioners are entitled to allotment of flats subject to fulfilment of the other conditions stipulated in Part B of the R&R Policy 2015, and their ineligibility letters would stand quashed.

Analysis

In this case, which deals with forced eviction and the failure of the state to provide alternative accommodation, the Court questioned the administrative and procedural technicalities based on which housing is denied to evictees. The Court examined the arbitrary “cut-off dates” which are used to exclude people from availing alternative accommodation, and also acknowledged that the settlement-dwellers may not be in a position to maintain records, hence, relief could not be denied on the failure to produce certain specific documents, as long as there is some proof of residence. The Court provided relief to some of the Petitioners, however, it restricted the use of the judgment as precedent to seek relief in other cases.

8. Ajay Maken v. Union of India

KEY ISSUES	Right to Housing, Forced Eviction, Homelessness, Legality of Urban Settlement, Due Process, Essential Services, International Law
Case Number	W.P. (C) 11616/2015
Case Citation	Not known
Decided on	18 March 2019
Petitioners	Ajay Maken and other interested parties in Delhi
Respondents	Indian Railways; Delhi Police; Government of National Capital Territory (NCT) of Delhi; and, the Delhi Urban Shelter Improvement Board (DUSIB)

Facts

In a demolition drive that commenced on 12 December 2015, the Indian Railways with the help of a large contingent of the Delhi Police demolished as many as 1,600 dwellings in Shakur Basti (West) Delhi, near Madipur Metro Station. Over 5,000 people were rendered homeless in the extreme cold, without any resettlement, after having also lost their belongings in the demolition.

Relief Sought

An order to restrain further evictions and to provide essential services to the affected persons.

Issue

Whether the demolition of settlements at Shakur Basti without provision for rehabilitation was legal.

Interim Relief

1. In an interim order dated 14 December 2015, the Court recognized the grave human rights violations caused by the forced eviction and stated that:
 3. (...) It is also not in dispute that nearly 5000 people have been rendered homeless and continue to remain on the site, facing the extreme cold without any roof over their heads, and having lost their belongings. **This is a dire circumstance in which the life and liberty of the homeless residents of Shakur Basti are in grave danger** [emphasis added].

The Court directed the Railways and Delhi Police to place on record a step-by-step, date-wise narrative of how the demolition drive came about, including the details of any survey conducted to prepare a comprehensive list of persons, including men, women, and children as per the directions of the High Court of Delhi in *Sudama Singh v. Government of Delhi*.⁸⁴

The Court directed the authorities to ensure immediate rehabilitation and held that:

9. Given the scale of the **human tragedy**, the Court expects all the parties before the Court to act in co-ordination and in cooperation to ensure that immediate relief for rehabilitation is made available to the persons who have lost their homes [emphasis added].

Responding to the claim of the Railways that the eviction had been carried out to ensure the safety of persons living close to the railway tracks, the Court observed that:

10. The Court was informed that the Railways were concerned about the safety of the persons who were living perilously close to the railway tracks and that the forced eviction was to ensure that they are not exposed to the attendant risks. **The Court cannot help observe that the action taken has perhaps exposed the displaced persons to a graver risk particularly concerning that it has taken place in the**

⁸⁴ 168 (2010) DLT 218.

peak winter season, and when one considers that the displaced population comprises children. In fact, there has been an unfortunate demise of one child. The Court has been assured that the authorities are taking prompt action in that regard [emphasis added].

Prioritizing the need for shelter for the persons who were rendered homeless after the eviction, the Court held that:

12. (...) While the Court would not like to specify what form of shelter can be provided, it would like to impress upon the Govt. of NCT of Delhi and the Railways that they should act immediately, in coordination, **to ensure that the minimum need of decent shelter is provided to the homeless displaced population** at Shakur Basti. It is made clear that the displaced population should not be subjected to any further forced or violent action till such time that their satisfactory rehabilitation does not take place. **The Court would like the GNCTD and the Railways to pay particular attention to the needs of shelter, health, food and education of the displaced population** [emphasis added].

2. In the order dated 16 December 2015, the Court recognized that the due process requirements laid down in the *Sudama Singh* case had not been complied with before carrying out the demolition, and hence the eviction was illegal and unconstitutional:

10. The unilateral action of forced eviction of the jhuggi dwellers of Shakur Basti on 12 December 2015 by the Railways, with the assistance of the Delhi police, **resulted in a grave violation of the rights of life and liberty of the jhuggi dwellers, comprising children and adults, including the loss of shelter and personal belongings and being subjected to grave risk to their life and liberty in peak winter. The demolition exercise undertaken by the Railways on 12 December 2015 was contrary to the requirements of the law and the Constitution** [emphasis added].

The Court emphasized the duties and responsibilities of the police in ensuring that no harm is caused to the safety and security of people and their belongings during forced evictions:

14. **The Court would like to observe that the primary task, and the constitutional duty of the Delhi Police, is to protect the life and property of the residents of Delhi.** As much as they are tasked with protecting public property, the Delhi Police ought to have ensured that in the situation with which they were asked to be associated, viz., a drive to remove dwellings, there is no harm caused or danger posed to the safety and security of jhuggi dwellers - not only their physical security but also of their personal belongings. **The measures adopted by the Delhi Police in such a situation cannot be so disproportionate that the very safety and security of the dwellers are endangered** [emphasis added].

3. Recognizing the grave violation of human rights caused by the forced eviction, the **Court requested the National Human Rights Commission (NHRC) to visit the site and submit an independent assessment report to the Court** on the extent of relief and rehabilitation being provided and to make suggestions about how it could be improved.

4. In its order dated 22 December 2015, the High Court of Delhi emphasized the need for a detailed protocol to be developed for steps to be taken prior to, during, and after removal of settlements. The Delhi Urban Shelter Improvement Board (DUSIB) was given the responsibility to frame a policy in line with India's constitutional and international human rights obligations, after consulting land-owning agencies and civil society organizations working on issues of housing rights. The Court directed that:

31. The protocol should list out the various stages, beginning with a comprehensive survey, the drawing up of list of persons eligible for the various proposed measures in terms of the scheme prepared under the DUSIB Act, the actual provision of the relief by way of in-situ upgradation or resettlement and rehabilitation measures as the case may be, the precautions to be taken in the event of removal and the measures to be taken post removal. This protocol shall be followed by all agencies including the Delhi Police in the event of any action for removal of JJ Bastis in the future.

32. (...) **The protocol will be drawn up keeping in view the requirements of the Constitution, the DUSIB Act as well as India's international human rights obligations flowing from the International Covenant on Economic Social and Cultural Rights, 1966 which has been ratified by India and the**

provisions of which form part of ‘human rights’ as defined under Section 2(d) read with Section 2 (f) of the Protection of Human Rights Act, 1993 [emphasis added].

5. In subsequent orders (for example, those dated 27 January 2016, 26 August 2016, and 12 May 2017), the Court directed the provision of water, street lights, electricity, and toilets to benefit the persons residing in the settlement, and to ensure their safety and security.

Final Judgment

1. In its final judgment of 18 March 2019, the Court reaffirmed and upheld the human right to adequate housing and also located it within the constitutional framework of India:

84. In the Constitution of India, there is no specific right to housing spelt out separately. The Preamble highlights the guarantee of social justice, and of the right to dignity. A collective reading of the provisions relating to equality, the freedom of movement, of residence anywhere in the country, and the freedom to carry on one’s trade or profession read with Article 21 impliedly invalidates the denial of the rights of the underprivileged to the basic survival rights. It also enjoins the State to not adopt measures that would deprive them of such basic rights.

85. Article 21, which guarantees that “no person shall be deprived of his life and liberty except according to procedure established by law,” has been interpreted by the Supreme Court of India to include a range of basic survival rights.

141. **The right to housing is a bundle of rights not limited to a bare shelter over one’s head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport facilities** [emphasis added].

2. The Court referred to India’s obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to guarantee the rights enunciated in the Covenant, including the human right to adequate housing:

56. (...) The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 is a multi-party treaty, ratified by India in 1976. India being a country that adopts the principle of ‘dualism’, the ICESCR is not enforceable straightway. However, with the enactment of the Protection of Human Rights Act, 1993 (PHRA), and in particular Section 2 (f) thereof, the ICESCR is one of the human rights covenants recognised by the Indian Parliament to be enforceable. Consequently, the obligations under the said covenant are enforceable in India.

57. (...) Under Article 2(2), ICESCR every State party, including India, has undertaken to guarantee “that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

3. The Court referred to General Comment 4 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) to emphasize the integral elements of the human right to adequate housing as well as the indivisibility of human rights:

61. In terms of General Comment 4, among the aspects of the right to adequate housing were: (i) legal security of tenure (ii) availability of services and materials, facilities and infrastructure (iii) affordability (iv) habitability (v) accessibility (vi) location and (vii) cultural adequacy. The CESCR emphasised that the right to adequate housing cannot be viewed in isolation from other human rights contained in the two international covenants i.e. the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. Emphasizing the indivisibility of rights, it observed:

“the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.”

4. The Court highlighted the obligation of state parties under CESCR to adopt a ‘national housing strategy’ and emphasized the need for coordination between all government ministries and local authorities in Delhi to reconcile housing-related policies and the provision of legal remedy in cases of violation. It said:

62. The CESCR identified the steps to be taken immediately and underscored that the State parties “must give due priority to those social groups living in unfavourable conditions by giving them particular considerations.” Among the steps that each party was expected to take was to adopt ‘a national housing strategy’ which should reflect:

“extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.”

63. This is particularly relevant in the context of Delhi, where there is a multiplicity of agencies dealing with the issue of slums on both public and private lands. In Delhi, most of the slums are on public land, and the agencies involved include, among others, the Central Government, the Government of the NCT of Delhi, the DDA, the MCD, the NDMC and, now the DUSIB. The Central Government itself is comprised of several ministries and departments. The Railways and the Public Works Department (PWD) are some of the major departments which are identified as ‘land holding agencies.’ **What General Comment No. 4 emphasises is that there should be coordination between all ministries and local authorities in order to reconcile the related policies with the obligation under Article 11 of the ICESCR. Among the remedies that Article 11 of the ICESCR envisages is the provision of “legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions.” They would also include “legal procedures seeking compensation following an illegal eviction, complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance and racial or other forms of discrimination”** [emphasis added].

5. The Court also referred to and quoted from General Comment 7 of CESCR (1997), which specifically relates to the issue of forced evictions:

65. The CESCR, therefore, chose to define the expression ‘forced evictions’ as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” The CESCR added that “the prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”

66. Paragraph 13 of General Comment 7 reads as under:

“13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted””

67. The procedural protections identified by the CESCR as being applicable in situations of forced evictions include: “(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons

carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

6. The Court also made a reference to the UN Basic Principles and Guidelines on Development-based Evictions and Displacement⁸⁵ (“Special Rapporteur’s guidelines”), which lay down operational procedures to be followed before, during, and after evictions.

7. The Court recognized the ‘right to the city’ and emphasized its importance as an extension of the components of the human right to adequate housing:

80. In the context of the right to shelter and its sub-species, the right to adequate housing, it is necessary to acknowledge that there is an increasing recognition in the international sphere of what is termed as the ‘right to the city’ (RTTC), which in the context of the case on hand, is an important element in the policy for rehabilitation of slum dwellers...

82.2 Preceding the adoption of the New Urban Agenda, a Habitat III Policy Unit “Right to the City, and Cities for All”, consisting of experts from Member States, was formed to provide inputs into formulation of the Agenda. The aforesaid policy paper defined the RTTC as under:

“10. The right to the city is...defined as the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right.”

82.3 The policy paper also sets out a non-exhaustive list of components that ensure the ‘city as a common good’: (a) a city free of discrimination; (b) a city of inclusive citizenship; (c) a city with enhanced political participation in all aspects of urban planning; (d) a city ensuring equitable access for all to shelter, goods and services; (e) a city with quality public spaces for enhancing social interaction; (f) a city of gender equality; (g) a city with cultural diversity; (h) a city with inclusive economies; and, (i) a city respecting urban-rural linkages, biodiversity and natural habitats.

82.4 The aforementioned components of the ‘city as a common good’ have been ultimately incorporated in the New Urban Agenda as a ‘shared vision’ for “the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all”. Formulated thus, what the New Urban Agenda has acknowledged is a RTTC.

8. The Court highlighted the significance of the ‘right to the city’ in the context of the rehabilitation of settlement-dwellers:

83. **The RTTC acknowledges that those living in JJ clusters in jhuggis/slums continue to contribute to the social and economic life of a city.** These could include those catering to the basic amenities of an urban population, and in the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life. Many of them travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life. **Prioritising the housing needs of such population should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution. The RTTC is an extension and an elaboration of the core elements of the right to shelter and helps understand the broad contours of that right** [emphasis added].

9. The Court referred to the decision of the Supreme Court of India in *Olga Tellis v. Bombay Municipal Corporation*,⁸⁶ to establish the linkage between the right to livelihood and the right to adequate housing, and

⁸⁵ Available at: <https://www.ohchr.org/en/Issues/Housing/Pages/ForcedEvictions.aspx>

⁸⁶ (1985) 3 SCC 545.

to recognize that poverty itself is a violation of a bundle of human rights, encapsulated in Article 21 of the Constitution of India.

88. For the purposes of the present case, the importance of the decision in *Olga Tellis* (supra) is two-fold: one is the link between the right to shelter and the right to livelihood and how these cannot be separated into different compartments, as both inextricably form part of the life itself; second is that any attempt of deprivation of either right to shelter or right to livelihood, would mandate compliance with basic principles of natural justice i.e. providing a hearing to those sought to be evicted forcibly. **The running theme of the decision in *Olga Tellis* is the acknowledgement that poverty itself could constitute a barrier to the realization of fundamental rights. The Court was acknowledging the processes of impoverishment where people are forced to migrate to cities and live in squalor just to eke out their livelihood. The Court was acknowledging the need to protect the dignity of such persons since that was an inextricable part of the right to life itself under Article 21 of the Constitution** [emphasis added].
91. It is interesting that post *Olga Tellis* the jurisprudence around the right to shelter developed in the context of the invocation of the LAA⁸⁷ to provide alternative accommodation to the weaker sections of the society and not so much regarding the right to adequate housing in situ where the slum dwellers reside or even in the context of right against ‘forced eviction.’ This was discussed only partly in *Olga Tellis* where the harshness of forced eviction was sought to be assuaged by requiring the authorities to comply with the principles of natural justice before resorting to eviction drive.
10. The Court held that the procedure established by the High Court of Delhi in the case of *Sudama Singh v. Government of Delhi* would be applicable to all settlements in NCT Delhi, irrespective of the land-owning/land-holding authority.
111. (...) In other words, even if the Central Government were to take the stand that the JJ Batis/clusters on its land will not be covered under the 2015 Policy framed under Section 11 of the DUSIB Act, **the basic procedural protections and acknowledgment of the rights to adequate housing and against forced evictions therein, consistent with the legal requirements as spelt out in *Sudama Singh* would nevertheless continue to govern the removal and resettlement of such jhuggis.** For that matter, even as regards the Railways, which is but a Ministry of the Central Government itself, the position can be no different. The claim of the Railways that they can deal with the JJ bastis/clusters and jhuggi dwellers on land held by them in a manner contrary to the law laid down in *Sudama Singh* cannot, from a legal standpoint, be accepted [emphasis added].
117. **The decision in *Sudama Singh* governs the law in relation to slums and slum dwellers in the NCT of Delhi.** This is true whether the slums are those under the management of the DUSIB or are located on land owned by other agencies including the central Government. **The decision in *Sudama Singh* requires a Court approached by persons complaining against forced eviction not to view them as ‘encroachers’ and illegal occupants of land, whether public or private land, but to ask the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy** [emphasis added].
118. (...) **The decision in *Sudama Singh* is binding on all agencies including the Central Government and the Railways.** In sum, it is not as if only the JJ clusters and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB that are required to be dealt with in terms of the decision in *Sudama Singh* but **every jhuggi dweller, anywhere in the NCT of Delhi, has to be dealt with in terms of the said decision. In effect, therefore, no slum dweller in the NCT of Delhi in one area can be treated differently from that in another** [emphasis added].
11. The Court held that settlement-dwellers cannot be viewed as “illegal encroachers” by the government or its authorities and any incidents of forced eviction, without adhering to the procedure established in law would be illegal.
142. The law explained by the Supreme Court in several of its decisions discussed hereinbefore and the decision in *Sudama Singh* discourage a narrow view of the dweller in a JJ basti or jhuggi as an illegal

87 Land Acquisition Act.

occupant without rights. **They acknowledge that the right to adequate housing is a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city. They recognise such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement** [emphasis added].

143. Once a JJ basti/cluster is eligible for rehabilitation, the agencies should cease viewing the JJ dwellers therein as ‘illegal encroachers.’ The decisions of the Supreme Court of India on the right to shelter and the decision of this Court in *Sudama Singh* require **a Court approached by persons complaining against forced eviction not to view them as ‘encroachers’ and illegal occupants of land, whether public or private**, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. **Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in the above decisions** [emphasis added].

Relief Granted

1. As there was no perceived further threat of eviction by the authorities, the relief provided by the Court was limited to stating that in all future cases of eviction, a proper survey must be conducted and residents of the settlement must be consulted. The Court held that:

134. It must be noted that the Petitioners have some reservations to the specific aspects of the Draft Protocol. However, as of now there is no threat of forced eviction of the dwellers of Shakur Basti as all the Respondents, including the Railways, have taken a stand recognising that in terms of the DUSIB Act, the 2015 Policy and the decision in *Sudama Singh* it is essential to first complete the survey and consult the JJ dwellers. Further, under Section 10 (1) of the DUSIB Act, read with the 2015 Policy, and even otherwise, **unless it is possible for the JJ dwellers to be rehabilitated upon eviction, the eviction itself cannot commence** [emphasis added].

2. The Court stated that if *in situ* (on site) rehabilitation is not possible, the Railways shall consult with DUSIB, to find alternative land for rehabilitation and provide the Petitioners with alternative rehabilitation and adequate time to relocate. The Court held that:

135. **If no in situ rehabilitation is feasible, then as and when the Respondents are in a position to rehabilitate the eligible dwellers of the JJ basti and jhuggis in Shakur Basti elsewhere, adequate time will be given to such dwellers to make arrangements to move to the relocation site.** The Court would not like to second guess the time estimate for such an exercise and, therefore, keeps open the right of the JJ dwellers to seek legal redress at the appropriate stage if the occasion so arises. At that stage, the Court would possibly examine the objections that the JJ dwellers may have to the Protocol. Subject to this, the Court permits DUSIB to operationalise the Protocol [emphasis added].

