

(1986) 06 CAL CK 0030
In the Calcutta High Court

In Re: No. 57 Block Bastuhara Committee and Others

Date of Decision : 19-06-1986

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : AIR 1987 Cal 122 : 91 CWN 337

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Biman Kanti Basu and Ahimesh Mukherjee, for the Appellant; Tapas Roy, Alope Chakraborty and Sumit Panja, (for Nos. 2, 3, 4 and 6), K.M. Yusuf and Smritikana Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This petition is heard as a contested application upon notice to the respondents and is also disposed of after hearing the respective parties without issuing a Rule.

2. Petitioners Nos. 2 to 45 have stated in the writ petition that they are citizens of India and all of them are residing at No. 5, Mathur Babu Lane within police station Entally in the city of Calcutta. Petitioner No. 1 is No. 57 Block Bastuhara Committee which is an association of members who are hut dwellers along the banks of both sides of new canal of Kulti Canal which is locally known as Pachakhal. It has been stated that the banks of both sides of the said canal where the petitioners are residing as hut dwellers are included within Ward No. 57 of the Calcutta Municipal Corporation. The petitioners have stated that the said new canal starts at Palmer Bazar Pumping Station owned and maintained by the Calcutta Municipal Corporation and the said canal comes up to Kulti beyond the municipal limit of Calcutta. The Petitioners have stated that through the said canal the Municipal authorities are required to provide a safe and sufficient outfall in or outside Calcutta for effectual drainage and proper discharge of storm water and sewerage of Calcutta and it has been admitted by the petitioners that Section 277(2) of the Act provides that if the outfall deteriorates by the decay of existing river channels or otherwise, The State Government may require the

Corporation to take at the cost of the Municipal Fund such action as may be necessary to ensure a safe and sufficient outfall and Section 287 of the said Act provides for cleaning drains and it is the requirement under the Municipal Act that the said canal should be maintained and kept so as to create the least practicable nuisance and the canal should be properly flushed from time to time, cleaned and emptied and for the purpose of such works the Municipal authorities may construct or set up reservoirs, sluices etc. as may be deemed necessary.

3. It is the case of the petitioners that the Municipal authorities in an attempt to excavate the said canal for the purpose of proper flushing out all the sewerage water and also the rain water have been contemplating to evict the petitioners and large number of other person who had been residing on both sides of the said canal for pretty long time. It has been stated by the petitioners that many of such persons who had been residing by the sides of the canal by raising huts or shanties had been residing thereafter becoming refugees from the then East Pakistan and some of such dwellers were victims of communal riots long back. It is the case of the petitioners that since they had no place to reside they had been forced to reside by the sides of the said canal and they have been earning their livelihood through various avocations of life in and around the place of their living in the city of Calcutta. It has been contended by the petitioners that for the purpose of cleaning the said canal and/or for flushing the sewerage water and rain water there is no necessity of dismantling the shanties and huts raised by the petitioners and other dwellers by the sides of the canal. It has also been contended by the petitioners that in any event without assuring rehabilitation of the dwellers by the sides of the said canal including the petitioners at any nearby place, the respondents cannot demolish the shanties and/or the huts of the petitioners and other dwellers by the sides of the canal and the respondents cannot also evict them from the said place. Relying on the decision of the Supreme Court in the case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , it has been contended by Mr. Bose learned Counsel for the petitioners that the right to live which has been guaranteed by Article 21 of the Constitution includes right to livelihood and since the petitioners and other dwellers in the said place will be deprived of their livelihood if they are evicted from their hutments and shanties such eviction will be tantamount to deprivation of their lives and as such the same must be held to be unconstitutional. It has been held by the Supreme Court in the said decision that the right to live includes right to livelihood and the sweep of the right of life conferred by Article 21 is wide and far-reaching. It does not mean that right cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. But that is only one aspect of the right to life, and equally important facet 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 to be treated as constitutional part of the right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. The Supreme

Court has also held that such deprivation will not only denude the life of its effective content and meaningfulness but it would make life impossible to live. The Supreme Court has referred to Article 39(a) which is the directive principle of the State policy. The said Article provides that the State shall, in particular direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Referring to Article 41, it has been observed by the Supreme Court in the said decision that Article 41 is another directive principle which provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work in cases of unemployment and of undeserved want. The Supreme Court has referred to Article 37 which provides that Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The Supreme Court has held that the principles contained in Article 39(a) and Article 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and contents of fundamental rights. But the Supreme Court has also held in the decision of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, that footpaths and pavements are public properties which are intended to serve the convenience of the general public and they are not laid for private use and indeed their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The Supreme Court has specifically observed that there is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrian to make use of the pavements for passing and repassing are competing claims and that the former should be preferred to the latter. It has been specifically held that no one has right to use public property for a private purpose without requisite authorisation and therefore, it is erroneous to contend that the pavement dwellers have their right to encroach upon the pavements by constructing dwellings thereon. It may be noted in this connection that in the decision of *Olga Tellis* the encroachment was on the pavements by constructing shanties or hutments.

