

THE INTERSECTIONALITY OF RIGHTS FROM HOUSING TO HEALTH AND WELLBEING

(Based on the judgment in *Ajay Maken and ors. v Union of India and ors.*)

(2019) 260 DLT 581 (DB)

A HUMAN TRAGEDY

On a cold Delhi December morning in 2015, several Northern Railway officials within the Ministry of Railways along with a large contingent of the Delhi Police reached Shakur Basti (West) near the Madipur Metro Station. Located on this land owned by the ministry was a *jhuggi jhopri basti* ("JJ basti"). The government and police machinery proceeded to demolish the 1200 *jhuggis* in the *basti*, rendering nearly 5000 people homeless...



This is the story of how the Delhi High Court laid down the law on all that is meant in having a right to housing.

KNOCKING ON THE COURT'S DOOR

The next day, a petition in the form of a Public Interest Litigation was filed in the Delhi High Court seeking certain reliefs in relation to the forced eviction.

The case was filed against the Ministry of Railways, Ministry of Urban Development, Government of the National Capital of Delhi ("GNCTD"), Delhi Police and the Delhi Urban Shelter Improvement Board ("DUSIB").

The petitioners argued that:

The demolition had taken place in violation of various Supreme Court and High Court judgments and the Master Plan for Delhi ("MPD") 2021 which was notified in 7 February 2007.

DUSIB and GNCTD had failed to provide rehabilitation to the displaced persons, which had forced them to live at the demolition site.

The court passed its judgment in 18 March 2019.

What happened to the people of JJ basti in the 39 months between the demolition and then?

A COURT MANDATED COORDINATION AND COOPERATION

As the hearing progressed, many affidavits were filed and orders passed.

The court made clear that its immediate priority was relief and rehabilitation for the displaced persons, irrespective of the legality of JJ basti. To this end, the court set into action on various fronts:

SURVEYING EXERCISE:

The first line of enquiry was whether a surveying exercise as mandated by the DUSIB Act had been carried out. It was uncovered that no such survey had been carried out. The court directed that a comprehensive survey of the population at JJ basti be carried out immediately.

A STEP-BY-STEP ACCOUNT:

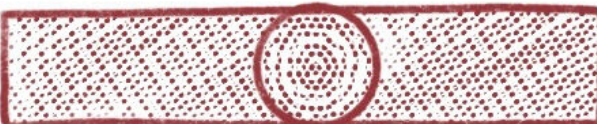
The court next called upon the Railways and the Delhi Police to provide a detailed account of the plan for demolition.

FOOD, MEDICINE AND LIGHTING:

The court directed that immediate arrangements be made for the persons displaced to ensure adequate food, medicine, lighting and toilet facilities.

A COMPLAINTS MECHANISM:

The court designated DUSIB as the nodal agency to receive complaints and requests from the displaced population and pass that information onto the agencies and the court, if necessary, so that immediate relief may be given.



ENGAGING THE NATIONAL HUMAN RIGHTS COMMISSION:

The court also mobilised the NHRC, directing it to deploy one senior officer at the site and submit a report to the court.

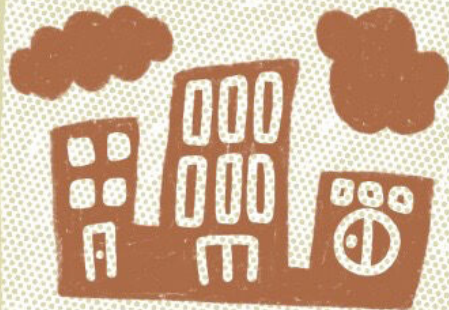
With these mechanisms in place on the ground, the court then delved deep into the different facets of the problem presented before it...

At the outset the court turned to data on the slum dwelling population in Delhi to understand the contexts in which forced slum demolitions and evictions occur, against which backdrop it determined the legal issues.

Importantly, it looked at government reports to note that about 80 million people live in slums in cities across India, of which 3% live in Delhi. The National Sample Survey Office (“NSSO”) survey 2012 revealed grossly inadequate basic resources in slums - nearly 80-85% slums lacked clean drinking water, underground sewerage systems and access to healthcare centres / government hospitals and educational institutions for children.