140. The Railways by themselves are not a ‘land owning agency’. The word ‘owning’ is used only in the sense of Railways holding the land of Union of India for activities concerning the Railways. In that sense, when it is said that land belongs to the Railways it is not in the sense of land being ‘owned by the Railways’, but land of the Union of India being held by the Railways. **If on account of close proximity to Railway tracks, in-situ rehabilitation is not possible, then alternative land, not close to the tracks, will have to be found in consultation with the DUSIB** [emphasis added].

3. The Court held that the Protocol established by the Delhi Urban Shelter Improvement Board (DUSIB) Act, the Delhi Slum & JJ Rehabilitation and Relocation Policy 2015, and the judgment in *Sudama Singh v. Government of Delhi* would have to be followed in all cases of forced eviction in Delhi:

136. The key elements of the 2015 Policy, which are in conformity with the decisions of the Supreme Court of India discussed in Part VII of this judgment as well as in *Sudama Singh*, would apply across the board to all bastis and jhuggis across the NCT of Delhi. **In other words, conducting a detailed survey prior to the eviction; drawing up a rehabilitation plan in consultation with the dwellers in the JJ bastis and jhuggis; ensuring that upon eviction the dwellers are immediately rehabilitated - will all have to be adhered to prior to an eviction drive. Forced eviction of jhuggi dwellers, unannounced,**

in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in all of the above decisions [emphasis added].

139. The DUSIB Act and the 2015 Policy are by and large in conformity with the Constitution and India's obligations under the ICESCR. Therefore, **the Railways Act when it comes to the question of removal of 'encroachments of slum dwellers' will have to be understood as having to also be interpreted in a manner consistent with the above legal regime...** [emphasis added].

Analysis

In this case, the Court recognized the grave human rights crisis as a result of the forced eviction of settlement-dwellers at Shakur Basti in the winter, and acknowledged the vulnerable condition of women and children who were especially affected by the demolition of their homes. Through various interim orders, the Court directed and monitored the provision of relief and rehabilitation to the persons affected by the demolition. The Court also directed the officers of DUSIB, Northern Railways, and Delhi Police, to place on record the reasons for the demolition, thereby affixing responsibility on the executive for acts of forced eviction. The Court emphasized the role of the police during forced evictions, and held that the police cannot act in a manner that causes harm to the people or their personal belongings.

In its final judgment, the High Court of Delhi strongly recognized and upheld the human right to adequate housing and relied extensively on international law to emphasize the obligation of the government to protect and fulfil the right. It also elaborated on key judgments of the Supreme Court recognizing the right to housing as an integral element of the right to life. The Court held that people living in urban settlements should not be viewed as "illegal encroachers" by the government or its authorities and relied on the conception of the 'right to the city' to substantiate its claim. It also emphasized the need to integrate the 'right to the city' in state policy and implementation of schemes. Further, it recognized the importance of the 'indivisibility of human rights.'

The Court acknowledged that forced evictions violate multiple human rights and held that in all cases of forced eviction in Delhi, the procedure established by the Delhi Urban Shelter Improvement Board (DUSIB) Act, the Delhi Slum & JJ Rehabilitation and Relocation Policy 2015, and the judgment of *Sudama Singh v. Government of Delhi* would have to be followed.

Despite its positive recognition of the human right to adequate housing and right to the city, the relief provided by the Court, however, was limited to the procedure laid down in the DUSIB policy and did not extend to mandating *in situ* rehabilitation or providing compensation to the affected families for the multiple human rights violations and extensive losses suffered during the forced eviction and its aftermath, which included the loss of health as well as loss of life of some residents. This could result in increased insecurity for the residents and in several affected families being omitted from the resettlement process or being relocated in remote and inadequate sites.

II. BOMBAY HIGH COURT

9. St. Anthony's Co-operative Society v. The Secretary (Co-operation and Textile Department)

KEY ISSUES	Right to Housing, Right to Life, Co-operative Society
Case Number	W. P. 1357/2000
Case Citation	2001 (1) BomCR 730
Decided on	18 August 2000
Petitioner	St. Anthony's Co-operative Society
Respondents	Government of Maharashtra, and certain members of the Society

Facts

A Co-operative Society registered under the Maharashtra Co-operative Societies Act 1960, (hereafter, 'the Act') sought to exclude persons other than Roman Catholics from its membership. The Society owned certain lands in Chembur. These lands were divided into plots, in pursuance of a sub-division that was sanctioned about 75 years ago. Individual allotment of the Society's 98 plots to members was effectuated on the basis of registered lease agreements for 99 years, executed between the Petitioner and its members. Respondent 5, a member of the Society, sought to transfer his interest in the leasehold property in favour of Respondent 6, who in turn, assigned his interest to Respondents 3 and 4 without the consent of the Petitioner. Respondent 7 claimed to be an assignee of a part of the premises of Respondent 6. When Respondents 3 and 4 filed for membership after documents were executed in their favour, the Administrator rejected the application for membership on the ground that the transferees were not Roman Catholics by faith. After the Administrator refused the application for membership of Respondents 3 and 4, they moved the Deputy Registrar; he allowed the Appeal and directed that Respondents 3 and 4 be admitted as members of the Society. This was also accepted by the Divisional Joint Registrar of Co-operative Societies, through an order dated 31 January 1996. The state government and the Secretary (Co-operation), by the impugned order dated 17 April 2000, only affirmed these positions. The Society sought to challenge in these proceedings the order dated 17 April 2000, passed by the Secretary (Co-operation).

Relief Sought

An order quashing the order passed by the Respondent authorities, which allowed the members (who were not Roman Catholic) to be inducted as members of the co-operative housing society.

Issue

Whether a co-operative housing society can confine membership to a particular religion, sect or group, and exclude those who do not profess the religious faith of the said cooperative society.

Ruling

1. If a society seeks registration under the Act, it must function within the framework of the provisions and comply with the objectives and conditions of the Act. Thereafter, a right which would be at variance with the Act cannot be asserted.

2. The Court referred to the preamble and provisions of the Maharashtra Cooperative Societies Act:
 - a) The Act was passed with a view to provide for the orderly development of the co-operative movement in the state, in accordance with the Directive Principles of State Policy contained in the Constitution of India.
 - b) Section 4 of the Act provides that a Society, whose objective is to promote the economic interests or general welfare of its members or of the public, in accordance with co-operative principles, may be registered under the Act.
 - c) Section 23 stipulates the basic principle of 'open membership.
3. The Court referred to model by-laws that had been framed, and had persuasive force.
 9. (...) it is an admitted position that the model by-laws, insofar as it is material to the controversy in the present case, provide for open membership in which the membership of a co-operative society shall not be denied on the basis of caste, creed, or religious faith.
4. The Court arrived at the following conclusions:
 - a) A cooperative society "is an economic institution informed by social purpose and not motivated by entrepreneurial profits; it is a democratic organisation owned and controlled by those utilising its services. A combination of all these features mark out co-operatives as distinct Organisations, different from other types in the private or public sector."
 - b) Co-operative Societies are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association.
 - c) It is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a Co-operative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and by-laws applicable from time to time. The stream cannot rise higher than the source.
 - d) The fundamental principles of cooperation include: (i) the principle of Voluntary Association; (ii) the principle of democratic management; (iii) the principle of self-help and mutual help; (iv) the absence of profit motive; (v) the principle of an open door policy; (vi) publicity; (vii) neutrality; and, (viii) equality.
 - e) The power to impose a disqualification, either in absolute or qualified terms, has been vested in the state government in Section 22 (1A), and a decision on whether a conflict of interest between a member and the object of the society is likely to result is not left to the discretion of the Society itself.
 - f) There is no compulsion to get a Co-operative Society registered and, therefore, once a Society is registered, a grievance cannot be made of the provisions of the statute which regulate the affairs of the Co-operative Society.
5. The Court also noted that co-operative societies provide an essential amenity to citizens – namely the facility of housing. The Court recognized that the right to housing is itself read into Article 21. Since membership to the society has bearing upon the ownership, use, or enjoyment of property, restricting membership restricts full enjoyment of property. However, it also stated that the "right may be regulated, as rights in property can generally speaking be regulated, but save and except in the face of a statutory indication, an interpretation which would interpose a bar upon the full enjoyment of the right ought not to be countenanced by the Court."

Analysis

Although the Court does not enunciate a clear right to housing, it recognizes the importance of enjoying property in the obiter, as well as the fact that membership to a society is linked with use of property.

The Court, however, relies on the literal interpretation of the law to reiterate that membership to the society (and thus to the enjoyment of housing) is subject entirely to legislative intervention. The judgment does not recognize

a constitutional right to housing or any form of property but merely a statutory right; consequently, if the state were to allow or mandate exclusion of certain members through legislation, the evicted members cannot rely on constitutional protection.

A better approach would have been to link the welfare objective of co-operative societies with the duty of the state to facilitate habitation for all members of society and every member's individual right to housing within a community.

10. Shivaji Krishna Zunjare v. State of Maharashtra

KEY ISSUES

Right to Housing, Right to Life, Resettlement, Positive Obligations of the State, Affordable Housing, International Law

Case Number

W.P. 1838/2004 and 1936/2004

Case Citation

2004 (6) BomCR 133

Decided on

23 July 2004

Petitioners

Residents of a settlement who were tenants but not listed on the state electoral rolls

Respondent

Slum Rehabilitation Authority

Facts

The Respondent issued an order that the Petitioners were not “eligible” to participate in a Slum Rehabilitation Scheme, or to receive notices for their eviction. The conditions stipulated for “eligibility” to participate in the rehabilitation scheme were: (i) The name of the inhabitant of a house/structure situated in a settlement must appear in the electoral rolls; (ii) The inhabitant must reside in the house/structure; (iii) Only the actual occupants of houses were eligible; and, (iv) The right of the owner must give way to the right of the actual occupant. Some residents of the settlement who did not meet these criteria filed this petition. They did this after one of the Petitioners was forcibly evicted by the police.

Relief Sought

Rehabilitation.

Issue

Whether the Petitioners are eligible for rehabilitation in light of statutory laws to that effect.

Ruling

1. Housing is a basic human right that is recognized in Article 21 of the Constitution of India. This encompasses the right to reasonable residential accommodation, and to settle in conditions of decency. The Court held that:
 4. While dealing with the present case, the Court cannot possibly overlook the circumstance that the decision of the Court is inextricably associated with a governmental policy which deals with the provision of housing to the marginalized and the poor. **The entitlement to housing constitutes a basic human right and a fundamental right which has been recognized in judicial decisions under Article 21 of the Constitution.** In *Shantistar Builders v. Narayan Khimalal Totame* 1990 AIR 1990 SC 630 the Supreme Court in a decision of three Learned Judges held that the **right to life comprehends the right to shelter; the right to reasonable residential accommodation. The fundamental nature of the right to reside and settle in conditions of dignity was recognized once again** in a decision of two Learned Judges of the Supreme Court in *J. P. Ravidas v. Navyuvak Harijan Uthapan Multi Unit Industrial Co-op. Society Ltd.*, AIR 1996 SC 2151. The Court noted that since the decision in *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180 where the Constitution Bench held that the **right to life included the right to residence** that was the position which has been adopted by the Court. In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* AIR 1997 SC 152, the Supreme Court held that **the State, including its local bodies, constitute an integral part of the implementation of the Directive Principles contained in Part IV of the Constitution.** The Court held that it was, therefore, the **duty of the appellant before it to enforce schemes in a planned manner by annual budgets to provide a right of residence to the poor** [emphasis added].
2. The Court referred to the Constitution of South Africa, as well as significant judgments from the Constitutional Court of South Africa, in order to highlight that: the right to housing superseded legislative rules; arbitrary

legislation encouraging eviction was unconstitutional; and, there is at least a negative obligation on states to desist from impairing the right of access to housing. The Bombay High Court said:

5. The issue of housing is the subject matter of significant jurisprudence in other developing societies. Section 26 of the Constitution of the Republic of South Africa, 1996 provides that **everyone has a right to have access to adequate housing**; that the State **must take reasonable legislative and other measures within its available resources, to achieve the progressive realization of this right and that no one may be evicted from their home without an order of Court** made after considering all the relevant circumstances. There is an **embargo against legislation that permits arbitrary evictions**. The leading judgment in the area is *Government of the Republic of South Africa v. Grootboom*.⁸⁸ The Constitutional Court held that though Section 26(1) does not expressly say so, there is, at the very least, a **negative obligation placed upon the State and all other entities and persons to desist from preventing or impairing the right of access to housing** [emphasis added].
6. The constitutional imperatives are as strong in India as they are in South Africa. The **interpretation which the Court places on legislative and administrative measures adopted by the State in recognition of the right to housing must effectuate and advance the salutary object underlying the adoption of those measures** [emphasis added].

Relief Granted

The Court held that:

16. The conclusion which has been arrived at by the Slum Rehabilitation Authority in holding that the petitioner was ineligible is clearly and manifestly in error. In so far as the companion petition is concerned, here too it must be held that Maharashtra State Road Transport Corporation (MSRTC) as the owner of the structure has no right to participate in the Slum Rehabilitation Scheme in view of the clear provisions of Development Control Regulation 33(10) which confer such recognition only on the actual occupant and not upon the owner of the structure. In this view of the matter, both the petitions are allowed. The impugned order passed by the Slum Rehabilitation Authority insofar as it holds that the Petitioners are not eligible to participate in the Slum Rehabilitation Scheme are quashed and set aside. There shall accordingly be a direction to the effect that both the Petitioners shall be eligible to participate in the Slum Rehabilitation Scheme subject to the fulfilment of all the requirements.

Analysis

In one of the most remarkable instances of the recognition of the right to housing, the Bombay High Court, in this case, dealt with the exclusion of certain persons from a slum rehabilitation scheme under the Development Control Regulations for Greater Mumbai. The Court, while discussing the right to adequate housing, invoked Article 26 of the South African Bill of Rights, which provides that the right to adequate housing exists for all persons; that the State must take reasonable legislative and other measures within its available resources; and, that no one may be evicted without an order of the Court considering all circumstances.⁸⁹ The Court then discussed the *Government of the Republic of South Africa v. Grootboom*,⁹⁰ a landmark judgment on the right to housing in South Africa, as an illustration of the role of the judiciary in effectuating socio-economic rights. The Court especially highlighted the test of reasonability as propounded by *Grootboom* in testing the legality of state policies. However, the Court refused to enumerate the content of the right to housing in India owing to the fact that there was already a state policy in place for settlement-dwellers. Nevertheless, this case is significant for the positive acknowledgement of the human right to adequate housing by the Bombay High Court.

.....
88 2001 4 SA 4.

89 Article 26, Bill of Rights, South Africa.

90 *Government of the Republic of South Africa v. Grootboom*, 2000 (11) BCLR 1169 (CC).

11. Sahyadri Punarvasan Gaothan Vikas Sanstha v. Pandharpur Municipal Council

KEY ISSUES	Right to Life, Right to Privacy, Indivisibility of Human Rights, Forced Eviction, Resettlement, International Law
Case Number	W.P. 4000/1991
Case Citation	2005 (3) BomCR 210
Decided on	6 December 2004
Petitioners	Persons displaced by the Kanhar Dam in Satara District who were resettled in Sahyadri Nagar (earlier known as Isbavi Village) in Solapur District
Respondents	Pandharpur Municipal Council and the Government of Maharashtra

Facts

The construction of Kanhar Dam across the Venna River by the State of Maharashtra resulted in the submergence of five villages in Satara District and the displacement of its inhabitants. In total, 271 families consisting about 900 adults and about 500 minors were displaced due to such submergence. They were resettled in a village later known as Sahyadri Nagar near Pandharpur. Further, the municipal limit of Pandharpur was extended by the state government to include the areas where the Petitioners were rehabilitated and resettled, leading to an additional burden on the displaced persons to pay municipal taxes.

The petition was brought against the Respondents for refusing to provide alternative land for cultivation and housing, as well as for the failure to provide other resettlement-related benefits and amenities.

Relief Sought

A direction to Respondents seeking proper and complete rehabilitation, and exemption from municipal taxation.

Issue

Whether the rehabilitation and resettlement undertaken by the Respondents was adequate.

Ruling

1. The Court took cognizance of the fact that in the name of the larger public good, people residing in remote villages are often displaced, resulting in a range of adverse impacts, especially on women and children. The Court stated that:

5. It is **unfortunate that whenever such projects are undertaken in the name of larger public good, people residing in remote villages are displaced. Not only they get thrown out from the areas where they are residing for decades together but upon shifting, minimum and basic amenities are also not guaranteed to them.** It is a common grievance of such people that while residing for decades together, with State assistance and most of the times on their own, they establish schools, play grounds, cremation grounds etc. Villagers get together and implement, with assistance from Non-Governmental Organisations and State, schemes for water supply and other amenities. Everything is gone the moment the villages are submerged. **People are shifted to far off places. In the name of resettlement and rehabilitation virtually nothing is provided. This is the grievance on most occasions. People get thrown out and displaced physically, mentally and socially. Communities which are residing together for decades have to adjust with totally different living conditions. This has an adverse impact on all sections and strata of the society but more particularly on women and children** [emphasis added].

2. The right to life under Article 21 was read expansively to include the right to reputation, right to privacy, and the right to equal opportunity. This means that everyone is entitled to basic amenities such as open toilets, open spaces, markets, burial grounds, electricity and water.
 8. (...) **Right to reputation, Right to privacy and Right to equal opportunities of personal, social and community growth and development is a facet of the rights guaranteed by Article 21 of Life and Liberty.** The mandate is clear. **Right to live has to be made meaningful, purposeful and relevant.** It is not as if only the urban population is entitled to basic amenities. It is a **misnomer and misconception when we proceed on the basis that people residing in villages do not require toilets, open spaces, markets, burial grounds, roads, electricity and water supply.** Even after 57 years of independence, we are unable to provide these basic amenities. The response of State is not at all encouraging. **It is unfortunate that absolutely no attention is paid to these aspects when implementing and undertaking public projects** [emphasis added].

Relief Provided

1. The Court directed the Respondents to take cognizance of the grievances as set out by the Petitioners. They were also to take appropriate steps and measures, as expeditiously as possible.
2. The Respondents were further directed to prepare and submit a report to the Court for redressing these grievances.
3. The Court, however, rejected the claim that the Petitioners ought to have been informed and given a chance to object to the extension of municipal limits. Just because they had not been granted amenities did not warrant their non-payment of taxes.

