

SMOTHERING THE HOUSING RIGHTS OF THE URBAN POOR

Relevant for: Indian Economy | Topic: Issues Related to Poverty, Inclusion, Employment & Sustainable Development

In a short order with devastating consequences, the [Supreme Court of India on August 31 ordered](#) the [removal of about 48,000 slum dwellings](#) situated along the railway tracks in Delhi. A three-judge Bench headed by Justice Arun Mishra, in one of his last orders before his retirement, directed State authorities to remove the *jhuggi jhopri* clusters in the railway safety zone within a period of three months. Most shockingly, the order stated that “no Court shall grant any stay with respect to removal of the encroachments” and in case any such interim order is granted “that shall not be effective”.

Relying on an affidavit filed by the Railways, the Court observed that there is a “predominant presence” of slums in close vicinity of the 140 km-long railway line in Delhi. It noted that while the National Green Tribunal had constituted a special task force for the removal of encroachments from railway property — “There seems to be some political intervention against removal of such encroachments”. The Court ordered that these “encroachments” should be removed within three months and “no interference, political or otherwise, should be there.”

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The Supreme Court order which seeks to summarily demolish informal settlements of poor urban residents is deeply disturbing and raises serious legal questions. The order is fundamentally flawed because the Court has ignored principles of natural justice, judicial precedents on the right to shelter, and state policies governing evictions.

The order violates principles of natural justice and due process since it decided on the removal of *jhuggi jhopris* without hearing the affected party, the *jhuggi* dwellers. The order was passed in the long-running case, *M.C. Mehta vs. Union of India & Ors.*, regarding pollution in Delhi and was in response to a report by Environment Pollution (Prevention & Control) Authority for the National Capital Region on the piling up of garbage along railway tracks. However, neither this case nor the report concerns itself with the legality of informal settlements. Still, the Court made an unconvincing connection between the piling of garbage and the presence of slums and gave an eviction order without giving the residents a fair hearing.

The Court ignored its long-standing jurisprudence on the right to livelihood and shelter upheld in various judgments. In the landmark decision concerning pavement-dwellers, a five-judge Bench of the Supreme Court in *Olga Tellis & Ors vs. Bombay Municipal Corporation & Ors.* (1985) held that the right to life also includes the “right to livelihood” and that no eviction shall take place without notice and hearing those affected. Further, in *Chameli Singh vs. State Of U.P.* (1995), the Supreme Court recognised the “right to shelter” as a component of the right to life under Article 21 and freedom of movement under Article 19(1)(e).

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The Court also failed to consider the policies and case laws on slum eviction and rehabilitation in Delhi. In *Sudama Singh & Others vs Government Of Delhi & Anr.* (2010), the High Court of Delhi held that prior to any eviction, a survey must be conducted and those evicted should have a right to “meaningful engagement” with the relocation plans. The procedure laid down in this judgment

formed the basis for the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015. This was reiterated in *Ajay Maken & Ors. vs Union Of India & Ors.* (2019), a case concerning the demolition of Shakur Basti on railway land, where the Delhi High Court invoked the idea of the “Right to the City” to uphold the housing rights of slum dwellers. This case led to the framing of a Draft Protocol for the 2015 Policy on how meaningful engagement with residents should be conducted. However, neither the case laws nor the state policies were referred to by the Court.

The Supreme Court order that threatens to leave lakhs of people homeless amid a health and economic emergency is callous and unconscionable. As the pandemic makes urban informal livelihoods more vulnerable, the UN Special Rapporteur on the right to adequate housing has called on member-states to declare an end to forced evictions. However, as in a recent report of the Housing and Land Rights Network (HLRN), over 20,000 people were displaced in 45 incidents of forced evictions between March 25 and July 31, when India was under lockdown. Over the last three years, over five lakh people have been evicted, most often for various “city beautification” projects.

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The courts have also played an active role in such demolition drives, often under the premise of environmental protection. The present order follows the trajectory of court-led evictions, highlighted by Anuj Bhuwania in his book, *Courting the People: Public Interest Litigation in Post-Emergency India*, whereby the court admits a Public Interest Litigation (PIL), ignores the specific issues and proceeds on a tangential topic, relies on reports of court-appointed committees and orders the demolition of slums, often without hearing the affected population. This represents a dangerous turn of PIL jurisprudence whereby its procedural relaxations are used to deny principles of natural justice to the most marginalised groups.

The promise of the right to housing offered by *Sudama Singh* and *Ajay Maken* is now being undone by an insidious and legally dubious order that pre-empts other courts from giving orders to stop the eviction. The Court disdainfully refers to how “political interference” does not allow “encroachments” to be evicted. However, it is often through such political negotiations that residents of informal settlements incrementally make claims on housing and exercise their “Right to the City”. These residents would now need to employ a combination of political and legal strategies to protect their housing rights and ensure that no eviction or rehabilitation is conducted without their prior informed consent.

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