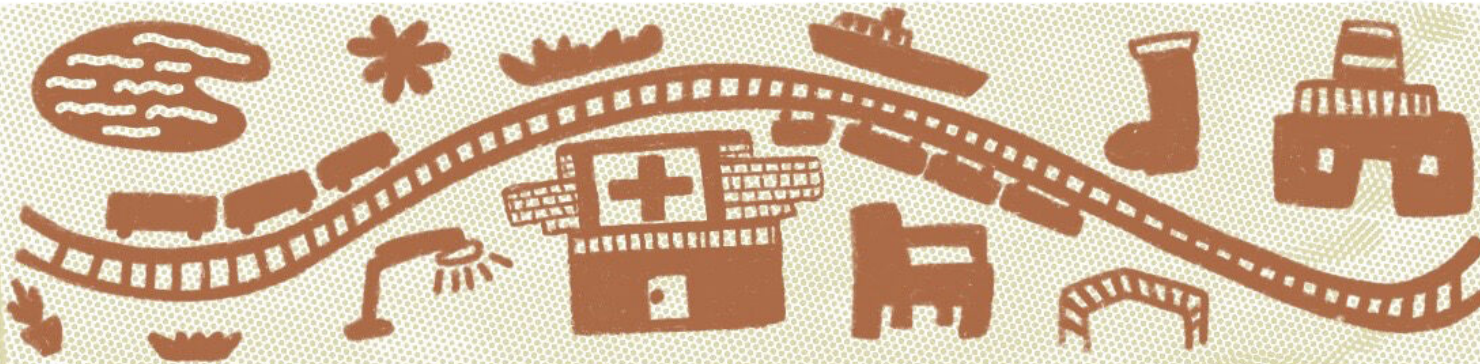
THE DATA



The court looked to the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) to which India is a party and which was operationalised in India by virtue of the Human Rights Act, 1993. Article 11 of the ICESCR puts the obligation on States to realize the right of everyone to an adequate standard of living, which in turn includes the right to adequate food, housing, and improvement of living conditions.



Thereafter, the court took note of General Comment No. 4 to the ICESCR on the Right to Adequate Housing which explains that the right to adequate housing must not be interpreted narrowly to mean bare shelter – rather, it is the right to live in security, dignity and peace. The right to housing is integrally linked to the realization of other human rights such as accessibility and availability of essential services.



INTERNATIONAL MANDATES

The court next looked to the emerging concept of a right to the city. The idea in invoking this concept was to reiterate that people living in *jhuggi-jhopri bastis* are equal participants and contributors to the social and economic life of the city. These include sanitation workers, garbage collectors, domestic help, public transport drivers, labourers and a wide range of service providers indispensable to a city. Prioritizing the housing needs of this population should be imperative for a State committed to social welfare.

The New Urban Agenda adopted by Member States at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), in 2016, defined the ‘right to the city’ 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”*.

An accompanying policy paper to the agenda sets out a list of components that ensure the “city as a common good” – (a) non-discrimination policies, (b) inclusive citizenship, (c) equitable access for all to shelter, health, goods and services, (d) quality of public spaces, (e) gender equality, (f) inclusive economies, among others.

A RIGHT TO THE CITY: FOSTERING SOCIAL SOLIDARITY

The Constitution of India does not specifically spell out a right to housing. Yet, the court concluded that the Constitution protects social and economic rights for everyone, and in particular marginalized groups. How did it do so?

The preamble highlights the guarantee of social justice and the dignity of the individual.

The Constitution guarantees the right to equality (Article 14), freedom of movement (Article 19(1)(d)), freedom of residence anywhere in the country (Article 19(1)(e)) and the freedom to carry on one's occupation, trade or profession (Article 19(1)(g)).

The Right to Life (Article 21) has been interpreted by a series of judgments to include a right to live with dignity, which includes access to the bare necessities such as adequate nutrition, clothing, and shelter among others.

Directive Principles of State Policy in Part IV oblige the central and state governments to realize the rights to work, to education and to maternity relief.

The aforesaid principles were invoked in *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545 which dealt with the forced eviction of pavement dwellers in Bombay. The court held that all social and economic rights and entitlements which make life liveable would form part of the right to life.

EVEN MORE SPECIFICALLY...

While the court located the right to adequate housing in the Constitution, it also invoked one of its own previous judgments in *Sudama Singh v Government of Delhi* (2010) 168 DLT 218 which specifically dealt with the issue of demolition of slums in Delhi.

Sudama Singh therefore governs the law today in relation to slums and slum dwellers in Delhi. It lays down the procedure for authorities to follow if they propose to undertake eviction of slum dwellers – even those located on government land. The framework became the basis for the evolution of the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015.