Analysis

The Court recognized the plight of the Petitioners who were displaced as part of government policy, but not provided with alternative accommodation and adequate resettlement, even after twenty years. The Court directed the state to immediately provide relief to the Petitioners and report to the Court on the progress of the situation. The Court not only upheld adequate housing as an essential element of the right to life but also recognized the rights to privacy, reputation, and equal opportunity. Further, it included within its ambit basic amenities such as electricity, water, open spaces, toilets, markets, and burial grounds. This is consistent with the comprehensive interpretation of the human right to adequate housing by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment 4.⁹¹

91 UN Committee on Economic, Social and Cultural Rights, General Comment 4: 'The Right to Adequate Housing' (Art. 11 (1) of the Covenant), 1991. Available at: http://hlrn.org.in/documents/CESCR_General_Comment_4.pdf

12. Joseph Bain D’Souza v. State of Maharashtra

KEY ISSUES	Right to Housing, Affordable Housing, Urban Planning
Case Number	W.P. 3189/2004
Case Citation	2005 (6) BomCR 543
Decided on	17 October 2005
Petitioners	Three citizens from professional backgrounds – a municipal commissioner, a member of a conservation committee, and a civil engineer
Respondent	State of Maharashtra

Facts

The provisions of the Development Control Regulation 33 (7) allowed incentives in the form of an additional Floor Space Index (FSI) from 50 per cent to 70 per cent, for the redevelopment of buildings. This provision saw the rampant replacement of buildings in Bombay with multi-storey towers, many of which often extended to narrow streets leaving no space for installation of civic amenities, such as sanitation facilities and water piping.

Relief Sought

Reading down the provision to grant additional or incentive FSI for the reconstruction of buildings which are not unsafe or beyond economic repair on the ground that it was arbitrary and unreasonable.

Issue

Whether there is a deleterious impact upon the infrastructure and quality of life in the city, as a result of the increased FSI under Development Control Regulation 33 (7).

Ruling

1. The Bombay High Court framed the issue, in the context of the Mumbai floods of 2005. The Court stated that:
 1. (...) The questions which confront the Court present on the one hand the dangers of urban disruption brought about by unchecked construction and on the other hand the **need to protect the constitutionally guaranteed right to life of the large, if even silent, majority**. With the destruction that was caused in the aftermath of monsoon rains this year in Mumbai, a hard look at them cannot be postponed [emphasis added].
2. The Court highlighted the historical shortage of housing for people belonging to the middle and lower economic groups. It stated that:
 4. The city of Mumbai witnessed a large influx of population from within and outside the State at the turn of the 20th century. A significant segment of the work force was absorbed in textile mills. Areas around textile mills, such as Parel, Lalbag, Girgaon, and the docks witnessed the construction of buildings with small tenements of an area between 70 to 100 sq. ft. Most of these *chawls*⁹² were characterised by common toilet blocks on each floor. It was not uncommon for a tenement in the chawls to be occupied by large families consisting of near and not so near relatives who came to Mumbai in search of work. Many of the rooms in the chawls were let out by landlords. The climatic and weather conditions in Mumbai often resulted in the corrosion of steel and wooden beams used in construction. These buildings were not RCC structures. A need was perceived to constitute a body that would oversee the construction of new houses for the lower and middle income groups since the chawls were insufficient to cater to the massive influx of population. The Bombay Housing Board Act, 1948 was enacted with a view to provide for the construction of new houses for persons belonging to the low and middle income groups.

92 A large residential building with multiple tenements, offering low-cost housing.

3. The Court held that:

36. The material before the Court amply demonstrates that the problem of fake tenancies has assumed a serious dimension. The problem is now of such a magnitude that unless it is tackled with a sense of purpose, it would imperil all the fundamentals of urban planning in the metropolis. Builders and real estate developers have unfortunately obtained the benefit of a regulatory system which is inconsistent and lacking in transparency. The brazen manner in which tenancies have been inflated with bogus claims is the result of a deep and pervasive malaise in the system... The certification process by Maharashtra Housing and Development Authority (MHADA) is seriously flawed.

4. The Court further stated:

37. In our view, it is necessary that there should be an independent monitoring mechanism.

A range of considerations must be weighed and balanced with the need to provide conditions for dignified existence to those occupants... **The right to housing is a basic human right... Many of those buildings lack facilities as elementary as a self-contained toilet attached to a tenement. Hence, the preservation of the balance of life warrants a balance between competing equalities.** The impact of an additional population on the existing civic services is one facet of the impact on the quality of life... The balance is not easy to define but a balance has to be made on the basis of a considered understanding of all the facets of a complex problem [emphasis added].

5. The Court laid down considerations that directed the Respondents to seriously consider the impacts of strained infrastructure on the population.

Relief Granted

The Court had passed an interim order restraining Respondents from:

1. Granting permission for reconstruction, unless the building had been assessed and deemed unstable by a panel of civil engineers.
2. Granting basic FSI in excess of a fixed amount, unless the panel consisting of Civil/Structural Engineers appointed by the Government of Maharashtra was satisfied after a thorough scrutiny and verification of the need for it.

In the final judgment, the Court stated:

1. The process of certifying tenancies in pursuance of proposals under Development Control Regulation 33(7) should be scrutinized and screened by an independent Screening Committee, presided over by a former Judge of this Court. Since the functions of the Committee will entail an investigation of facts, the Committee shall also consist of a retired District Judge. The Committee must have the assistance of representatives from MHADA and of the Municipal Corporation.
2. The Committee shall have the power to scrutinize and certify the list of tenants submitted with each development proposal under Development Control Regulation 33(7). For the aforesaid purpose, the Committee shall lay down the parameters that shall be observed in the process of certification. In carrying out the task of certification, the Committee shall have due regard to the municipal assessment record, the electoral roll and such other public records maintained in the ordinary course by a statutory or public authority as the committee may consider it proper to accept as genuine and authentic. All the pending development proposals under Development Control Regulation 33(7) shall also be submitted to the Committee for verification and certification. The Committee shall endeavour to complete its investigation in each case and certify the list of tenants within a period of sixty days of the receipt of the initial list with the recommendations of MHADA and necessary documentary evidence. The Committee will be at liberty to inspect the concerned cessed building in order to verify the position in regard to genuine tenancies.

Analysis

In this case, the Bombay High Court examined the housing situation in Mumbai in the aftermath of the 2005 floods. The Court engaged with the state government and urged it to examine issues of urban planning, the need to create affordable spaces for the urban poor, and the dilapidated condition of existing housing facilities. The Court's approach reflects an implicit understanding that the right to housing not only signifies protection from illegal eviction, but also requires the state to actively ensure accessibility of affordable housing.

13. Zubair Malik v. Municipal Corporation of Greater Mumbai

KEY ISSUES

Forced Eviction, Resettlement

Case Number	W.P. (Lodging) 2371/2014
Case Citation	2015 (1) ALLMR 543
Decided on	8 October 2014
Petitioners	Tenants of dilapidated buildings
Respondent	Municipal Corporation of Greater Mumbai

Facts

The Petitioners filed the case in response to an eviction notice issued by the Respondents under Section 354 of the Mumbai Municipal Corporation Act 1888 (hereafter MMC Act), by virtue of which eviction may be required if a building is found to be in a ruinous or dangerous condition. The Petitioners claimed that the landlord was not in a position to provide alternative accommodation.

Relief Sought

Alternative or temporary accommodation.

Issue

Whether the state is under obligation to provide alternative, or even temporary, accommodation.

Ruling

The Court ordered that:

1. The landlord is not under an obligation to provide accommodation if the building is being vacated.
2. The state is obligated to provide alternative or temporary accommodation:
 17. **All human beings' problems/difficulties just cannot be overlooked when it comes to vacation or eviction of compulsory leaving of home/premises, even for want of development of the property by the developer/owner or the society itself.** The cooperation and settlement is the solution. The State or local bodies having once decided to provide temporary or permanent shelter with all facilities, as recorded above, the similar policy and/or housing policies, should be, on certain conditions and taking note of the circumstances for such poor tenants/occupants, required to be framed [emphasis added].

Analysis

This case pertains to the legality of an eviction notice served by the Municipal Corporation of Greater Mumbai, in the absence of alternative accommodation. While recognizing that immediate eviction must not be carried out without providing alternative accommodation, the Court held that every landlord might not be economically well-off to provide the same. In such situations, therefore, the Petitioners could approach the state to provide temporary accommodation. The Court also urged the state government to formulate policies for providing temporary accommodation for people who are forcefully evicted as a result of a state policy. In doing so, the Court was mindful of the economic background of the Petitioners. However, the Court did not clarify if the state was obligated to provide temporary accommodation in situations where eviction was not a result of a state policy.

14. Pani Haq Samiti v. Brihan Mumbai Municipal Corporation

KEY ISSUES	Right to Life, Right to Water, Indivisibility of Human Rights, Legality of Urban Settlements
Case Number	PIL 10/2012
Case Citation	MANU/MH/2705/2014
Decided on	15 December 2014
Petitioners	Committee of settlement-dwellers, whose settlements were constructed after 1 January 2000 and had not been regularized as “legal” settlements in Mumbai
Respondents	Mumbai Municipal Corporation, the state government, and public authorities

Facts

A large number of settlements were established in Mumbai, over several years, on public land of the state government, Mumbai Municipal Corporation, and other public authorities; some of which the state government had, from time to time, legalized. Most of these settlements resulted from the failure of the state to make available affordable residential accommodation in the city of Mumbai.

Nevertheless, the state government protected certain settlements under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (hereafter Slum Act) by prohibiting arbitrary evictions and providing procedure for rehabilitation and relocation.

The state government, however, issued a circular stating that local authorities were to ensure that water supply was not released to any “unauthorized constructions.” The Petitioners brought a petition to Court challenging this circular. The Respondents sought to justify this circular on the grounds that providing water would contribute to the further construction of “illegal settlements.”

Relief Sought

Quashing of order disconnecting water supply to “illegal” settlements.”

Issue

Whether occupants of settlements deemed as “illegal settlements” can be denied water supply by the state.

Ruling

1. Recognizing that the scope of the right to life under Article 21 of the Constitution of India is wide and includes the right to live with human dignity, which comprises the right to enjoy “pollution free” water and air, the Court asserted that:
 10. (...) The scope of the Article 21 of the Constitution of India need not be restated. Suffice it to say that the scope of the Article 21 is very wide. The right to life guaranteed by the Article 21 is not of animal existence, but it is a **right to live with human dignity**. ... The Apex Court in the case of Subhash Kumar vs. State of Bihar AIR 1991 SC 420 held that the right to life under Article 21 of the Constitution of India includes right of enjoyment of pollution free water and air for full enjoyment of the life [emphasis added].
2. While recognizing the right to housing, the Court further asserted:
 10. (...) Thus, the Apex Court categorically held that right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.
 11. We are conscious of the fact that the right to shelter guaranteed by Article 21 of the Constitution of India does not extend to protecting possession of a citizen over an illegal/unauthorized construction/dwelling unit. All the concerned Authorities of the State including Local Authorities are under a legal

obligation to ensure that the illegal constructions do not come up and that even if the illegal structures come up, the same are effectively and expeditiously demolished by following the due process of law.

3. The Court held that in the context of the human rights to food and water under Article 21, the state cannot deny water supply to a citizen of India. This has nothing to do with the status of construction:

11. **As the right to life guaranteed under Article 21 of the Constitution of India includes right to food and water, the State cannot deny the water supply to a citizen on the ground that he is residing in a structure which has been illegally erected...** Such a citizen who occupies an illegal hut, has no right to retain the illegally constructed hut, but he **cannot be deprived of his fundamental right to food and water which is an integral part of the right to life guaranteed under Article 21 on the ground that he is in occupation of an illegally constructed hut** [emphasis added].

4. The Court, however, stated that while supplying drinking water to occupants of such “illegal settlements,” the Municipal Corporation could charge higher water rates than what was charged for water supply to “authorized constructions.”

18. Going back to the Article 21 of the Constitution of India, as observed by us, **the right to get water is an integral part of the fundamental right Article 21 of the Constitution of India. Right to get water is an integral part of the right to life conferred by Article 21. We must note here that a citizen who stays in an illegal structure or in illegal slums cannot claim right to get water supply on par with water supply made available to a law abiding citizen who has either constructed his house after obtaining a permission or who he is occupying a residential premises which is lawfully constructed and which is permitted to be occupied.** It is ultimately for the Municipal Authorities to decide in what manner the water can be supplied to the occupants of the slums... **It is for the Municipal Corporation to evolve a policy for supply of water** to the persons occupying such illegal slums. The said water supply may not be necessarily by providing water supply lines to the individual slums [emphasis added].

5. The Court directed the Municipal Corporation to formulate a policy for providing water supply in some form to the occupants of the settlements as expeditiously as possible and in any event by the end of February 2015.
6. It further stated that the municipal authorities were under an obligation to prevent construction of unauthorized settlements and to demolish existing settlements that are not protected, and which were constructed after 1 January 2000.
7. The Municipal Corporation was ordered to file an affidavit of compliance, stating the manner in which it would prevent the construction of such illegal settlements and the manner in which it would demolish the “illegal settlements.”

Relief Granted

1. The Court upheld the right to water of all residents, irrespective of the status of their housing or tenure in the eyes of the state. It directed the Municipal Corporation of Mumbai to formulate a policy for providing water supply to the occupants of the settlements.
2. It also directed the Municipal Authorities to initiate action against erring Designated Officers in terms of Section 475-B of the MMC Act.

Analysis

The Court here accepted the existence of a right to shelter/housing but made a distinction between “illegal” and “legal” settlements. It also recognized the right to water, and stated that water supply must be provided to all irrespective of the nature of the settlement. In the same breath, however, the Court sanctions differential rates and means of providing water, according to the “legality” of the settlement, thus entirely contradicting the human rights approach.

While on one hand, the rights to housing and water are seen as universal rights imposing obligations on the state to ensure them, on the other hand, the Court distinguishes between “legal” and “illegal” dwellings, relying on

the state's discretionary power in making such policy decisions. This reveals an inherent discrimination against the urban poor without acknowledging the larger socio-economic challenges and the shortfalls of the state in providing public housing, especially in large cities like Mumbai.

The failure of the Court to uphold the human right to adequate housing of those deemed "illegal," even going to the extent of sanctioning the demolition of their homes, is disturbing.

This case has been included in this compilation to highlight the inherent contentions and contradictions within the judiciary.

15. D.B. Realty Ltd. v. State of Maharashtra

KEY ISSUES

Affordable Housing, Positive Obligations of the State

Case Number	W. P. 366/2014
Case Citation	2015 (3) BomCR 640
Decided on	5 February 2015
Petitioners	Real estate developer owning immovable properties of more than 4,000 square metres in Mumbai
Respondent	State of Maharashtra

Facts

A notification dated 8 November 2013 issued by the State of Maharashtra (State) in exercise of its powers under Section 37 (1AA) of the Maharashtra Regional Town Planning Act 1966 (MRTP Act) was issued by the state government, requiring property to be utilized for construction of houses for Economically Weaker Sections/Low Income Groups (EWS/LIG), or to be handed over to the Maharashtra Housing and Area Development Authority (MHADA).

The provision mandatorily requires the owner of the land admeasuring 4,000 square metres or more in terms of clause 1 (a) and seeking sub-division or layout of the land for residential purpose, to:

- Develop plots of 30 to 50 square metres for EWS/LIG on minimum 20 per cent of the plot area; or,
- Hand over an area of 20 per cent of the land to MHADA for constructing EWS/LIG tenements at the rate prescribed in the Annual Statement of Rates (ASR) in the year in which sanction is granted to the Sub-division or Layout.

The Court summarized the major issue as quoted below:

5. A plain analysis of the schedules to impugned notification would reveal that it mandatorily requires the owner of the land admeasuring 4000 sq.mts. or more in terms of clause 1(a) seeking sub division or lay out of the land for residential purpose, then on minimum 20% of the plot area the land owner has either to develop plots of 30 to 50 sq. mts. for Economically Weaker Sections/Low Income Group (EWS/LIG) or an area of 20% of the said land is required to be handed over to Maharashtra Housing and Area Development Authority (MHADA) for constructing EWS/LIG tenements at the rate prescribed in the Annual Statement of Rates (ASR) in the year in which sanction is granted to the Sub division or Lay out. The next sub-clause (b) provides that the affordable plots required to be sold to MHADA at one place in consideration of equal quantum of FSI to be utilized on the remaining plots. In the event of MHADA declining to purchase the plots within six months the developer can sell the affordable plot in the open market. However, in such cases the additional FSI of affordable plots shall not be available to the developer.

The Petitioner challenged the notification on the ground that it amounted to compulsory acquisition of property without authority of law, leaving no option with the Petitioner.

Relief Sought

Quashing of notification requiring property to be utilized for construction of houses for Economically Weaker Sections/Low Income Group (EWS/LIG) or to be handed over to the Maharashtra Housing and Area Development Authority (MHADA).

Issue

Whether the impugned notification amounted to a coercive acquisition of property.

Ruling

1. The case was found not to be an issue of acquisition of property, as the Petitioner could by way of compensation utilize/exploit the land to the extent it could be, before his holding was truncated.
2. Precedent was relied on to prove that FSI was a form of compensation paid for surrendering land.
3. The land acquired had to fulfil a public purpose.
4. The Court declared that the paramount purpose of the MRTP Act was planning. The acquisition was merely incidental.

The Court also stated that:

21. (...) There is a distinction between the property vesting in the planning authority and one which is only to enable re-allotment for the purpose of achieving the objectives of town planning. Thus, we are of the view that the impugned notification is not one of acquisition but involves laying down conditions on the basis of which permission is to be granted for construction of residential houses on plot of land in excess of 4000 sq. mtrs.

Analysis

In this case, the Court upheld a state policy requiring real estate developers to reserve a certain area for economically weaker sections in exchange for additional floor space index. The Court rejected the contention that this provision violates the right to property of the building owners, emphasizing the need to develop affordable urban housing. Any policy which purports to do the same must be upheld. The Court's decision is significant as it recognized the positive duty of the state to provide affordable housing. Although, the Court does not use the language of the right to housing, it effectively clears the way for the realization of the same.