4. Summarising the respective contentions of the parties and the principles of law involved in the aforesaid decision, the Supreme Court has held that no person has the right to encroach by erecting structure or otherwise on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground, the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the facts and circumstances of that case.

5. Mr. Roy, learned Counsel for the respondents has submitted that excavation of the said canal is extremely urgent and in view of the fact that the monsoon has already set in, there is every likelihood that large areas in and around the said portion of the canal are likely to be inundated causing serious hardship to a large number of residents in that locality who are mainly weaker section of the community. Mr. Roy has submitted that because of the paucity of funds, the said

excavation could not be made earlier but such fund has been made available through World Bank and work of excavation is also a time-bound programme. He has submitted that the petitioners as a matter of fact could not deny that excavation of the canal to flush sewerage water and also rain water is an urgent necessity and it could not be denied by the petitioners that such excavation is urgently required. Mr. Roy has submitted that the respondents and the State Government do not deny the need of rehabilitation of the weaker section of the community including the petitioners and the State Government and the other respondents have a serious concern to take effective steps for rehabilitation of those dwellers of the sides of the canal who have been there from 1976 onwards. Mr. Roy has, however, submitted that as a matter of fact a high level meeting had been organised with the Chief Minister of the State and the Minister of Local Self Government and Metropolitan Development and also senior officers of the State Government to find out ways and means as to how best and effectively such dwellers who have been there from 1976 can be rehabilitated. But in view of the special problem of the State of West Bengal, it is very difficult to find out suitable lands near about the place of residence of the said dwellers for rehabilitation. It has been stated in the affidavit that the concerned authorities have been asked to find out suitable lands which may be made available to the hands of the State, for the purpose of settlement of the genuine persons. Mr. Roy, has, however, submitted on further instruction from the Minister for Local Self Government and in charge of the Metropolitan Development that the District Magistrate of South 24-Parganas has been requested to make sincere efforts to find out suitable lands near about Sonarpur area so that the genuine dwellers of the sides of the said canal since 1976 may be rehabilitated. Mr. Roy has further submitted that in the facts of the case it is not possible for the State Government to give any guarantee that such rehabilitation will be made within any fixed period. He has submitted that from the affidavit already filed on behalf of the State and also from the instructions he had received from the Minister of Local Self Govt. and Metropolitan Development, the Court may take note of the fact that the State Government is making genuine efforts for rehabilitation of the dwellers by the sides of the said canal since 1976 and the Government reasonably expects that such rehabilitation may be possible within a reasonable time. Mr. Roy has, however, submitted that since the necessity for excavating the said canal and for the said purpose, demolition of unauthorised constructions and removal of the said dwellers from the huts and shanties by the sides of the said canal are essential and for an essential public purpose, such public purpose cannot be frustrated by the petitioner and/or other dwellers on both sides of the said canal by referring to Article 21 of the Constitution. He has submitted that the Supreme Court has specifically held that nobody has got any right to encroach upon the public land and if for genuine public purpose such eviction is required, the appropriate authorities will be quite competent to evict such encroachers. After hearing learned counsel for the parties it appears to me that it is essentially necessary to excavate the said canal without any further delay, more so, when the monsoon has already set in, and for the said purpose the

dwellers in the hutments and shanties by the sides of the said canal are got to be evicted and the said shanties and hutments are to be demolished. There is no manner of doubt that dwellers in the shanties and hutments by the sides of the canal belong to the weaker section of the community, and it may be reasonably accepted that because of the extreme poverty they had been compelled to reside by the sides of the canal in most unhygienic conditions for years together. There is also no manner of doubt that the State Government must seriously try to settle those unfortunate persons in the best possible manner as far as practicable. But it cannot be said that so long such alternative arrangement for rehabilitation can be made the State Government and/or the Calcutta Municipal Corporation cannot undertake the work of excavation, for the greater interest of a large number of residents in the City, of Calcutta.

6. From the affidavit filed on behalf of the State of West Bengal and also from the Statement made by Mr. Roy, on instructions from the Hon'ble Minister, as indicated hereinbefore, it appears to me that the State Government is not oblivious of the social problem associated with the petitioners and other dwellers by the sides of the said canal and the State Government has been giving its anxious consideration to rehabilitate them within the means and resources of the State Government as early as practicable.

7. In the aforesaid circumstances this writ petition fails and is dismissed. But in view of the fact that the petitioners and other persons have been residing there with the members of the family for a long tune and if they are evicted and shanties and hutments are demolished they will be made homeless, it is directed that the respondents should give sufficient notice to the dwellers that such removal operation would be taken and only after the expiry of 10 days from today the State Government will be free to take appropriate steps for removal of the said dwellers by the sides of the canal including the petitioners by removing the shanties and hutments belonging to them.

8. It is made clear that this 10 days" time is not given by this Court in recognition of the rights of the petitioners and other dwellers to continue the unauthorised encroachment by the sides of the canal but the same has been given on humane consideration that all on a sudden if the eviction takes place during this rainy season, a large number of persons including women and children will have immense suffering.

9. There will be no order as to costs.