

SC HAD UPHELD PAVEMENT DWELLERS' RIGHT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Heavy hand: Security personnel in front of demolished buildings in Jahangirpuri on Saturday. SUSHIL KUMAR VERMA

The North Delhi Municipal Corporation's bulldozers' show of strength against roadside stalls, and push carts in Delhi's Jahangirpuri may face resistance from a Constitution Bench judgment of the Supreme Court which had upheld the right to livelihood of pavement dwellers who ply their trade on the footpaths out of sheer economic compulsions.

Examining the issue that pavement dwellers cannot be treated as trespassers, a five-Judge Bench led by then Chief Justice of India Y.V. Chandrachud had held that their eviction should not lead to deprivation of their livelihoods.

Right to livelihood

The court had said that they should not be subject to harassment adding that their right to livelihood was an integral part of the right to life under Article 21 of the Constitution.

"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 live, 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. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live," the Supreme Court had held in the Olga Tellis case in 1985.

Though the right to reside and settle in any part of India under Article 19 (1)(e) cannot be read to confer the licence to encroach and trespass upon public property, the eviction of pavement dwellers and traders should be in accordance with the procedure established by law, the Constitution Bench had held.

This "procedure" should be "fair, just and reasonable".

"Any action taken by a public authority which is invested with statutory powers has to be tested by the application of two standards — The action must be within the scope of the authority conferred by law and it must be reasonable," the Constitution Bench had laid down.

"The State may not, by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21," the 1985 verdict had held.

It is in this context that the Supreme Court has asked people affected by the Jahangirpuri evictions to come forward with their grievances.

Alternate sites

In 2017, the Supreme Court, speaking through a Bench of Justices Kurian Joseph and Amitava Roy (both since retired), had upheld that authorities were obliged to provide alternative sites for

accommodation to evictees after consultation with them in a “meaningful manner”.

The authorities should ensure that people displaced were provided basic civic amenities at the site of relocation. The amenities should be “consistent with the rights to life and dignity of each of the citizens in the jhuggies”.

The top court had observed that authorities cannot say these people were not entitled to relocation because they had been obstructing the “right of way” of the public.

Right to shelter was a fundamental right under Article 21. It was a right recognised by international conventions and an integral part of the principles of natural justice, the court had held.

Justice Kurian’s judgment in the Sudama Singh case concerned the residents of New Sanjay Camp Slum Cluster whose jhuggies were demolished by the Public Works Department in 2009 to make way for an underpass.

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