III. HIGH COURT OF MADRAS

16. C. Ponnusamy v. Government of Tamil Nadu

KEY ISSUES	Right to Housing, Land Acquisition, Due Process
Case Number	W.P. 2203/1988
Case Citation	1997 (1) CTC 212
Decided on	4 February 1997
Petitioners	Sixty-three owners and residents of land in Goundampalayam Village, Coimbatore, which was the subject of an acquisition notification issued by the Tamil Nadu Housing Board
Respondent	Government of Tamil Nadu

Facts

The Petitioners had purchased small portions of land for the purpose of building houses. Many of them had already constructed homes and were residing there with their families. A notification was issued at the instance of the Tamil Nadu Housing Board to acquire the land for the Anna Nagar Neighbourhood Scheme, Coimbatore. Despite having sent in objections, several of the Petitioners were not served with any notice, and the remarks of the requisitioning body were not communicated to them and no personal enquiry was conducted by the Land Acquisition Officer.

Relief Sought

Writ of certiorari/mandamus or any other appropriate writ to quash the declaration issued under the Land Acquisition Act in so far as it relates to the Petitioners' lands, and consequentially to direct the Respondents to exclude the said lands from the acquisition proceedings.

Issue

Whether the notification was vague, incorrect, and untenable in light of the fact that the Petitioners had no other land and had resided on it for a long time.

Ruling

1. The Court held that the principles of natural justice embodied in Rule 3(b)⁹³ of the Tamil Nadu Land Acquisition Rules, which mandates the Collector to hold a hearing on receiving objections, and Section 5-A of the Land Acquisition Act 1984⁹⁴ had been violated.
2. The Court considered the fundamental nature of the right to shelter under Article 19(1) of the Constitution. It cited Supreme Court decisions to recognize that fundamental rights cannot be violated when acquiring land for the purpose of building housing. The Court ruled that:

93 Rule 3 (b) of the Tamil Nadu Land Acquisition Rules provides that: "If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry."

94 Section 5A of the Land Acquisition Act 1984 (Hearing of Objections).

221. In these circumstances, on the ground that there has been violation of... the petitioner's fundamental right to shelter which the first Respondent has to provide for, I am inclined to quash the acquisition proceedings impugned in the present writ petition.

Relief Granted

The acquisition proceedings were quashed.

Analysis

While acknowledging and upholding the right to housing, the case highlights the importance of procedural safeguards such as providing notice and public hearings to prevent any arbitrary incursions against the right to housing.

17. Steel Plant Employees Union, Salem v. Steel Authority of India Limited

KEY ISSUES	Compensation/Housing Rent Allowance
Case Number	W.P. 1692/2002
Case Citation	28 March 2002
Decided on	(2003) ILLJ 189 Mad
Petitioners	A collection of employees' unions and labour associations in Salem, Tamil Nadu
Respondent	Steel Authority of India

Facts

The Steel Authority of India had constructed some quarters for its workers near the Salem Steel Plant since it was far away from Salem town in the state of Tamil Nadu. Since these were not sufficient for all workers, rules were framed to determine allotment based on eligibility criteria. However, even after being declared “eligible,” many workers were not allotted housing.

Despite this, the company initiated a scheme that allowed employees of other public sector units (PSUs) and banks established in the township to avail of company accommodation on a long-term lease basis. The employees who were not allotted accommodation, opposed this move.

Relief Sought

Invalidating the decision of the Respondents to give away the houses/flats in the Salem Steel Plant Township on long-term lease to employees of other Public Sector Units on grounds that it was unreasonable, unjust, and violative of the rights of the Petitioner employees for housing in the Township.

Issues

1. Whether the scheme was fair and reasonable.
2. Whether the Petitioners' right to housing was violated.

Ruling

1. The Court held that having acquired land for certain purposes under the Land Acquisition Act 1894, the Respondents could not utilize it for anything other than the stated ‘public purpose.’ However, the Court recognized that the scheme was floated by the company to meet its financial losses incurred over the years. It also noted that many changes in terms of accessibility had come into place, such as better roads and housing colonies in nearby areas.
2. The Court interpreted the scheme liberally and said that the ‘public purpose’ was the preservation and sustenance of the plant to prevent further deterioration.
3. The Court also said that the agreement/settlement clarified that those not getting accommodation would get house rent allowance. Accordingly, the scheme was deemed fair and reasonable, as it aimed to maintain the plant, which was indeed the ‘public purpose’ for which the land was acquired. The Court also relied on the order of preference to dismiss the apprehensions of the Petitioners.
4. Responding to the Petitioners' claim that their right to shelter/housing is protected by Article 21 of the Constitution, the Court ruled that the settlement (‘National Joint Committee for Steel Industry’ Agreement) made it clear that those not provided quarters would be provided housing rent allowance.

Analysis

In this case, the High Court of Madras neither confirmed nor denied the protection of the right to housing under the Constitution of India. However, the case exhibits the manner in which the right to housing may be fulfilled, which either could be by providing housing facilities or allowance/compensation in lieu of it.

18. R. Krishnasamy Gounder v. The State of Tamil Nadu

KEY ISSUES

Right to Housing, Forced Evictions, Resettlement

Case Number	W.P. 7517/1998
Case Citation	2008 8 MLJ 1037
Decided on	25 September 2008
Petitioners	Owners of lands in Vilankurichi Village, Coimbatore
Respondents	The State of Tamil Nadu and the Tamil Nadu Housing Board

Facts

The writ petition was directed against proceedings dated 14.11.1996 issued under Section 4 (1) of the Land Acquisition Act 1894, as well as the declaration dated 22.11.1997 issued by the second Respondent, whereby the property of the Petitioners and other land-owners were acquired by the Tamil Nadu Housing Board.

The Petitioners claimed that they were owners of the land in Vilankurichi Village, Coimbatore North Taluk, and after purchase of the property, along with other land-owners, they jointly formed a layout in the year 1995 for the purpose of selling the land in small plots as house sites. The property was purchased by individual land-owners by way of separate documents. Subsequently, they got the approval for the layout from the Director of Town and Country Planning, as per the proceedings of the year 1995. The Petitioners also executed a registered settlement deed in favour of the local panchayat for providing a road, park, and other facilities. The Petitioners executed several sale deeds in the years 1995 and 1996 to individual purchasers, and sold 56 plots. The first Respondent then issued a notification under Section 4 (1) of the Land Acquisition Act on 14.11.1996, proposing to acquire 11.86 hectares in Vilankurichi Village. The land belonging to the Petitioners and other neighbouring owners was also included in the said notification. The Petitioners made their objections before the authorities and also attended enquiries conducted by the second Respondent. However, the first Respondent overruled these objections and issued a declaration under Section 6 of the Land Acquisition Act 1894, whereby the lands belonging to the Petitioners and others were acquired. Aggrieved by the said proceedings, the Petitioners presented this writ petition.

The Respondents justified the acquisition on the ground that the lands were required for construction of houses for Low Income Groups and Middle Income Groups.

Relief Sought

Writ of certiorari for notifications and documents issued in acquisition proceedings.

Issue

Whether the land acquisition was justified.

Ruling

1. The Court held that the Petitioners had purchased the land not for the purpose of individual residence but for the purpose of selling it to others. Since they had sold their properties through registered sale deeds, there was no question of challenging the present writ petitions.
2. Due proceedings had already been carried out by the Respondents, and the objections were taken note of. The Court found that the land was necessary for acquisition. Acquisition done in accordance with law is a valid exercise of power.
3. The Court further said that acquisition in this case was undertaken for the purpose of constructing housing for Low Income Groups and Middle Income Group. Hence, the acquisition was justifiable:

16. **The right to have a reasonable residence is also a guaranteed right under Article 21 of the Constitution of India. Article 21 is one of the salutary provisions included in Part III of the Constitution of India. Right to life as guaranteed under Article 21 includes right to live with human dignity and in a healthy environment. It is the duty of the State to provide the minimum facility to a citizen so as to have a meaningful life. What was contemplated under Article 21 was only a decent living and not a mere animal existence.** The very concept of good governance had undergone a sea change in the recent times [emphasis added].

4. The Court cited precedent from the Supreme Court in *Chameli Singh v. State of Uttar Pradesh*⁹⁵ to indicate that the right to shelter/housing means more than mere protection of life and limb, and is also a home with the opportunity to grow physically, intellectually, spiritually, and mentally. It thus includes adequate living space, safe infrastructure, and clean surroundings:

Analysis

This case is significant as it recognizes the broad ambit of the right to housing and acknowledges that it includes not only shelter but other civic amenities such as clean drinking water, sanitation, and electricity. The case elaborates the meaning of adequate housing to include personal safety and security of tenure as well opportunities for personal growth.

.....
95 (1996) 2 SCC 549.

19. T.M. Prakash v. District Collector and Tamil Nadu Electricity Board

KEY ISSUES	Right to Life, Right to Electricity, Indivisibility of Human Rights, Legality of Tenure
Case Number	W.P. 17608/2013
Case Citation	(2014) 1 MLJ 261
Decided on	27 September 2013
Petitioners	Residents of <i>poromboke</i> (government) lands in Thiruvannamalai District, Tamil Nadu seeking an electricity connection
Respondents	District Collector, Tiruvannamalai, and the Tamil Nadu Electricity Board

Facts

The Petitioners were laundry workers residing on *poromboke* (government) lands for over two centuries. They had built huts on the land but did not have electricity connections. Their children were studying in schools and colleges in the area. When they applied to the Respondent Electricity Board, they were required to produce 'No Objection Certificates' from the District Collector, Tiruvannamalai. Representations were made to the said persons, but rejected with irrelevant reasons.

The Respondents claimed that a memo was floated by the Additional Chief Engineer, Tiruvannamalai Electricity Distribution Circle (TEDC), stating that with respect to *poromboke* land, there was no need to provide electricity service. However, the Petitioners claimed that as per Section 43 of the Electricity Act 2003, the second Respondent was mandated to provide electricity to the occupier of the land, and had a duty to do so. They said that a memo could not override the provisions of a statute or the rights accruing from it.

The Petitioners also argued that since they had been residing at the site for a long time, they could not be treated as "encroachers." In 1992, the Tahsildar, Tiruvannamalai District, had requested the Commissioner, Tiruvannamalai Municipality, to grant house site *pattas* (titles) to the laundry workers. However, the district administration had been delaying assignment of lands to the Petitioners. The Petitioners had also contributed monetarily for the construction of a *salavaithurai* (area to wash clothes).

Relief Sought

Mandamus directing Respondents to provide electricity connection to the Petitioners.

Issue

Whether the Tamil Nadu Distribution Code 2004 and the Electricity Act 2003 casts a mandatory duty on the licensee to provide electricity supply to an owner/occupier of a premise, or whether it is only directory.

Ruling

1. The Court referred to Section 43 of the Electricity Act 2003, which states that, on an application made by the owner or occupier of any premises, a duty is cast upon the licensee to supply of electricity to such premises.
2. The Court held that there was indeed a statutory obligation to provide electricity to an owner/occupier of the premises:
 35. In Section 43 of the Electricity Act, the word "shall" is used. Applying the principles of law to the Electricity Act, Distribution and Supply Codes, as regards supply of electricity, from the language employed in Section 43 of the Act, i.e., duty to supply electricity on request and Section 44 of the Act, i.e., exceptions from discharging the duty to supply electricity, which states that nothing contained in Section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises, if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control, it could be concluded that there is a statutory obligation to provide electricity to an owner or occupier of the premises.

3. It was found that the intention of the legislature was to provide electricity supply to all persons, **regardless of whether they were owners or occupiers**. This universal right was subject only to the submission of an undertaking, as specified in Regulation 27 of the Tamil Nadu Electricity Distribution Code 2004:

40. Thus, reading of the statutory provisions of the Act and the Code, framed by the authorities, makes it clear that the intention of the Legislature is to provide electricity supply to all the persons, whether they are the owners of the property or occupiers, as the case may be. As stated supra, as between the owner and occupier, like in the case of a landlord and tenant, a mortgagee, assignee and any other person, who is in lawful possession and not a tress-passer, and even in the case of those residing in government poramboke lands, there is a provision for supply of electricity, subject to the submission of an undertaking, etc., as stated supra.

4. The requirement to supply electricity was clearly not discretionary because there are penal consequences for failing to comply with the requirement.
5. The Court, however, found that the Petitioners were “encroachers” because they were required to submit a No Objection Certificate, as per Regulation 27 of the Tamil Nadu Electricity Distribution Code 2004. The Court also highlighted the lack of documents to prove residence for two centuries.
6. It was found that supply of electricity would not confer any claim of ownership of the land, especially because the persons providing the undertaking declared that they were aware of their liability to be evicted at any point of time.
7. The Court recognized, however, the centrality of electricity to other socio-economic rights such as health and education, and its absence as a perpetuator of poverty:

66. **Lack of electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without electricity supply cannot even imagine to compete with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor, supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour** [emphasis added].

8. The Court suggested that access to electricity supply should also be considered a part of the fundamental right to life under Article 21 of the Constitution of India:

67. **When right to education up to the age of 14 years is a fundamental right, when right to health is also recognised as a right to life, under Article 21 of the Constitution of India, access to electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India. The Respondents ought to have addressed all the issues, instead of banking on the Committee’s decision, which in the humble opinion of this Court, is not in aid of human right, but inapposite to the need for, providing the basic amenity, electricity. The authorities ought to have considered, whether it would be effective enforcement of Article 21 or Article 21-A of the Constitution of India, while denying the Petitioners, access to electricity supply** [emphasis added].

9. The duty of the Respondents was also elaborated – they were hauled up for not understanding the particular difficulties of women, children, and older persons living without electricity. The Court saw electric supply as important to achieve social goods:

68. The Respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without electricity. **Electricity supply is an essential and important factor for achieving socio-economic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose.** Lack of electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socio-economic rights. **Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved** [emphasis added].

69. Right to electricity to a person in occupation of Government poramboke lands is recognised in the Distribution Code and it is **integral to the achievement of socio-economic rights**. It is extricably related to ameliorate poverty. **Electricity is an implicit component and facet of human right**. In the light of the above discussion, the Respondents ought to have come forward to provide electricity supply to the Petitioners, instead of opposing the relief sought for [emphasis added].
10. Further, it was held that access to electricity should be construed a human right, and denial of the same would amount to a violation of human rights:
70. **Access to electricity should be construed as a human right, of course, to the requirements to be satisfied under the electricity laws. Denial of the same, upon even satisfying the requirements, would amount to violation of human rights.** The action of the Respondents is regressive. **Electricity supply under the Electricity Act, the Distribution and Supply Code, is a legal right** [emphasis added].
11. Finally, an important distinction was made between removing persons for encroaching upon land and denying them electricity supply:
86. Removal of encroachment is different, from entitlement to seek for electricity supply. The law applicable for removal of encroachment and the mandatory duty to provide electricity, under the electricity law, are different and distinct. The delegated legislation, taking note of occupation of those in poramboke lands, has recognised them as “occupiers”, entitled to seek for electricity supply, and in such circumstances, while removal of encroachment can be done, as per the procedure under the Encroachment Laws, supply of electricity cannot be denied to the “occupier” of poramboke lands. When **statutory provisions do not differentiate an owner and occupier for the use or intended to use, electricity supply even by a person in occupation of poramboke lands, denial of electricity supply by the Respondents, to the Petitioners, who are in occupation, at least from 2005 onwards, amounts to discrimination and violative of Article 14 of the Constitution of India** [emphasis added].
12. The Court emphasized the responsibilities of the state and its authorities:
87. It is the **fundamental duty of the Respondents to show compassion to those who are living in huts and tenements for long number of years, taking into consideration their socio-economic disabilities**, without electricity supply for many years. Preamble to the Constitution of India guarantees right of every person to justice, social, economic and political. **When socio and economic justice is the mandate of the Constitution of India, it is a travesty of justice to deny electricity to the Petitioners.** Income is one of the sources for achieving an egalitarian society and it is the fundamental right to decent living. Providing electricity to the poor, subject to the satisfying conditions, as per the electricity laws, would reduce the economic imbalance and help the under privileged. The authorities should be pragmatic and realistic to the constitutional goals. The weaker sections and under privileged do not crave, in their heart, for power in hierarchical positions; they only want electric power to have “lighting” in their house. Hut dwellers cannot expect and afford luxury. But for them, it is only a basic amenity. **Electricity supply should, not only be extended to pattadars or the owners of lands, but it should also be extended to the poor and the needy, who live in government poramboke lands, when they substantiate occupation, for a considerable period** [emphasis added].

Relief Granted

Respondents were directed to consider the case of the Petitioners and provide electricity connections, along with necessary undertaking.

Analysis

This case is significant for affirming the indivisibility of human rights and holding that electricity is an essential human right and necessary for the fulfilment of several human rights, including the human rights to adequate housing, education, and life. The case also illustrates that access to essential services, such as clean water and electricity, cannot be denied on the basis of the status of tenure. Irrespective of the legal status of occupancy, everyone is entitled to basic services to ensure their right to life and dignity.

20. Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board

KEY ISSUES

Right to Life, Right to Electricity, Legality of Tenure

Case Number

W.P. (MD) 4772/2016 and W.M.P. (MD) 4291/2016

Case Citation

MANU/TN/0369/2016

Decided on

9 March 2016

Petitioners

A social worker claiming to work on behalf of the residents of Sanamangalam Village, Tamil Nadu

Respondent

Tamil Nadu Electricity Board

Facts

The Petitioner had brought to the notice of the District Collector, Trichirappalli, that there were “encroachments” in the area, and had sought their removal. However, no action was taken. A writ petition was filed in response to this, but it was disposed of with directions to the District Collector to consider the representations of the village residents and to pass orders accordingly.

Relief Sought

Writ of Mandamus prohibiting Respondents from providing electricity connections to property situated in certain plots in the village.

Issue

Whether electricity can be provided to an “encroacher” of land.

Ruling

1. The Court relied on the judgment in *T.M. Prakash and Others v. District Collector, Tiruvannamalai District, Tiruvannamalai*,⁹⁶ which held that the access to electricity is a human right, integral to the achievement of other socio-economic rights and cannot be denied to people living on *poromboke* (government) land.
2. Consequently, the Court held that a Mandamus directing Respondents not to provide electricity would violate the Tamil Nadu Electricity Code and thus, the supply of electricity to an individual cannot be restrained by a writ of Mandamus.

Relief Granted

Respondents were directed to consider the case of the Petitioners and provide electricity connection based on their applications and the necessary undertaking and Indemnity Bond submitted by them. Electricity supply had to be granted within a period of four weeks from the date of receipt of the applications and other requirements.

Analysis

This case, in consonance with the judgment in *T.M. Prakash v. District Collector and Tamil Nadu Electricity Board* is significant for its recognition of electricity as a human right. It is also important that the judgement recognizes that access to electricity supply should be considered integral to the right to life and hence, cannot be denied to people living on *poromboke* lands (a local reference to government land used and shared by communities).