THE COURT'S DECISION

“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, sewage, and transport facilities.”

In conclusion, the court held that:

It is now settled law that the courts discourage a narrow view of a dweller in a *jhuggi-jhopri basti* as an ‘illegal occupant without rights’. They recognize such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement.

The law mandates that a court approached by persons complaining of forced slum demolitions and evictions not view them as ‘illegal encroachers’ of land, whether public or private, but direct the agencies to first conduct a survey to determine if the dwellers are eligible for rehabilitation of existing law and policy. Forced evictions of *jhuggi* dwellers, unannounced and in coordination with other agencies, without compliance with above steps, are contrary to law.

Land owning agencies must first complete the survey and consult *jhuggi* dwellers and others affected by the proposed demolition at Shakur Basti. If rehabilitation is not feasible on site, then as and when the Respondent government agencies are in a position to rehabilitate the eligible dwellers of the *jhuggi jhopri* basti elsewhere, adequate time will be granted to such dwellers to make arrangements to move to the relocation site. Until such time, there ought not to be an imminent possibility of eviction.

THE INTERSECTION OF RIGHTS FROM HOUSING TO HEALTH AND WELLBEING

(Based on the Judgment in *Maya Shakti and others v. Union of India and others*)

(2019) 240 DLT 581 (DB)

A URBAN TRAGEDY

On a cold Delhi December evening in 2015, several Northern Railway officials within the Ministry of Railways along with a large contingent of the Delhi Police reached Shalimar Park Hostel near the Badli Metro Station. Located on the land owned by the ministry was a *Jugajyoti* hostel (‘J’ host). The government and police machinery proceeded to demolish the 1200 *Jugajyoti* in the host, rendering nearly 500 people homeless...

THE COURT HELD THAT THE UNION GOVT MUST TAKE CARE TO ENSURE THAT ALL J HOSTS ARE GIVEN A RIGHT TO HOUSING

HOUSING ON THE COURT’S DOOR

The very day a petition in the form of a Public Interest Litigation was filed in the Delhi High Court seeking certain relief in relation to the forced evictions...

The case was filed against the Ministry of Railways, Ministry of Urban Development, Government of the National Capital of Delhi (NCTD), India Police and the Delhi Urban Shelter Improvement Board (DUSIB). The petitioners had filed their petition in various Supreme Court and High Court judgments and the Master Plan for Delhi (MPD) 2014 which was updated on 7 February 2017. DUSIB and NCTD had failed to provide rehabilitation to the evicted persons which had forced them to live in the makeshift shacks. The court passed an order on 18 March 2016. What happened to the people of J host in the 30 months between the demolition and the?

THE DATA

At the outset the court turned to data on the slum dwelling population in Delhi to understand the context in which forced slum demolition and eviction occur, against which backdrop it determined the legal issues. Importantly, it looked at government reports to note that about 80 million people live in slums in urban areas, of which 30 live in Delhi. The National Sample Survey Office (NSSO) survey 2012 revealed grossly inadequate basic amenities in these slums. 80% of these slums lacked clean drinking water, underground sewerage systems and access to healthcare centers, government hospitals and educational institutions for children.

QUEST HARBORS OCCUPATION AND PROTESTS

As the housing program, many activities were held and protests passed. The court made clear that its mandate primarily was relief and rehabilitation for the displaced persons, irrespective of the legality of J host. To this end, the court set out action on various fronts:

- SURVEYING EVICTED:** The first time of enquiry was whether a satisfactory census as mandated by the KESCR Act had been carried out. It was ascertained that no such survey had been carried out. The court directed that a comprehensive survey of the population of J host be carried out immediately.
- A STEP-BY-STEP APPROACH:** The court next called upon the Railways and the Delhi Police to provide a detailed account of the plan for demolition.
- FOOD, ESSENTIALS AND LIAISON:** The court directed that immediate arrangements be made for the persons displaced to ensure adequate food, medicine, heating and toilet facilities.
- A COMPLAINTS MECHANISM:** The court requested DUSIB as the nodal agency to receive complaints and requests from the displaced population and pass that information onto the agencies and the court, alternatively, that mechanism need not be given.
- EXPANDE THE NATIONAL URBAN SHORES COMMISSION:** The court also modified the NUSC, directing it to register one more office at the site and make a report to the court.

THE COURT WAS NOT ASKED TO INTERFERE IN THE MATTER OF THE NATIONAL URBAN SHORES COMMISSION.