96 (2014) 1 MLJ 261.

IV. CALCUTTA HIGH COURT

21. Bibhuti Bhusan Chakraborty v. Deputy Registrar

KEY ISSUES	Right to Housing, Right to Privacy, Co-operative Society, Transfer of Property
Case Number	Appeal 11/1995
Case Citation	AIR 1997 Cal 374
Decided on	17 April 1997
Petitioner	Deputy Registrar of Co-operative Societies (Housing)
Respondents	Two individuals to whom the flat was actually transferred (Respondents 5 and 6), and Urbashi Housing Society

Facts

This case arose as an appeal to the order of a Trial Court judge on a matter involving the transfer of a flat by the Petitioner in favour of the Santukas (Respondents 5 and 6). The Petitioner claims that as member of the co-operative society, he had a right to transfer his flat, with written consent of the society. He also claimed that the society had no right to arbitrarily withhold permission and refrain from transferring the flat to the Santukas, as he had an inheritable and transferable right in the flat and was legally entitled to the transfer. The Respondent housing society, however, said it had no objection to the right of the appellant to transfer, but rather towards the specific persons in favour of whom the flat was sought to be transferred. The housing society also claimed that the Santukas had undertaken remodelling work in the flat that threatened the structural stability of the building.

Relief Sought

Setting aside the order of the Trial Court judge which remanded the case back to the Appellate Authority for deciding the issue.

Issue

Whether the co-operative housing society is required to allow the transfer of property.

Ruling

1. The Court ruled that it is a mandatory requirement that the cooperative society has to satisfy itself that the transferees have genuine need for permanent accommodation, but there was nothing to show that the Respondents intended to stay in Calcutta (Kolkata) permanently.
2. The right to housing was referred to, through Supreme Court precedent,⁹⁷ to accept that the basic needs of human beings include the need for shelter, and the right is inherent in Article 21 of the Constitution of India.⁹⁸ The Court held that:

37. In the facts and circumstances of the case, and the principal laid down by the Supreme Court in this case, it is clear that a citizen requires a suitable accommodation which is a must to him and which is required for allowing him to grow in physical, mental and intellectual aspect of the matter.

97 Shantistar Builders v. N.K. Totame, AIR 1990 SC 630.

98 Paragraph 36.

3. The Court also read the right to privacy as part of the right to shelter/housing through another Supreme Court case.⁹⁹ This meant that a citizen has the “right to be let alone” and also “the right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.”¹⁰⁰ The Court stated that:

40. Accordingly, in our view, keeping the object and purpose of the Act, the right to privacy of the other members of the co-operative society should not be lightly interfered with. **Right to shelter, read with the right of privacy, includes a right of every citizen of safeguard the privacy of his own and a shelter which is necessary for allowing him to grow in every aspect – physical, mental and intellectual.** The right, guaranteed under Article 21 of the Constitution, is an inbuilt right under the provisions of the Co-operative Societies Act, particularly the co-operative housing societies [emphasis added].

Analysis

This judgment is significant in light of the numerous instances of discrimination in access to housing on grounds of caste, gender, religion, sexuality, and marital status, among others. The Court, by reaffirming the right to privacy as part of the right to shelter, prohibits the denial of housing by co-operative societies on moral or arbitrary grounds. The right to shelter/housing includes the right to be let alone, and does not allow discrimination based on the private life of an individual. The judgment links the right to housing, an economic, social and cultural right, with the right to privacy, a civil and political right – thus reinforcing the indivisibility of human rights approach. The judgment also upholds the right to dispose property, as per will.

99 R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.

100 Paragraph 39.

22. 'Fashion' Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co.

KEY ISSUES	Right to Housing, Right to Life, Right to Electricity, Indivisibility of Human Rights
Case Number	W.P. 25405 (W)/2008
Case Citation	AIR 2009 Cal 87
Decided on	21 March 2009
Petitioner	A tenant of a leased property
Respondents	The West Bengal State Electricity Distribution Company, and a private electricity provider

Facts

The Respondents claimed that the Petitioner has no right to remain in occupation of the premises, and hence, has no right to an electric connection from the Respondent. This was argued especially because the Petitioner had erstwhile, purportedly, received electricity from a private party.

Relief Sought

A writ directing Respondent to provide electricity supply.

Issue

Whether the Petitioner had a right to an electricity connection.

Ruling

1. The Court held that if the law of the land provides that a person in possession of any premises may not be dispossessed from there, except in accordance with law, it is implicit that the possession of the person is protected till such time that an appropriate forum holds otherwise and the person is removed from the premises under due process of law. It stated that:
 13. If the law of the land provides that a person in possession of any premises may not be dispossessed therefrom except in accordance with law, it is implicit that the possession of the person is protected till such time that an appropriate forum holds otherwise and the person is removed from the premises under due process of law. It would then defy reason to suggest that such person can continue to be in possession but be denied an **essential utility as electricity which is within the broad sweep of the right to life guaranteed under Article 21 of the Constitution** [emphasis added].

Relief Granted

The Court directed the private electricity provider to provide a new electricity connection to the Petitioner after he complies with all requisite formalities including paying the relevant charges.

Analysis

This case follows the right to housing jurisprudence, which holds that essential utilities, such as clean drinking water and electricity, are integral to the realization of the human right to adequate housing and the right to life, and hence, should not be denied on the basis of legality or status of tenure.

23. Abhimanyu Mazumdar v. Superintending Engineer

KEY ISSUES	Right to Housing, Right to Life, Right to Electricity, Indivisibility of Human Rights
Case Number	W.P. 423/2010
Case Citation	AIR 2011 Cal 64
Decided on	21 March 2009
Petitioners	Families accused of encroaching on government land in the Andaman and Nicobar Islands
Respondents	Electricity Department, Andaman and Nicobar Administration, and the central government

Facts

The Petitioners were admittedly “encroachers” on government land and had built houses on it after April 1993. The Superintending Engineer accorded approval of permanent electricity to the families who had encroached on the Government Revenue Land after the year 1978, but prior to the month of April, 1993. According to the Petitioners, there was no justification for fixing a cut-off date, for the purpose of providing electricity because Article 21 of the Constitution of India brings within its purview the right to get electricity irrespective of the status of the occupier in the land.

Relief Sought

Provision of electricity to the Petitioners, in accordance with the provisions of the Electricity Act 2003 and the rules framed thereunder.

Issues

1. Whether the right to electricity is included within the derived right to shelter/housing under Article 21 of the Constitution of India.
2. Whether the right to shelter/housing, which is a derived/emanated fundamental right could be extended to “unauthorized occupants, squatters, encroachers” of any land or premises to supply electricity as a consequential relief, despite breach of statutory provisions under the Electricity Act 2003, and the Works of Licensees Rules 2006.

Ruling

1. The Court held that if only an occupier with perfect legal title could apply for an electric connection, then in the absence of consent of an owner, no person would be able to get an electric connection. This leads to a situation where a landlord can take advantage of this interpretation to gain the upper hand in disputes with the tenant.
2. The Court cited the Supreme Court judgment in *Rame Gowda v. M. Varadappa Naidu*,¹⁰¹ which held that: **“A person in settled possession of immovable property cannot be dispossessed otherwise than by due process of law and such a person, in settled possession, although the commencement of such possession was unlawful, can restrain even the lawful owner from disturbing his settled possession otherwise than in due process of law”** [emphasis added].
3. The Court held that in the absence of a conclusive definition of a “lawful” occupier, anyone in settled possession of a property is entitled to electricity connection.

.....
101 AIR 2004 SC 4609.

4. The Court relied on Supreme Court precedent¹⁰² to establish the principles to determine “settled possession”:
- a) That the trespasser must be in actual physical possession of the property over a sufficiently long period;
 - b) That the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*.¹⁰³ The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
 - c) The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and,
 - d) That one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.¹⁰⁴

Relief Granted

The Respondents were directed to provide electricity to the Petitioners if the applicants were found to be in settled possession of the premises in question and they were held to be entitled to the enjoyment of the electricity so long they were not dispossessed by due process of law on compliance of all other formalities required under the law.

Analysis

This case reaffirms that the right to electricity is a component of the right to shelter/housing, which is derived from the right to life, and therefore, the provision of electricity should be independent of the legality of the settlement.

102 *Ram Rattan v. State of Uttar Pradesh*, AIR 1968 SC 702.

103 An intention to possess (sometimes called *animus possidendi*) is the other component of possession, apart from physical control.

104 Paragraph 12.

V. HIGH COURT OF KARNATAKA

24. Junjamma v. Bangalore Development Authority

KEY ISSUES	Land Acquisition, Resettlement, Positive Obligations of the State, Affordable Housing, Urban Planning, International Law
Case Number	W.P. 42483 and 42517/2002
Case Citation	ILR 2005 KARNATAKA 608
Decided on	20 September 2004
Petitioners	Owners of land in Sonnenahally, Ramasandra, Kengeri, Ullalu, and Manganahally villages, Bengaluru, who were cultivating the land or using it for residential purposes, as well as owners of land who purchased agricultural land, or set up schools or residential units, or gardens and nurseries in the area.
Respondent	Bangalore Development Authority

Facts

The Bangalore Development Authority (BDA) sought to acquire around 1,788 acres of agricultural land for the purpose of constructing 'Sir M. Vishveswaraiah Layout' as part of a plan to develop Bangalore's (now Bengaluru) metropolitan area. It issued notifications and invited objections according to the stipulations of the Land Acquisition Act 1894. After considering the said objections, BDA upheld the objections only with respect to 357 acres of land, while it rejected the objections with respect to the remaining extent of land. In its final notification, the Government of Karnataka declared that land measuring around 1,337 acres would be required for the formation of Sir. M. Vishveswaraiah Layout.

The owners of these lands petitioned the Court, challenging the acquisition.

Relief Sought

Quashing the notification for acquisition of land.

Issues

1. Whether the acquisition of land was legal and valid.
2. Whether the Petitioners were entitled to the benefit proposed by BDA on the same terms and conditions that were extended to the owners who were similarly placed in the case of Anjanapura layout, wherein the Court had directed BDA to allot sites to owners in lieu of the land acquired.

Ruling

1. The Court stated that the majority of Petitioners were poor people who had invested their hard-earned money in the land, just to get a roof over their heads. While it was true that often they had "illegally" purchased lands not yet approved, and on occasion had even refrained from paying the full amount, the Court was sympathetic to the fact that the people being allotted the acquired land were also of similar socio-economic status and faced many difficulties because of the slow and bureaucratic process of acquisition and allotment. These people were thus compelled to purchase sites in unapproved areas:

51. As already stated these site owners could be broadly classified as petitioners who have purchased sites in agricultural lands, who have purchased lands in layouts which are not approved, who have purchased sites in layouts which are approved and who have put up constructions on the said sites and some of them who have paid entire consideration, taken possession of the sites under power of attorney registered or otherwise, and on the basis of affidavit etc. It is in this background and taking note of other social conditions, hard realities of life, legal illiteracy among literates also and the consequences which flow from such indiscrete, injudicious acts on the part of the petitioners, coupled with the fact that the Authority acquires land against the will of the owner of the land, forms layout, distributes lands keeping in mind the social philosophy reserving a certain extent of site to SC, ST, backward communities, Ex-service men, handicapped people, sportsman etc., an acceptable solution is to be found. In a city like Bangalore it is not possible to acquire a site by paying the market value prevailing in any particular locality by these classes of people. There are more people to buy but sites are few. In such situation if one has to acquire a site through the Authority, he has to wait in queue, make applications and it is only after several attempts one may get his turn to get a site. Factors such as delay in acquisition proceedings, the hurdles the Authority has to cross and the judicial intervention at every stage of the acquisition proceedings, then the remedy of appeals etc., necessarily results in the formation of layouts at a snail's pace and the people patience is tested. It is these hard realities that drive some of those poor people purchase sites formed in agricultural lands; unapproved layouts or even in approved private layouts. Hence, it cannot be said all these acquisitions are by way of an investment. May be few indulge in purchase of such site with an intention of investment and multiplying their money. By and large the persons who purchase these sites also belong to lowest strata of the society who are poor, weak and coming from depressed classes and minorities. Acquiring sites of such persons in exercise of the power of domain and allotting the very same sites to persons who are similarly placed does not stand to reason. But at the same time one cannot encourage disobedience to law and illegal actions. It is here that the Courts are faced with the problem of balancing private interest against the public interest, rule of law and the constitutional mandate. **It is an universally accepted view that adequate housing is one of the most basic human needs. With the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing comes within the fold of universally applicable and universally accepted human rights law. Ultimately, adequate housing is the right of every child, woman and man. Recognizing this, the Supreme Court has held that the right to shelter is a fundamental right that springs from right to residence (Article 19(1)(e) and right to life (Article 21) [emphasis added].**
2. Recognizing the quandary as one between balancing private rights and the public interest, the Court said that the core problem was the need for housing by the poor and needy. Given that the right to adequate housing was recognized internationally, it was suggested that the same benefit be granted to the new tenants and the original site-owners, including those who did not have a registered sale deed. The Court stated that:
52. The acute shortage of housing and magnitude of the problem has often given rise to some sort of a solution being found, as was done in the case of formation of Anjanapura layout. In the said instance; a balance was struck and by way of a compromise an order came to be passed directing the Authority to accommodate such poor unfortunate innocent site owners in the manner suggested therein. It is because of that, the Authority while considering their objections in the instant case, though over-ruled their objections while sending report to the Government brought to the notice of the Government the difficulties experienced by such site owners and what transpired in similar situations earlier and proposed the very same remedy in the instant case also. Therefore, the authority is not averse to extend the same benefit to the site owners who are petitioners in some of these petitions in the manner it was done in the Anjanapura layout. Therefore, I do not find any good reasons why the said benefit should not be extended to the petitioners who are similarly placed. Even though the Government has not considered the said proposal and passed appropriate orders, now that the matter is before Court no one has and can have any objection for extending the same benefit to the petitioners. Under these circumstances, I deem it proper to extend the same benefit to the petitioners who are similarly placed subject to the terms and conditions mentioned in the aforesaid order. **Here I would like to suggest that in the given case if the Authority is satisfied that though some of the petitioners do not possess a registered sale deed or they have acquired title to the land after preliminary notifications or**

claiming right under power of attorney or any other mode other than by way of a registered sale deed if such persons belonged to weaker sections, economically backward, poor in their discretion the same benefit may also be extended to them [emphasis added].

53. Similarly, if a layout has already been formed with approval of some authority or if a pucca layout is formed even without such approval if it is of the specifications prescribed under the BDA Act itself and if the said layouts could be harmonized or mingled with the layout to be formed by the BDA as far as possible every attempt should be made to synchronize the said layouts with the BDA layout and if it is possible to allot the very same sites to the petitioners and in particular to those who have already put up construction and living there. That would be the best way of solving this human and housing problem.
3. The Court also pointed out that:
 54. (...) the formation of unauthorized layouts, construction of unauthorized buildings and diversion of agricultural lands for non-agricultural purposes would not have been possible in the outskirts of Bangalore so blatantly without the connivance and active co-operation of the officials who are under obligation under the various statutes to prevent such illegal acts. The gullible public is misled. **The demolition of unauthorized constructions with police support by the officials of the BDA cannot by any stretch of imagination be termed as an act of bravery.** But on the other hand, it is like constructing the bridge after the water has flown, and **goes against the very spirit of providing shelter. The citizens, though some may be poor and helpless, have a right to expect the Government to be concerned about their shelter needs and to fulfil the State's obligations in terms of protecting and improving the housing facilities rather than using all its might to damage or destroy the houses** [emphasis added].
 4. The Court clarified that:
 56. The concern shown by this Court for the poor, needy, downtrodden and economically weaker sections of the society should not be construed as a license to allot sites to all the persons who have purchased sites in the approved and unapproved layouts and in revenue plots. Here it is emphasized that a distinction has to be made between persons who are struggling to have a roof over their head for shelter and persons who are speculators and who have purchased sites by way of investments. It could be easily made out from the sale deeds. If sites are purchased in the name of a family members minors and persons who are not residents of Bangalore and who are residing in other parts of the country, certainly there is no obligation cast upon the authority to allot sites in lieu of such sales. It would be a just exercise of discretion to award them compensation for the sites acquired. In this regard every care should be taken to scrutinize each sale deed by the officials concerned and keeping in mind the observations made by this Court in these Writ Petitions and terms of the order in respect of Anjanapura layout and see to it that the benefit conferred under this judgment is not misused, abused and misinterpreted. If persons who are entitled to allotment of sites are denied the sites and persons who are not entitled to sites are granted sites, and if any person were to approach this Court with the aforesaid complaint certainly this Court would view the matter very seriously and the concerned official who has been vested with the power to process claims could be held personally liable for all the consequences flowing therefrom. The experiences gained should lead the Authority to prompt action being taken in future to avoid repetition of similar situation so that there could be an orderly development of the beautiful city of Bangalore, and the land grabbers and speculators are kept at bay and innocent people are not lured into such helpless situations.

Relief Granted

The Court upheld the acquisition, subject to certain conditions:

1. The Petitioners were directed to register themselves as applicants for allotment under the Bangalore Development Authority [Allotment of Sites] Rules 1984, and file applications for allotment.
2. Bangalore Development Authority was directed to treat such Petitioners as applicants entitled to priority in allotment and allot each of them a site measuring 30 feet by 40 feet in Sir M. Visweswaraiiah Layout, or in any other nearby layouts in Bangalore at the prevailing allotment prices subject to Petitioners satisfying the twin

requirements for allotment under the BDA (Allotment of Sites) Rules 1984, that they must be residents of Bangalore (ten years domicile) and should not own any other residential property in Bangalore.

3. Bangalore Development Authority would calculate the compensation payable to the Petitioners and give credit to them by adjusting the same towards the allotment price for the site to be allotted and by calling upon the Petitioners to pay the balance.
4. If any of the Petitioners do not fulfil the requirements for allotment, under the allotment Rules, their cases may be considered for allotment of 20 feet by 30 feet sites as per the Rules containing incentive scheme for voluntary surrender of land. For the purpose of the said scheme, such Petitioners would be deemed to have voluntarily surrendered the sites.
5. While the scheme mentioned above would be applicable only to owners with registered sale deeds, the Court left it to the discretion of authorities to “consider the case of GPA Holders¹⁰⁵ /Agreement Holders and persons who are claiming on the basis of affidavits the sites in question though they are not entitled to the same as a matter of right, only if they belong to weaker sections, poor and down-trodden.”

The Court also directed the state government to take note of the circumstances leading to “the unfortunate situation, identify the departments and the authorities and their officials who are responsible for this sorry state of affairs, and ensure appropriate action is taken against all of them.”

Analysis

This case demonstrates the complexities of land use and ownership in a metropolitan city, where there is scarce access to low-cost housing and land. Though the Court upholds the acquisition proceedings, it recognizes the realities of the urban poor and the responsibility of the government to formulate adequate policy to ensure adequate housing for all. The Court’s view that the land-acquirers, in this case, also belonged to economically weaker sections and the protection arising from the right to adequate housing would also extend to them, exhibits that the right to adequate housing is universal in nature and is not dependent on the nature or perceived legality of tenure.

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105 GPA: General Power of Attorney.

25. Sharadamma v. State of Karnataka

KEY ISSUES	Land Acquisition, Due Process, Resettlement, Urban Planning, Legality of Administrative Action
Case Number	W.P. 26601–26604/2004
Case Citation	2005 (4) KarLJ 481
Decided on	3 September 2005
Petitioners	Owners of agricultural or converted lands, house sites, residential farms and houses, as well as companies and builders
Respondent	Bangalore Development Authority (BDA)

Facts

The writ petitions were filed by Petitioners questioning the legality and correctness of the acquisition of vast tracts of land for a development scheme called ‘Arkavathi Layout.’ Bangalore Development Authority was trying to acquire many acres of land, and issued notice regarding acquisition to land-owners and interested persons. It also submitted a scheme to the government for approval, as required under the BDA Act, after which it published a final notification about acquiring land for the planned development work. Calls for applicants to the proposed housing units were also issued, to which responses were received.

The Petitioners, however, contested these proceedings on the basis that the lands were already sought for acquisition by the Karnataka Industrial Area Development Board (KIADB), and also on the basis that this exercise of “eminent domain” was not legitimately a “public purpose.” They also claimed that their right to livelihood under Article 21 (right to life) of the Constitution of India was threatened.

Relief Sought

Quashing of the orders for acquisition of land.

Issues

Some of the main issues decided by the Court were:

1. Whether the scheme in question was properly framed by BDA and whether the same was legal and valid.
2. Whether the acquisition of lands in question were for a “public purpose” by exercising the principle of “eminent domain.”
3. Whether the acquisition of lands in question would violate the right guaranteed under Article 19 of the Constitution of India and consequently deprive the Petitioners of their right to livelihood under Article 21 of the Constitution of India.
4. Whether the inquiry conducted to consider the objections filed to the acquisition proceedings was fair, reasonable, and in compliance with the principles of natural justice.

Ruling

1. The Court observed that the formalities required for the formulation of the scheme had not been followed. It found that BDA itself was not sure about the plan, or about how much land it would require. As for the promise of water, electricity, sanitation, and other amenities – unless actually provided, the mere formation of sites or construction of roads or laying of water pipes would not be enough.
2. It also opined that the appropriation of property under the guise of “public purpose” was legitimate, and the use of the principle of “eminent domain” was justified:

34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain.'

The Bangalore Development Authority was deemed subordinate to the government and hence unable to exert "eminent domain" to acquire lands for a "public purpose." The Court also stated that the notification should have been issued by the government under Section 4 of the Land Acquisition Act and not under Section 17 of the BDA Act. This was also because the BDA Act was enacted by a state legislature and the Land Acquisition Act 1894 was enacted by the Parliament of India.

3. In spite of legitimizing "public purpose," the Court proceeded to check if the "public purpose" criteria were satisfied in this case. The stated reason for the acquisition of the layout was the allotment of sites to the public. It was recognized, however, that:

48. ...In the guise of allotting sites to the needy persons, by the impugned action, the BDA and Government make the landowners landless and indirectly help the affordable class of persons without acquiring their lands.

49. ...**By acquiring of such vast extent of lands, the occupation and the right to reside will be deprived and the landowners are deprived of the Constitutional rights guaranteed under Articles 19 and 21 of the Constitution. The acquisition of vast extent of lands is also violative of Article 38 of the Constitution of India. Allotting site under the special scheme will not come to their livelihood nor will payment of compensation solve their problems. The long duration that will take for payment of compensation amount for the acquired lands also cannot be ignored. Until compensation is paid and alternative arrangements for residence, profession, studies and other basic requirements are made, one can imagine the plight of the owners standing empty hands on the streets** [emphasis added].

4. The Court also showed sensitivity to the unique problems and human rights violations faced by persons who were subject to eviction and displacement:

51. While lands involved in 16 villages are proposed for the project, BDA or the Government have not thought of any rehabilitation scheme of these villagers who will be displaced. They lose their residence, occupation and livelihood and the education of their children. **Mere payment of compensation will not serve the purpose. In the guise of providing shelter to siteless or houseless persons, the owners of immovable property are made landless as also jobless.** That amounts to robbing Peter and paying to Paul. They are compelled to go in search of alternate land in far off places forgetting their born and grown-up place to start altogether a new life in new environment. Not only they are deprived of lands and houses, profession and right to live but their sentiments are also affected. If a man living in a place right from generations is stripped of everything except payment of some meagre compensation amount, one can imagine the mental torture he will undergo thinking the future of himself, his family members, relatives and friends. Virtually these persons are displaced. They have to go in search of a new place, settle there by constructing an abode, go in search of new profession or avocation, adjust to the new environment and admit the children to school, if at all exists. When the BDA proceeded to implement the Scheme in question with all enthusiasm with all pomp and posh, it has never thought of landowners who will stand empty. Even payment of compensation amount is also not immediate. It has to undergo its own process. **Without considering all these factors, the BDA boasts of "public purpose" totally forgetting the negligence shown towards the real owners who lost their immovable properties and virtually stand on streets**" [emphasis added].

The Court thus held that there was no "public purpose" in the scheme of the acquisition of land in question.

5. The Court held that natural justice principles would be violated by allowing acquisition of these lands. The fact that the objections of the parties interested in the land could be overruled easily by the government made the collection of objections an empty formality since they were not considered properly.¹⁰⁶
6. Unfortunately, it was held that by entertaining the writ petitions it should not be construed that the property rights of the Petitioners were being recognized by the Court. However, the Court did recognize that BDA had acted with high-handedness. It stated that the observations made in the order would be a guide for BDA to correct its functioning and see what was possible thereafter.

Relief Granted

1. The entire acquisition proceedings were quashed.
2. The Court deemed that BDA did not have the jurisdiction to frame a development scheme.
3. It directed the state government to issue notifications specifying the Metropolitan Planning Area; and also to issue necessary instructions to the concerned authorities to see that no more conversion orders were passed and no plans were approved without the sanction of either the Metropolitan Planning Committee or the District Planning Committee, as per the procedure in the Karnataka Municipal Act and the Karnataka Panchayat Raj Act.
4. The Deputy Commissioners and/or Tahsildars who were authorized to pass conversion orders were directed to be more careful while exercising powers under Section 95 of the Karnataka Land Revenue Act for considering applications for conversion, and to satisfy themselves that there were no violations of provisions of any other enactments.
5. The Court stated that sub-registrars in Bangalore, while registering sale deeds and other transfer deeds in relation to the notified lands, should satisfy themselves that there was no violation of any of the provisions of the law in force.
6. It also ordered the state government to issue necessary instructions to the concerned to carry-out the aforesaid directions.

Analysis

In this significant case, which highlights the arbitrary and excessive use of power by state agencies, the High Court of Karnataka held that the acquisition proceedings would be void if the government did not adhere to the principles of natural justice. The Court recognized that the acquisition of land causes serious problems as well as violations of the human rights of displaced persons, including homelessness and loss of livelihood. Adequate consideration, therefore, must be given before acquisition proceedings are initiated. In this case, the state agency failed to demonstrate due consideration and violated the principles of natural justice, leading to the invalidation of the acquisition procedure.

The Court also drew a distinction between legislative bodies like the Parliament that are omnipotent and can exercise the power of “eminent domain,” and those that enjoy limited or qualified jurisdiction such as the Bangalore Development Authority. The ruling is also significant because it details the impacts of displacement on affected persons and communities, thereby demonstrating a complex understanding of the many dimensions of the human right to adequate housing and congruent rights.

.....
106 Paragraphs 62 and 63.

26. Mirza Sanaulla v. Davanagere Urban Development Authority

KEY ISSUES

Right to Housing, Legality of Administrative Action

Case Number	W.P. 18941/200
Case Citation	ILR 2010 KARNATAKA 2956
Decided on	12 March 2010
Petitioner	Mirza Sanaulla – an individual who was allotted a site after payment
Respondent	The Davanagere Urban Development Authority

Facts

The Davanagere Urban Development Authority, after expending considerable sums of money from the state exchequer, formed a layout of residential sites to be allotted to persons who did not own or possess residential sites. The Petitioner, a gullible customer, when allotted a site at S. Nijalingappa layout followed by payment of Rs 120,000, was made to believe that the site allotted was identifiable and demarcated by boundaries, in accordance with the lease-cum-sale agreement and possession certificate. However, since the Petitioner was unable to identify the allotted site, owing to the failure on the part of the Respondent to demarcate the same, he made a representation to the Civil Court. The decree of the competent Civil Court was not complied with, and the Respondent unmindful of its obligation and responsibilities, went about its business of auction sale of corner sites and allotment of sites at S. Nijalingappa layout. The inaction on the part of the Respondent impelled the Petitioner to invoke the extraordinary writ jurisdiction, however, the Respondent did not rise to the occasion which led to the initiation of contempt proceeding whence the resolution Annexure-G was passed declining the request of the Petitioner but willing to allot an alternative site measuring either 40 by 60 feet, or 50 by 80 feet at J.H. Patel layout, at the then market value.

Relief Sought

This petition was filed to quash Annexure-G and to direct the Respondent to allot an alternative site of the same dimension at a certain 'site No. 1232' either at S. Nijalingappa layout or Devaraj Urs layout (A) block.

Issues

1. Whether the Respondent acted irresponsibly and in violation of law.
2. If yes, who should pay for the years of harassment and agony suffered.

Ruling

1. The Court held that:
 5. (...) The respondent threw all caution to wind and acted in a manner insensitive to the rightful demand of the petitioner. The submission of the Learned Counsel for the respondent that after the writ of mandamus was issued by Order Annexure-F, the Urban Development Authority resurveyed the land to ascertain if there was any site available for allotment, is a clear indicator of the fact that the petitioner was mentally tortured and harassed right from the issue of a possession certificate in the year 1999. **In my opinion action of the respondent and its officials is nothing short of being illegal, irresponsible and irrational** [emphasis added].
2. The Court relied extensively on judgments of the Supreme Court establishing the right to shelter emanating from the Constitution of India and held that:
 13. Keeping in mind **the constitutional right of a citizen to shelter and obligation of the State**, applying the same to the facts of this case the petitioner is entitled to restitution at the hands of the respondent-Urban Development Authority [emphasis added].

3. The Court ruled that:

15. In the circumstances, the respondent-authority and its Officers having committed acts of misfeasance in allotting an unidentifiable site and failing to take immediate steps to allot an alternative site, the petitioner has suffered both mentally and physically due to malafide, oppressive and capricious act of the officers of the respondent.

Relief Granted

The Court issued the following directives:

1. To demarcate, by measurement and boundary, a site at S. Nijalingappa layout and deliver possession of the same to the Petitioner.
2. If the site was not available, the Respondent was directed to purchase, in the open market, a site of similar dimension at S. Nijalingappa layout or Devaraj Urs layout (A) Block at its own cost and put the Petitioner in possession of the same, in any event within a period of three months from the date of receipt of the order. The Court also directed the Chief Secretary, Government of Karnataka, “to hold an enquiry over the accountability of the public servant/s who has/have caused the misfeasance and if found responsible, recover from the salary/pension/retirement benefits of each one of them and if insufficient from the sale of personal assets as arrears of land revenue, towards sums spent for purchase of the site at the market value and to file a report to the Registrar General of this Court within six months.”

Analysis

The case demonstrates how the Court established the right to housing/shelter as a constitutional right and held executive bodies accountable if they failed in their duty to implement laws and policies related to implementing the right.

27. Millennium Educational Trust v. State of Karnataka

KEY ISSUES	Right to Housing, Right to Livelihood, Rights of the Child, Indivisibility of Human Rights, Homelessness, Positive Obligations of the State, International Law
Case Number	W.P. 47957/2011 (KLR)
Case Citation	ILR 2013 KARNATAKA 1452
Decided on	22 February 2013
Petitioner	Millennium Educational Trust
Respondents	State of Karnataka; Deputy Commissioner, Bangalore District; and, Rajeev Gandhi Rural Housing Corporation Limited

Facts

The Millennium Educational Trust applied for land from the Deputy Commissioner, Bangalore, and received it for educational activities. Even though the Deputy Commissioner formally handed over the land by lease deed, the actual possession of the land was not facilitated. Despite representations made by the Petitioner, the Respondent cancelled the grant on the grounds that land had not been used within two years, and handed it over to the Rajiv Gandhi Rural Housing Corporation Limited, Bangalore to utilize the land for homeless and landless persons in Bangalore (now Bengaluru).

Relief Sought

Quashing the order of the Deputy Commissioner which cancelled the grant of land to the Petitioner.

Issue

Whether the Deputy Commissioner was justified in handing over the land to the housing corporation.

Ruling

1. Upon perusal of the facts and arguments made by the Petitioner, it emerged that the Petitioner was utilizing only five out of the allotted ten acres of land, and reportedly, was facing difficulties from villagers in occupying the remaining five acres.
2. The Court responded to the Petitioner's claim that allowing the daily wage-earners and villagers residing on the land to be recorded as Respondents was illegal; it recognized that they are socially and economically poor and had legitimately made an application to the Deputy Commissioner to regularize lands for them, as they did not have a place to stay.
3. The Court relied on the judgment in *Chameli Singh v. State of Uttar Pradesh*,¹⁰⁷ which upheld the right to shelter/housing as integral to the right to life guaranteed by Article 21 of the Constitution of India.
4. The Court also relied on the judgment in *Consumer Education and Research Centre v. Union of India*,¹⁰⁸ where the Supreme Court held that the right to shelter/housing would mean and include the right to livelihood, a better standard of living, hygienic conditions in the work place, and leisure.
5. The Court took cognizance of international human rights law and standards, and read those in conjunction with the Constitution of India:
 16. Article 25(1) of the Universal Declaration of Human Rights provides that the right to adequate housing has been codified and other National Human Rights. Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his

107 (1996) 2 SCC 549.

108 1995 (3) SCC 42.

family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” **These weaker sections are entitled, as a matter of right, under Article 21 read with Article 19(1)(c) and paragraph 4 of Articles 39 and 46 of the Constitution of India and in the light of interpretation made by the Hon’ble Supreme Court specially in the light of the provisions of International Human Rights and other covenants and it is a pious and constitutional obligation on the part of the State, to provide shelter to the weaker sections** [emphasis added].

6. The Court also emphasized that whenever there is a conflict between different legislative/administrative actions, the actions furthering the constitutional mandate of ensuring social justice and the ‘right to shelter’ would be prioritized:

17. When an action is initiated bearing in mind the concept of social justice as in preamble to the Constitution and the provisions of Directive Principles of State Policy, **the fundamental rights coupled with right to shelter prevails over the legislative and administrative actions.** (emphasis supplied) Clause 7 of the grant made in favour of the petitioner which specifically states that when the land is required for public, then liberty is reserved to the respondent-Deputy Commissioner to cancel the grant without any notice. Whereas, in the instant case though notices were sent, the same could not be served on the petitioner since the petitioner was not residing in the address given in the lease agreement and in the said address, other than the petitioner, some other finance company, i.e. “Parineetha Enterprises” was carrying on its business and the petitioner also failed to furnish any material, which only gives scope to hold that the petitioner is not entitled to any relief at the hands of this Court by exercising its discretion under equity and extraordinary jurisdiction.

7. The Court, while recognizing the indivisibility of human rights, also perceived the right to housing in the context of sustainable development and the right to a safe environment of future generations:

18. **‘Right to shelter’ cannot be looked only through the persons who make application for grant of housing site as a matter of right, the same has to be looked through the succeeding generation, specially children’s right. A child’s right is to be brought up in a safe environment. The right to housing and security are interconnected. While poor housing condition affects the health, homelessness and frequent displacement are prone to impair the child’s learning. Though housing remains as fundamental as food and security, the issue has not yet received the priority it deserves. The National Human Rights Council emphasizes that the current housing crisis can be addressed effectively, only when it is acknowledged as a human right** [emphasis added].

Relief Granted

1. The Deputy Commissioner’s action was held proper and legal, and the lower court order cancelling the grant made to the Petitioner and handing over the land to the housing society was confirmed.
2. The Court issued directions to the Deputy Commissioner and the housing corporation to fulfil their obligations:

19. (...) By exercising power under Articles 226 and 227 of the Constitution of India, a direction is issued to the Deputy Commissioner and to Rajiv Gandhi Rural Housing Corporation Limited to complete their obligation in forming the layout on the land and allotting the same to the members of weaker sections in a time-bound manner. It is to be noticed that developmental works in urban areas like putting up a fly-over, asphaltting roads and construction of Public Utility Buildings are carried on in a time-bound manner. Whereas in the cases of this nature, **especially putting up a shelter to the people who are displaced, flood victims, and homeless persons of weaker sections**, normally there will not be any outer limit stipulated as a matter of time-bound action. Hence, six months’ time is granted to Rajiv Gandhi Rural Housing Corporation Limited from the date of receipt of a copy of this Order to form a layout and allot the same to the weaker sections. The Deputy Commissioner is further directed

to ascertain genuineness of the claimants before allotment. With these directions, the petition stands dismissed [emphasis added].

Analysis

This case is significant for the right to housing jurisprudence because it firmly establishes housing as a human right derivable from the constitution and from the international human rights legal framework. It recognizes the right to housing as a comprehensive right, essential for the fulfilment of the right to life of the present and future generations, and indivisible from other fundamental human rights. The case adopts a human rights approach and outlines the responsibility of the state to provide adequate housing to people belonging to the economically weaker sections, as part of the state's obligation to fulfil the right to housing.