A RIGHT TO THE CITY: FOSTERING SOCIAL SOLIDARITY

The court looked to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which India is a party and which are incorporated in India by virtue of the Human Rights Act, 1993. Article 11 of the ICESCR puts the obligation on States to realize the right of everyone to an adequate standard of living, which in turn includes the right to adequate food, housing, and improvement of living conditions. Furthermore, the right to work set out in General Comment No. 4 to the ICESCR on the Right to Adequate Housing which states that the right to adequate housing should not be interpreted narrowly to mean mere shelter - rather, it is the right to live in security, dignity and peace. The right to housing is a right linked to the realization of other human rights such as accessibility and availability of essential services.

THE URBAN AGENDA

The court next looked to the emerging concept of a right to the city. The idea is treating this concept as to ensure that people living in *Jugajyoti* hostels are equal participants and contributors to the social and economic life of the city. These include sanitation workers, garbage collectors, domestic help, public transport drivers, laborers and a wide range of service providers indispensable to a city. Prioritizing the housing needs of the population should be a primary for a State committed to social justice. The New Urban Agenda adopted by Member States at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), in 2016, declared the ‘right to the city’ as the ‘right of inclusion, power and justice to ensure an inclusive urban and sustainable cities, shaped as a common good central to the quality of life. The right to the city refers to equal participation in governance and in social, cultural and economic life.’ An accompanying policy paper to the agenda sets out a non-exhaustive list of components that ensure the ‘city as a common good’ - 10 non-discriminatory policies, 30 inclusive mechanisms, 30 equitable access for all to facilities, health, goods and services, 10 quality of public spaces, 10 gender equality, 10 inclusive economic, energy cities.

INTERNATIONAL STANDARDS

The Constitution of India does not specifically spell out a right to housing. Yet, the court came to the conclusion that the Constitution protects social and economic rights for everyone, and in particular marginalized groups like J host. The provisions highlight the protection of social justice and the dignity of the individual. The Constitution guarantees the right to equality (Article 14), freedom of movement (Article 19(1)(d)), freedom of choice of abode in the country (Article 19(1)(e)) and the freedom to carry on one’s occupation, trade or profession (Article 19(1)(g)). The Right to Life (Article 21) has been interpreted by a series of judgments to include right to live with dignity, which includes access to the bare necessities such as adequate nutrition, clothing, and shelter among others. Directive Principles of State Policy in Part IV of the Constitution and State governments to realize the rights to work, to education and to society (Art. 41). The relevant principles were invoked in *Shri. Dhanraj Municipal Corporation (1985) 2 SCC 541* which dealt with the forced eviction of pavement dwellers in Bombay. The court held that all social and economic rights and entitlements which make the dwelling would form part of the right to life.

THE COURT’S APPROACH

While the court heard the right to adequate housing in the Constitution, it also invoked line of its own previous judgments (which was upheld by the Supreme Court in *Shri. Dhanraj Municipal Corporation (1985) 2 SCC 541* which specifically dealt with the issue of demolition of slums in India). Justice Singh therefore governs the law to be applied in relation to slums and their dwellers in Delhi. It lays down the procedure for authorities to follow if they propose to undertake evictions of slum dwellers - even those located on government land. The framework became the basis for the evolution of the Delhi Slum and JI Rehabilitation and Relocation Policy 2015.

THE COURT’S DECISION

The right to housing is a bundle of rights not limited to a bare shelter over one’s head. It includes the right to live in a healthy, safe, secure and dignified life, including right to clean drinking water, sewage and proper drainage. In conclusion, the court held that: It is now settled law that the courts discharge a narrow view of a dweller in a *Jugajyoti* host as an ‘illegal occupant without rights’. They recognize such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement. The law mandates that a court approached by persons complaining of forced slum demolitions and evictions see them as ‘illegal occupants’ of host, whether public or private, but direct the agencies to first conduct a survey to determine if the dwellers are eligible for rehabilitation in terms of extent law and policy. Forced evictions of *Jugajyoti* dwellers, unassisted and in coordination with other agencies, without compliance with above steps, are contrary to law. Last meeting agencies must first complete the survey and extend *Jugajyoti* dwellers and other affected to the proposed demolition at Shalimar Park. If rehabilitation is not feasible on any terms or when the Respondent government agencies are in a position to rehabilitate the eligible dwellers of the *Jugajyoti* host dwellers, adequate time will be granted to such dwellers to make arrangements to move to the relocation site. Until such time, there shall not be an immediate possibility of eviction.