28. Shantha Mary v. State of Karnataka

KEY ISSUES

Right to Housing, Right to Resettlement

Case Number

W.P. 42743/2012 and 29393–29531/2013, W.P. 46496–46718/2014

Case Citation

2014 (4) AKR 513

Decided on

25 September 2014

Petitioners

Persons residing in makeshift tin sheds in Bangalore (now Bengaluru) constructed by Bruhat Bengaluru Mahanagara Palike (BBMP)

Respondents

BBMP, State of Karnataka

Facts

The Bangalore City Corporation had formulated a scheme for the construction of 1,512 flats over an area spanning 22 acres in Koramangala, Bengaluru to provide housing to Economically Weaker Sections (EWS). Upon completion, lease-cum-sale agreements with respect to these flats were allotted to allottees. Due to substandard construction quality, some of the blocks crumbled. The majority of original allottees gave up their possession through powers of attorney and only 230 remained as residents on the site. The Petitioners who were not the original allottees continued to live in the EWS quarters, even when they were unfit for human occupation, due to their extreme poverty. Over time, BBMP demolished the remaining flats and moved the Petitioners to tin sheds, with the promise that they would be provided permanent houses at the same site.

Bruhat Bengaluru Mahanagara Palike initially passed a resolution declaring that residential tenements would be reconstructed and given to the original allottees, on account of demolition of the dilapidated EWS quarters. However, when the actual occupants protested, as they were the real displaced persons, BBMP modified its earlier resolution, providing for resettlement of all those who were evicted from the EWS tenements. The new resolution called for identifying present residents therein, even if they were not the original allottees, for the purpose of allotting flats in the residential complex. A resolution was also passed by BBMP to evict the residents from the dilapidated EWS quarters, as a precautionary measure.

However, in a subsequent development, the original allottees and BBMP reached a settlement, whereby a residential complex would be constructed and flats would be allotted to the original allottees and a commercial complex would be developed for the benefit of the property developer.

Relief Sought

The Petitioners sought a direction from the Court that the original allottees should not be the only beneficiaries of the resettlement and redevelopment project.

Issue

Whether the allottees had any right to housing/rehabilitation after their homes were demolished by BBMP.

Ruling

The Court declared that the BBMP resolution, along with various other provisions like identity cards, ration cards, and voter cards did not confer allotment rights to the Petitioners. However, the Court also stated that:

30. But it does not mean that the writ petitioners and the similarly placed tenants/unauthorised occupants are not entitled to any relief. The right to shelter is certainly within the sweep of Article 21 of the Constitution of India. As held by the Apex Court in the case of Chameli Singh v. State of U.P., reported in (1996) 2 SCC 549, the protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The relocation of the petitioners has to be a meaningful exercise consistent with the rights to life, livelihood and dignity. In a proactive spirit and

on humanitarian ground, the State Government and B.B.M.P. have identified an area of five acres at Sy. No. 122 of Sulikunte Village, Varthur Hobli, K.R. [emphasis added].

Relief Granted

The Court issued the following directions:

...

- (iii) The B.B.M.P.'s submission that the petitioners and the similarly placed persons are being rehabilitated in Sulikunte Village without charging any amount from them is taken on record.

...

- (v) The B.B.M.P. is directed to complete the residential complex in Sulikunte Village and hand over the flats therein to the eligible oustees on ownership basis without charging any amount from them.
- (vi) It is possible that there may be some teething problems in the rehabilitation project. It is therefore open to the petitioners to represent to the Government and the B.B.M.P. for the redressal of their grievances.
- (vii) The Government and the B.B.M.P. shall consider setting up the Grievance Redressal Cells in Sulikunte Village for attending to the problems of the rehabilitated persons. The problems of the rehabilitated persons (petitioners and other similarly placed persons) are required to be attended to sympathetically, pro-actively and without any loss of time.
- (viii) The Government shall consider opening the schools, colleges and hospitals in Sulikunte Village, if they are already not established. The Government shall also consider increasing the frequency of the city buses to and from Sulikunte Village.

Analysis

In this case, the High Court of Karnataka held that proof of residence in an area, does not automatically confer a legal title to the property or land. However, it also implicitly relied on the legal right to shelter/housing to state that every person who is evicted, irrespective of legal status, must be rehabilitated and provided access to livelihood, healthcare, and education facilities, among others.

VI. GAUHATI HIGH COURT

29. Phongseh Misao v. Collector of Land Acquisition

KEY ISSUES	Land Acquisition, Compensation
Case Number	Civil Rule 572/1975
Case Citation	AIR 1977 Gau 47
Decided on	16 June 1976
Petitioners	Headman of Nungphou Village, in which many people were tenants/residents paying rent
Respondents	The Collector of North District, Manipur; the State of Manipur; and, the Secretary, Government of Manipur, Development Department

Facts

The Petitioner was the headman of Nungphou Village – a hill village located in the state of Manipur. He had exclusive possession of the lands of the village, realizing house tax from the residents of the village for payment to the government.

While the Petitioner was the owner of the land of the village, in 1965–66, the Respondents took possession of an area of land without any authority, for the purpose of constructing some government houses, on the assumption that it was government *khas*¹⁰⁹ land. The Petitioner filed applications, praying for reasonable compensation for the land occupied. The Government of Manipur ordered an inquiry to ascertain the facts. Despite the inquiry report stating that the land belonged to the petitioner, the Government of Manipur decided to acquire the land in question, and issued a preliminary notification under Section 4 (1) of the Land Acquisition Act 1894. On receipt of this notice, the Petitioner appeared before the Collector and lodged an objection regarding the area of land actually acquired. No other person appeared before the Collector to lay any claim to the land or to the compensation in respect of the same. The Collector made an award on behalf of the Petitioner but the Respondent consistently avoided payment. Instead, the Respondent made a reference to the District Judge, claiming that the Petitioner was not entitled to receive the land. Against this reference, the Petitioner filed the present writ petition claiming that the Respondents were bound in law to pay him the compensation awarded by the Collector, for the acquired land.

Relief Sought

Quashing the reference made by the Collector, Manipur North District, Karong, and writ directing compensation to be paid to the Petitioners.

Issue

Whether or not the Respondents were bound to pay compensation to the Petitioner.

¹⁰⁹ 'Khas' land refers to government-owned fallow land. It is land which is deemed to be owned by the government and available for allocation according to government priorities.

Ruling

1. The Court opined that even when an acquisition proceeding has been taken up and an award has been made, the government has the right to refer the case to a District Judge; this action was in accordance with the procedure of the Land Acquisition Act 1894.
3. The Court stated that:
 14. (...) It was never the case of the Respondents before the Collector that the acquired land is actually Government khas land or that the State is the owner of the land comprised in village Nungphou and the petitioner has got only possessory right.
4. As per a literal reading of the Land Acquisition Act 1894, there was no 'dispute' regarding the persons entitled to compensation. The Respondents were, therefore, bound to pay compensation money to the Petitioner.

Analysis

This case highlights that persons whose land has been acquired have the right to adequate compensation, which cannot be done away on the basis of mere technicalities.

30. Gopiram Agarwalla v. Smt. Bina Agarwalla

KEY ISSUES

Right to Housing, Right to Life, Right to Livelihood, Forced Eviction

Case Number Civil Revn. 32(H)/1984

Case Citation (1985) 1 GLR 248

Decided on 17 January 1985

Petitioner A tenant

Facts

The Deputy Commissioner of Kohima rendered an order that the Petitioner (tenant) could be evicted forcibly from the premises by the police. The tenant brought a challenge to this order.

Relief Sought

Quashing of the impugned order passed by the Deputy Commissioner of Kohima.

Ruling

1. The Court observed that:

3. I feel disposed to observe that the **right to shelter is a fundamental right of a citizen under the Constitution. If he has the right to live guaranteed to him under Article 21, it guarantees a dignified living under a shelter and certainly cannot be thrown out summarily to the streets from a place which has sheltered him.** If he is carrying on trade or business on a premises, his right under Article 19(1)(g) will be infringed if it is unreasonably tempered within an unauthorised or arbitrary manner. Indeed, as held in Dilip Kumar AIR 1983 SC 109, even in such cases, Article 21 will be infringed. **The right to earn livelihood of such a citizen would be thereby impaired.** The expression “life” does not cannot (sic) a mere animal existence, so it was held by their lordship Reference made to “dignity of individual” in the Preamble to the Constitution, of which notice was taken in Kharak Singh (AIR 1985 SC 1295) also bears reiteration in this context. I have no doubt, therefore, that right to a dignified existence under a shelter is inherent in Article 21. If a person is under a shelter as a living human being of 20 century (not belonging to the stone age) accustomed to the finer graces of the modern civilisation, he is entitled to live there or even continue there his trade or profession to earn his livelihood enjoying protection of the shelter until he is evicted therefrom in accordance” with the procedure prescribed by law [emphasis added].

The Court further asserted:

3. (...) **Not only his fellow citizen, even the State cannot, using its ‘police power’ evict him in an illegal and arbitrary manner** [emphasis added].”
2. The Court implicitly denied a universal right to housing when it said that the revisionist (tenant) was not a pavement-dweller who could exercise the right to shelter. It stated that:
 3. (...) What the learned Deputy Commissioner, Kohima clearly overlooked was that revisionist was not a pavement dweller in whose case there may not possibly exist any scope (sic) exercise right to shelter for the apparent reason that the pavements are not meant to give shelter to any citizen but all citizens the fundamental rights of freedom of movement (sic) enable which to be exercised legally and constitutionally is the “fundamental duty” of every citizen under Article 51 A.
3. In answering the contention that the law does grant “police help” to a party in evicting a tenant, the judge said that when an application is made to an Executing Court for such “help” it may consider the prayer only in accordance with the provisions of the Code of Civil Procedure. However, in this case, there was no decree and the ‘suit’ remained undecided by the patent court. Accordingly, “police help” could not be provided.

Relief Granted

The Court set aside the order passed by the Deputy Commissioner, Kohima which had stated that the Petitioner could be evicted forcibly from the premises by the police.

Analysis

This case held that the right to shelter/housing is an integral part of the right to life, and accords protection against instances of arbitrary forced eviction.

31. Yamkhomang Haokip v. State of Manipur

KEY ISSUES

Right to Housing, Right to Life, Right to Livelihood, Internal Displacement, Due Process, Resettlement, Rights of the Environment

Case Number: Civil Rule 603/1997

Case Citation: (2003) 3 GLR 409

Decided on: 12 July 2000

Petitioners: Villagers of Mongjang Village near the Indo-Burma border, who had suffered violence and were forced to resettle in Moreh town

Respondent: The Assistant Conservator of Forests, Moreh

Facts

Upon suffering militant violence and arson in their home village, the Petitioners fled to another town – Moreh. They had built their new settlement on land which was claimed by the authorities as part of a reserved forest/wildlife sanctuary. The Respondents had issued an eviction notice requiring them to dismantle their structures.

Relief Sought

A direction that the villagers will not be evicted and that the eviction notice be quashed.

Issues

1. Whether the eviction notice, issued to the chief of the village, was in accordance with the law or not.
2. Whether the Petitioners have the right to housing or to live at the new site in Moreh or not.

Ruling

1. The Court deemed that from the documents available, it was not ascertainable whether the land in question was part of the wildlife sanctuary or not. The notice did not mention that the land was part of the sanctuary but merely stated that there had been an “encroachment” and provided details on the size of the land in question. The notice was thus vague and not tenable.
2. The right to shelter/housing is part of Article 21 of the Constitution and Supreme Court precedent has recognized that there is a right to dwell on pavements and in settlements to earn livelihood:
 7. (...) It is the Constitution Bench decision in *Olga Tellis v. Union of India*, reported in AIR 1986 SC 180, which has put life and vigour to this requirement, because in that case, the right to dwell on pavement or in slums were accepted as a part of the right conferred by Article 21, which, as would be seen later, takes within its fold the right to livelihood as the persons whom *Olga Tellis* represented in that case were staying at payments or in slums so as to enable them to earn their livelihood in places nearby, the Court came forward to protect them and desired providing of alternative accommodation for some categories of people.
3. The Court also stated that:
 7. (...) In view of the existing facts and circumstances of the case, this Court require the State respondents to examine the present matter by giving preference to it as the matter involves the right to life and this Court hope and trust that the State respondents shall protect the petitioner and his co-villagers by providing them their accommodation at the present place or to provide alternative accommodation at a suitable site so as to enable these poor villagers to earn their livelihood and that their present occupation and possession over the land shall not be disturbed until the matter is settled by the competent authority so that a common man may think that a human problem has been solved by the State respondents. This Court further requires the State respondents to keep in their mind the differences between the need of

an animal and human being for shelter, as for the animal, it is the bare protection of the body and for good food; and for - a human being a suitable accommodation or shelter which would allow him to go in other aspects - physically, mentally and intellectually with good food, clothing for survival on this earth [emphasis added].”

Relief Granted

1. The eviction notice was quashed.
2. The Respondents were to examine the matter, as it involved the right to life.
3. The Respondents were “trusted” to provide the Petitioners with accommodation.
4. The present situation of the Petitioners would not be disturbed until the matter had been settled.

Analysis

The Court recognized the rights to housing and livelihood as integral to the realization of the right to life. It, therefore, issued the order that due care must be taken while issuing a notice of eviction. The Court also held that due process laid down by law must be followed by the state and alternative accommodation must be provided, wherever possible. In case the notice is vague or due process is not followed, the eviction proceedings would not be valid.

32. S. Shangreikhai v. Union of India

KEY ISSUES

Right to Housing, Right to Life, Right to Land, Indivisibility of Human Rights

Case Number: W.P. (C) 420/2002

Case Citation: AIR 2011 Gau 171

Decided on: 14 March 2011

Petitioners: 112 owners of paddy fields near the Kahui Kong River in Halang Village, Ukhrul District, Manipur

Respondent: Union of India through its various agencies

Facts

The private lands/paddy fields of the Petitioners are situated near a river in Manipur and they depend solely on it for irrigation during the rainy season and winter season. The Petitioners grow crops like soya-bean, maize mintha, brinjal, tomato, onion, bean, and rice. The usufruct of the said private paddy fields is the only means of livelihood of the Petitioners.

The diversion of river water by the 20 Assam Rifles for their camp resulted in a loss to the Petitioners, in terms of reduction of cultivable land, requiring them to abandon certain crops and increase labour force during the lean season.

The Petitioners made many representations praying for payment of compensation for the loss of usufruct of their paddy fields. The Respondents did not deny that they were drawing water, but disputed the contention that damage was caused to the Petitioners' paddy fields.

Relief Sought

The Petitioners sought direction to the Respondents to pay compensation for the reduction of usufruct¹¹⁰ of their paddy fields due to diversion of water from Kahui Kong River by the 20 Assam Rifles in Somsai Village, Ukhrul, used by the Petitioners to irrigate their paddy fields.

Ruling

1. The Court relied on two concepts – the idea that the farmers had a vested right in the continued use of the paddy fields, and that the rights to shelter and livelihood are inherent in Article 21 of the Constitution of India.
2. Citing Article 300 A of the Constitution, the Court found that persons may not be deprived of their property except by authority of law. It found that a “vested right” means an absolute or indefeasible right, of an immediate fixed nature, in present or future enjoyment in respect of property. If such an indefeasible right was to be extinguished, an amount of compensation had to be paid.
3. On the importance of agricultural land, especially for indigenous communities, the Court stated that:
 14. The Apex Court in *Samatha v. State of A.P. & Ors.* (1997) 8 SCC 191: (AIR 1997 SC 3297) observed that ‘Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands.’

.....
110 Usufruct: The right to use and enjoy the fruits of a property.

Relief Granted

Accordingly, the Court mandated that:

1. The Respondents would pay compensation to the Petitioners for the losses and damage caused to their private lands/paddy fields.
2. A committee was required to be constituted for spot verification for determining the amount of compensation to be paid for the reduction of the yield/usufruct of the paddy fields of the Petitioners because of diversion of water from Kahui Kong River.
3. The spot verification and determination of the amount of compensation should be completed by the committee within three months from the date of constitution of the committee.

Analysis

This case recognizes land as an essential resource linked to the right to life, right to housing, right to livelihood, and right to dignity. In doing so, it acknowledges the indivisibility of human rights and the conception of land as not merely a physical resource but as a bundle of rights essential for the realization of the right to life.

VI. ALLAHABAD HIGH COURT

33. Dev Nath Yadav v. State of U.P.

KEY ISSUES	Right to Resettlement
Case Number	W.P. 44391/2010
Case Citation	2010 6 AWC 5742 All
Decided on	30 July 2010
Petitioners	Residents of a village in Uttar Pradesh
Respondent	State government of Uttar Pradesh (U.P.)

Facts

Petitioners claim that the identified land was earmarked for pastures, pathways, a pond, land submerged under water, and a school, and thus could not be utilized for construction of a residential colony, as proposed by the state government. They claimed that the land in the village was for the benefit of the villagers, and not for outsiders/ persons residing in towns.

Relief Sought

Writ to quash the order of the State Government under Section 117 of the U. P. Zamindari Abolition and Land Reforms Act 1950 to resume land earmarked for pasture, pond, land submerged under water, pathway and school to construct residential colony under Kanshi Ram Shahari Awas Yojna for the residents of Mubarakpur.

Issue

Whether the land could be used/acquired for residential purposes.

Ruling

The Court relied on statute to find that the state government was the owner of the land and had transferred it to the Gaon Sabha (village body) or other local authority. It was also, according to the statute, open to the state to reclaim the land upon payment of compensation., Therefore, the Gaon Sabha only had a right to compensation.

The Court, however, recognized the right to housing as an integral part of Article 21 of the Constitution of India, and said that the poor persons residing in towns had a right to resettlement since they did not have proper homes. It stated that:

8. (...) The right of re-settlement of the persons, who do not have proper homes, is a part of the fundamental right to housing, which is now well recognised by the Supreme Court, being a part of life under Article 21 of the Constitution of India.

Analysis

The case recognizes that the right to housing includes the right to resettlement of persons who are displaced. However, the case does not address the conflict between the rights of the villagers to their common land and the right of the urban poor to resettlement.

VII. HIGH COURT OF JUDICATURE AT HYDERABAD

34. Mala Pentamma v. Nizamabad Municipality

KEY ISSUES	Right to Housing, Right to Life, Indivisibility of Human Rights, Forced Eviction, Due Process, Compensation
Case Number	W.P. 15581/2005
Case Citation	2005 (6) ALD 488
Decided on	17 October 2005
Petitioners	Five members of a Scheduled Tribe living in Yerukalawada, Nizamabad
Respondent	Nizamabad Municipality

Facts

The Petitioners had been residing in their houses for ten years. They were paying property tax and had been allotted power connections and drainage facilities. The Respondent, Nizamabad Municipality, tried to demolish the rear portion of the respective houses, in the guise of laying down drainage pipelines on another side of the Petitioners' houses without any notice, but on resistance by the Petitioners, threatened to come back for demolition. It claimed that the Petitioners had encroached state land to build their homes.

Relief Sought

Writ of mandamus declaring action of Respondents in threatening to demolish houses in Nizamabad as illegal, arbitrary, and violative of the principles of natural justice.

Issue

Whether the Respondents acted in violation of Articles 19 and 21 of the Constitution of India and natural justice principles.

Ruling

1. The Court had passed an interim order seeking the Master Plan from the Respondents and directing them not to interfere with the Petitioners' properties in the meantime.
2. In the present case, the Court opined that:
 8. It is a settled position of law that **even for removal of encroachment, the encroachers are entitled to notice and without following due process of law**, as contemplated under the provisions of A.P. Land Encroachment Act, **they cannot be evicted**. Therefore, the contention of the Respondent Corporation that they are not duty bound to issue notice to the petitioner, does not hold water and shows their high handed behaviour [emphasis added].
3. The Court recognized that the Respondents claimed to have taken up the cause of the general public in attempting to build sanitation facilities. However, it gave priority to the right to shelter/housing of the Petitioners and read it as an integral part of Article 21 of the Constitution of India. The Court stated that:
 10. It is not in dispute that the respondents have taken up the cause for general public, but that by itself does not authorize the first respondent to deprive the petitioners of their shelter. **Right to shelter, is a**

fundamental right, traceable to Article 21 of the Constitution of India and any action infringing of such a right, is amenable to writ jurisdiction under Article 226 of the Constitution of India [emphasis added].

4. The components of this right were further elaborated as involving just and humane work conditions, adequate facilities, pollution free water and air, and full enjoyment of life. The Court affirmed that:

13. As stated earlier, **right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21, a fundamental right which is an inalienable human right.** The Apex Court in a decision *Samatha v. State of Andhra Pradesh*, AIR 1997 SC 3297, held that **right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity.** It is further observed that **adequate facilities, just and human conditions of work, etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has to take every action.** That apart, **right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life.** Right to life enshrined in Article 21 means something more than mere survival of animal existence. The **right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living would form part of the right to life. Right to health and social justice was held to be fundamental right to workers.** It was further clarified that any action infringing such a right is amenable to writ jurisdiction under Article 226 of the Constitution of India [emphasis added].

5. The Court also took cognizance of the fact that the Petitioners belonged to the Scheduled Tribes and were allotted houses, in which case it became all the more incumbent upon the government and local bodies to protect their enfranchisement.

The Court stated that:

11. It is admitted case of the Respondents that the Petitioners herein belong to Scheduled Tribes and they were allotted sites in which they constructed the houses. In such circumstances, it becomes all the more necessary for the Government or its Local Bodies to **preserve the interests of the Scheduled Castes, Scheduled Tribes and other Weaker Sections.** A passing reference can be had to **Article 46 of the Constitution of India, which mandates that the State shall promote with special care the educational and economic interests of the weaker Sections of the people, ... and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.** It is not out of place to mention here that the first Respondent has resorted to follow this Article more by way of breach, for the reasons hereinbefore stated [emphasis added].

6. Specific reference was made to the special right of tribals to socio-economic empowerment, and the duty of states to ensure that lands in Scheduled Areas are preserved for social empowerment:

13. (...) It is further observed by the Apex Court that the **tribals have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals** [emphasis added].

7. The Court said that the Respondents should have granted notice and followed due procedure as well as provided suitable alternative sites or compensation to the Petitioners. The Court held that:

14. In the backdrop of these principles, it is most unfortunate that the first respondent, the Commissioner of Municipal Corporation of Nizamabad without even causing notice, has demolished the dwelling houses of the petitioners read with Directive Principles of State Policy, in utter violation of Articles 19(1) (e) and 21 of the Constitution and Principles of Natural Justice. Therefore, this Court, initially thought of moving Contempt of Court proceedings against the first respondent, but since there is neither any such request from the petitioners nor does it serve the purpose of petitioners, therefore, thought of

proceeding with the WPMP No. 23801 of 2005. **If demolition of the houses of the petitioners was so necessitated for public purpose, as contended, the respondents ought to have pressed legal remedies into force, by issuing notice to the petitioners to surrender the land, offering alternative suitable site or by offering to compensate them for the property, instead of highhandedly resorting to demolish the same, which they must have constructed with their hard earned money.** Therefore, **the act of the first respondent without providing compensation resorting to damage the houses of the weaker Section, under the guise of public purpose, is definitely unconstitutional.** Therefore, for such highhanded activities of the respondents, the petitioners are entitled to damages [emphasis added].

Relief Granted

The Petitioners were entitled to damages proportional to the estimated loss suffered during the demolition. The Court directed the Respondent to pay damages at the rate of Rs 60,000 to the first Petitioner, Rs 20,000 each to the second and fourth Petitioners, and Rs 5,000 to the fifth petitioner, within a period of six weeks from the date of the order.

Analysis

In this judgment, the Court offers an expansive interpretation of the right to life guaranteed by Article 21 of the Constitution of India, which recognizes the right to housing/shelter. Apart from establishing the duty of state authorities to follow due process requirements before any eviction process, the Court also emphasized the right to housing of people belonging to marginalized communities. The Court held that the right to housing of people from the Scheduled Castes and Scheduled Tribes, is part of their right to social and economic empowerment and the government has the duty to protect the same.

IX. HIGH COURT OF PUNJAB AND HARYANA

35. Chander Bhushan Anand. v. Union of India (UOI)

KEY ISSUES	Right to Housing, Right to Life, Rent Control Laws
Case Number	W.P. (C) 20232/2003
Case Citation	(2005) 139 PLR 400
Decided on	9 November 2004
Petitioners	Various tenants of residential, scheduled ¹¹¹ and/or commercial buildings located in the Union Territory of Chandigarh
Respondent	Union of India

Facts

In the interest of limiting the mala fide increase of rent by landlords seeking to coerce tenants to vacate their homes, the state of Punjab wanted to enact a law to that effect. The central government facilitated this by extending the operation of the East Punjab Urban Rent Restriction Act 1949 (hereafter Rent Act) to Chandigarh. It did this by passing the East Punjab Urban Rent Restriction (Extension of Chandigarh) Act 1974. This Act, however, prevented landlords from availing of the provisions of the Transfer of Property Act 1882, which allowed them to regain possession of rented premises after issuance of a notice of termination. Technical problems further resulted in making certain procedures inoperable. The Administrator of the Union Territory of Chandigarh, therefore, issued a notification dated 7 November 2002 exempting those “buildings or rented lands” whose monthly rents exceeded Rs 1,500 from the applicability of provisions of the Rent Act and the East Punjab Urban Rent Restriction Act 1974 Act. The Petitioners claimed that the notification was contrary to the objectives of the Rent Act.

Relief Sought

The notification was challenged by the Petitioners on the grounds of arbitrariness and unreasonableness.

Issue

Whether the notification is sustainable or not.

Ruling

1. The Court relied on Supreme Court precedent to establish that the right to shelter/housing is a fundamental right, which emanates from the right to residence in Article 19(1)(e) and the right to life under Article 21 of the Constitution.¹¹²
2. The Court opined that rent control laws help towards securing the right to shelter:
 54. Ours is a country committed to social, economic and political justice for all. While the poor strata of society desperately looks towards its right to shelter; has a legitimate expectation for it, legislative measures of different kinds are taken to achieve this object. The Rent Acts are also one of the components of such measures. Keeping in view the per capita income out of which the lower middle class or poor

111 'Scheduled building' is defined as a residential building that is being used partly for residence and partly for business by a person engaged in any of the professions specified in 3 [Schedule 1] of the East Punjab Urban Rent Restriction Act 1949.

112 *U.P. Avas Evam Vikas Parishad v. Friends Housing Co-op Society Ltd.*, 1995 Suppl. (3) S.C.C. 456.

strata of society is expected to contribute towards the payment of monthly rent for the premises hired by such persons, protection of the tenancy to the extent of those who are paying monthly rent of Rs. 1,500/- or below, can successfully achieve the aforementioned constitutional object.

3. It further asserted that the rights which accrue to a landlord under the common law are normally in existence whereas the protections afforded to the tenant by the Rent Act are only protective for a specific period or purpose. This would mean that the landlord's rights under the common law continue to exist as long as these are not abridged by a special protective law like the Rent Act. On the other hand, tenants continue to enjoy the protective umbrella so long as the special legislation, namely the Rent Act is operative.

Relief Granted

The Court held that:

62. We are of the view that the impugned notification dated November 7, 2002 (Annexure P5) is neither an outcome of excessive delegation nor it runs contra to the legislative policy enshrined in the Rent Act and/or the 1974 Act. Similarly, the afore-mentioned notification is neither violative of Article 14 nor it takes away the fundamental right to shelter and lead a meaningful life as guaranteed by Article 19(1)(e) read with Article 21 of the Constitution of India.

Analysis

This case discusses the right to housing as a part of the right to life, and acknowledges the importance of rent control legislations in protecting the right to shelter of tenants against arbitrary and forced evictions by land-owners/landlords. However, the treatment of the tenant's right to housing in this case is not based on a human rights approach, as is evident from the Court's decision to allow the government to limit this protection only to a particular income group. Thus, it implied that the right to housing of tenants is a legal right arising from a law that can be restricted by the government. It is also unfortunate that the Court accepted an arbitrary income figure to limit protection accorded by the Rent Act. The Court also misreads the right to housing as being limited only to the most deprived, thereby leaving out a significant part of the population that would also be considered poor and in need of protection and guarantee of their equal right to adequate housing.

X. ORISSA HIGH COURT

36. Sri Zakir Khan, Plot No. 1374, Gandamunda, Bhubaneswar v. State of Orissa

KEY ISSUES	Right to Property, Land Acquisition, Forced Eviction, Rights of the Environment
Case Number	O.J.C. 5038/2002
Case Citation	MANU/OR/0216/2011
Decided on	30 September 2011
Petitioners	Social activist, on behalf of common people
Respondent	State of Orissa

Facts

The Petitioners' plea was that the construction activities around the Wildlife Sanctuary had put strain on the fragile ecosystem of the area. The Sanctuary contained several species of wildlife and was surrounded by wetlands. The Petitioners argued that multiple plots were constructed around the area and these were affecting the ecosystem, especially by contaminating water and reducing water levels. The Petitioner relied on the 'precautionary principle' to suggest that it was mandatory for the state government to anticipate, prevent, and address the causes of environmental degradation.

The Respondent, on the other hand, argued that the constructions would not adversely affect the ecosystem or the water quality or water levels. It argued that the owners of the lands had the fundamental right to use the lands as they wished.

On behalf of a group of villagers, an intervention petition was filed in 2010. It claimed that the Nandankanan Zoo was proposed to be built on land where villagers had ownership rights for a long time. When the proposal for constructing the zoo became known, the villagers applied for conversion of the status of their land from agricultural to homestead. However, their petitions were rejected on the ground that the matter was pending before the Court. Consequentially, the helpless villagers were unable to utilize their lands either for agricultural purposes (because of the construction of the zoo) or for housing purposes. The intervenors claimed that this affected the villagers' rights to life and livelihood.

A Court-appointed advocate was sent to the location to prepare a report, and he stated that multiple constructions, including permanent shops, within a kilometre's radius of the zoo had come up over the last five years. He also reported the presence of quarrying operations and roads that ran through the area.

Relief Sought

Order banning all construction activities within a radius of one kilometre around the boundaries of Nandankanan Wildlife Sanctuary, and a comprehensive plan from the Respondents to sustain the fragile ecosystem of the area, and to preserve nature and the status of the land.

Issue

Whether in the facts and circumstances of the case, the Respondent can be directed to take immediate steps to stop all plotting schemes and construction activities within one kilometre radius around the Nandankanan Wildlife Sanctuary.

Ruling

1. The Court said that:

20. Law is well settled that **a right to hold property is a constitutional right as well as human right** [emphasis added].

It referred to the Supreme Court judgment in *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd*¹¹³ which had held that:

54. The right to property is now considered to be not only a constitutional right but also a human right.
56. Earlier human rights were existed to the claim of individuals' right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. **Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights** [emphasis added].

2. The Court then directed the advocate for the government to indicate what steps would be taken to utilize the 1,100 areas of land owned by the Nandankanan Zoological Park. In response, the Director of the biological park said that they would maintain the ecological integrity of the sanctuary and the wild animals, and not change land-use patterns within a one kilometre radius around the park.

The report, filed by the Advocate appointed by the Court, also stated that the land in the villages was acquired only after appropriate compensation had been given. Further, it was found that the Zoological Park along with the lake and botanical garden had been notified as the Nandankanan Wildlife Sanctuary, and the area was being used properly for the conservation of flora and fauna.

3. The Court refrained from making any direction to the Respondents, because according to the report, there was no proposal to acquire land within a kilometre's radius of the Park.
4. However, the Court mentioned that if there was any infraction of the provisions of the Water (Prevention and Control) Act 1974, the Air (Prevention and Control) Act 1981, and the Environment (Protection) Act 1986, the authorities may take necessary action against persons concerned.

Relief Granted

The Court held that so far as acquisition of land is concerned, in view of the affidavit of the Director of Nandankanan Zoological Park stating "there is no proposal from Nandankanan Biological Park to acquire the land within 1 kilometre radius of the Park for declaration of that area as a green belt," there cannot be any direction qua the land in question.

Analysis

The case recognizes the right to property, as not merely a constitutional right, but also a human right which cannot be restricted except in accordance with the provisions of a statute. It uses this understanding of the right to prevent the arbitrary eviction of local villagers from the vicinity of a protected area, until actual harm can be proved. This judgment is significant because it strives to strike a balance between the right to property of individuals and environmental rights. This is crucial since in many similar cases in India concerning the conservation of wildlife and natural forests, courts and authorities favour the latter while disregarding the rights of the local people to their customary lands.

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113 AIR 2007 SC 2458.

XI. HIGH COURT OF TRIPURA

37. Peerless Tea and Industry Ltd. v. State of Tripura

KEY ISSUES	Right to Property, Compensation
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Case Number	W.P. (C) 401/2004
Case Citation	MANU/TR/0147/2015
Decided on	8 May 2015
Petitioner	Peerless Tea and Industry Ltd.
Respondent	State of Tripura

Facts

On 10 November 1986, the Government of Tripura took over management of the Petitioner's tea estate—Fatikherra Tea Estate—and handed it over to the Tripura Tea Development Corporation Limited. After taking over management of the Petitioner's tea estate, the government decided that compensation would be paid out of the profits made by the tea company. The acquisition was made under Tripura Tea Company (Taking over of Management of Certain Tea Units) Act 1986. As per the proviso to Section 3 (3) of the said Act, the state government or the custodian would pay an annual compensation of an amount as specified by the state government for suspending the rights of such persons.

The Petitioner had approached the Gauhati High Court and received a decree that directed the Government of Tripura to determine the rate of compensation payable under Section 5 of the Act, and pay that compensation by a certain date. A committee was formed for the purpose and it determined that no compensation had to be paid to the Petitioner; on the contrary, it stated that the Petitioner had to pay an amount of Rs 141,59,998 to the State Government (Respondent), for the substantial investment and expenditure incurred by the State Government in the Tea Estate.

Relief Sought

Compensation

Issues

1. Whether the government notifications can legally be truncated.
2. Whether the Petitioner is entitled to any compensation.

Ruling

1. Relying on statute, the Court opined that the Act clearly stipulates that the state must pay compensation, and hence the notifications were in contravention of the said Act.
2. While stating that the right to property was not a fundamental right, the Court relied on the Supreme Court judgment in *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation*, which had held that:
 9. **The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right.** Though, it is not a basic feature of the Constitution or a fundamental right.

Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension [emphasis added].¹¹⁴

3. Recognizing the welfare responsibility of the state and the fact that the Petitioner's use of property had been impeded, the Court declared that the Petitioner was entitled to compensation as provided by the statute:

22. Having regard to the law as enunciated in *Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.*, the state cannot arrogate itself to the status that is one beyond provided by the Constitution. By way of suspension, the petitioner had been put to disability to use their property and hence they are entitled to compensation as provided by the statute, denial of such would amount to denying their legal right to have compensation. **The state in exercise of its eminent domain has deprived the petitioner so far.** This court is inclined to interfere with such action of the state. The other question that has flowed for consideration of this court is that in view of the ex parte decree that has been passed, whether any direction can be passed in this case [emphasis added].

Relief Granted

Though the Court did not compute compensation or pass an order on the amount of compensation to be paid, it directed the state government to appoint a reputed chartered accountant for the purpose within two months, failing which it was to appoint a specific accountant. If no compensation was paid within three months of the assessment report, an interest of 18 per cent would be paid thereafter. The profit and loss account would have no impact on determining the compensation stated.

Analysis

The High Court of Tripura held that human rights, which were erstwhile considered as individual rights, are now also being recognized as multi-dimensional and thus, include the right to property and consequently, the right to housing. The Court also held that whenever the state uses its "eminent domain" to deprive people of their property, adequate compensation must be paid, irrespective of the profit or loss incurred by the state.

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114 (2013) 1 SCC 353.

Housing and Land Rights Network (HLRN)—based in New Delhi, India—works for the recognition, defence, promotion, and realization of the human rights to adequate housing and land, which involves gaining a safe and secure place for all individuals and communities, especially the most marginalized, to live in peace and dignity. A particular focus of HLRN’s work is on promoting and protecting the equal rights of women to housing, land, property, and inheritance. Housing and Land Rights Network aims to achieve its goals through advocacy, research, human rights education, and outreach through network-building – at local, national and international levels.

In this publication titled, **‘Adjudicating the Human Right to Adequate Housing: Analysis of Important Judgments from Indian High Courts,’** HLRN has compiled and analysed progressive judgments, from High Courts across India, that have upheld the human right to adequate housing – either directly as guaranteed by international law or through an expansive interpretation of the right to life, or indirectly by recognizing key elements of adequate housing essential for the realization of the right to an adequate standard of living and the right to live with dignity. Though the right to housing is linked to the realization of other civil, cultural, economic, social, and political rights, it is not explicitly protected in national law. A compilation of positive case law related to the right to housing is thus important in also building legal precedent towards protecting the human right to adequate housing in India.

Housing and Land Rights Network hopes that this publication will be a useful resource for lawyers, judges, academics, independent institutions, non-government organizations, human rights defenders, and anyone else interested in the positive role of the Indian judiciary in adjudicating the human right to adequate housing.



HOUSING AND LAND RIGHTS NETWORK

G-18/1 Nizamuddin West
New Delhi – 110 013, INDIA
+91-11-4054-1680 | contact@hlrn.org.in
www.hlrn.org.in

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