

**CWP-19148-2010,
COCP-2139-2011 and COCP-1135-2012**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: 29.04.2016

1. CWP-19148-2010

Khori Gaon Residents Welfare Association (Regd.) through its President

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

2. COCP-2139-2011

Khori Gaon Residents Welfare Association (Regd.) through its President

... Petitioner(s)

Versus

Shri Krishan Mohan, Financial Commissioner and others

... Respondent(s)

AND

3. COCP-1135-2012

Municipal Corporation Faridabad

... Petitioner(s)

Versus

Uday Shankar

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

Present: Mr. Karamjit Verma, Advocate,
for the petitioner(s) in
CWP No19148-2010 and COCP No2139-2011.

Mr. Jasbir Mor, Advocate,
for the petitioner in COCP No1135-2012.

Mr. Randhir Singh, Addl. A. G. Haryana.

Paramjeet Singh Dhaliwal, J.

This order shall dispose of CWP-19148-2010, COCP-2139-2011 and COCP-1135-2012, as common questions of fact and law are involved in all these petitions.

Before proceeding further, a brief reference to the facts is necessary which are being extracted from CWP-19148-2010.

CWP-19148-2010 has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents not to demolish the shanty (jhuggis) of the members of the petitioner-association who have been residing and settled at Lakkarpur Khori Gaon, Faridabad since many decades.

In short, the case as set up by the petitioner-Khori Gaon Resident Welfare Association (for brevity 'petitioner-Association') through its President is to the effect that members of the petitioner-association are the residents of Lakkarpur Khori Gaon, Suraj Kund Road,

Faridabad in the State of Haryana. The slum clusters in the said locality came up at a time when there were mining activities being carried out in Aravali Hills area which were stopped in the year 1984-85 in view of directions of the Hon'ble Supreme Court. However, at some places, it continued till the year 2001. In fact, members of the petitioner-association belong to economically poor rural areas of the country who have seen little or no employment opportunities in their respective States. They came to Faridabad in search of employment subjecting themselves to life in inhumane conditions. They are economic migrants caught up in the iniquitous economic policies of the Governments. It is also averred that the members are mining labourers and their families are residing in the said area for many decades. The administration has never in past objected to their shanties which are approximately 2000 in number. To prove that the members of the petitioner-association have been residing in the said locality, the petitioner annexed ration-cards, identity cards of Haryana Khadan Mazdoor Union and acknowledgment slips of some of its members. It is the case of the petitioner that now the respondents came with bulldozers and demolished some of the shanties as a result of which number of school going children, senior citizens and other persons living there have been affected and rendered homeless. The demolition is being carried out without prior notice and following the principles of natural justice. Hence, this writ petition.

Upon notice, the respondents put in appearance through their counsel. Respondent Nos.1 to 3 and 5 and respondent No.4 filed their

separate written statements. It has been averred in written statement that the Government has already notified the land in question (popularly known as “Aravali Hills”) as 'forest' in the year 1992 under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 (for brevity, 'the Act'). The forest department has the statutory duty to protect, control and manage this area, to carry out forestry activities and to check non-forest activities. The petitioner and its members have no legal right or title over the land in dispute and proper notification and notices were issued many times by the respondents to the unauthorized occupants of the land to get it vacated, but still the land was not vacated. The Municipal Corporation, Faridabad has the ownership rights over the land in question while respondent Nos.1 and 5 have the control and management over that land. Reference to the judgment rendered in I.A. No.22 in Writ Petition (Civil) No.4677 of 1985, titled as '**M.C.Mehta vs. Union of India**', decided on 18.03.2004, has been made in which the Hon'ble Supreme Court has clarified that area covered under Section 4 of the Act would be treated as 'forest' and for use of it, for non-forestry purposes, it would be necessary to comply with the provisions of the Forest Conservation Act, 1980. In compliance of the judgment rendered in **M.C.Mehta's case (supra)**, the Forest Department had issued 60 days show-cause notices dated 10.11.2005 and 30.11.2005 to immediately stop all non-forestry activities on the land in question and also to stop violation of the provisions of the Act and the Forest Conservation Act, 1980. It is also averred that the answering respondents received complaints that some land grabbers and

miscreants were cutting the green forest and selling the notified land to the migrants of the State of Bihar, Uttar Pradesh etc. In pursuance of these complaints, the Sub Divisional Magistrate (Civil), Faridabad and Additional Deputy Commissioner, Faridabad had sent their reports that there were about 2800 shanties over about 58 acres of forest land. In pursuance of their reports, it was directed by the Forest Ministry that the said illegal encroachments should be immediately removed with the help of police, D.T.P. (Director, Town and Country Planning), Enforcement and S.D.M. Faridabad and the entire area should be properly fenced. The Municipal Corporation had also issued 15 days notices and also conducted proclamation (*munadi*) to inform these unauthorized occupants to remove their belongings and vacate the land in question.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that members of the petitioner-association have been residing in the area for more than three decades and approximately 2000 families including women, school going children and senior citizens reside in the said area. The members of the petitioner-association are slum dwellers and belong to poor strata of the society. They have sufficient documents to prove their residence for the last many years. They cannot be evicted forcibly. They are required to be rehabilitated. The demolition without providing alternative houses is contrary to the constitutional provisions and various judgments of the Hon'ble Supreme Court. It is contended that in fact,

these dwellers are backbone of the city and adjoining areas as they act as house-maids, helpers, drivers and washer-men etc. Learned counsel also contended that they are not getting any subsidy from the Government. On account of the demolition and dispossession, their families will suffer. They are earning their livelihood by doing various types of jobs.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and contended that members of the petitioner-association are encroachers and they have adversely affected the efforts of the forest department to protect the forest area as directed by the Hon'ble Supreme Court in ***M.C.Mehta's case (supra)***, and grant of any relief would embolden the encroachers. The documents placed on record, may be proof of only residence, but are not proof of title and ownership of the land in dispute. The Forest Department and Municipal Corporation have been continuously making efforts to prevent encroachment and retrieve land from encroachers from time to time. The Forest Department and Municipal Corporation have a right to evict the unauthorized encroachers from the said land, ownership of which vests in them. The eviction process is in compliance of the directions issued by the Hon'ble Supreme Court in ***M.C.Mehta's case (supra)*** to save Aravali Hills. The learned State counsel further contended that it is difficult to rehabilitate every person who may come to the State and set up shanties.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the respondents have initiated the demolition drive in the area where the members of the petitioner-association are residing, which includes hundreds of families, and also some of the shanties (slum clusters) have been demolished. There is no doubt that the members of the petitioner-association are illegal occupants on the Government's land and the land must be vacated for implementation of the project which is to be carried out by the respondents in pursuance to the directions of the Hon'ble Supreme Court.

In the light of the above facts, it needs to be examined why slums are created and why people from the rural areas are migrating to the metropolitan/thriving cities. To me, one of the reasons appears to be inadequate development of villages in respect of employment, health, education and other facilities which are being provided in the cities. The migrants who come to the cities to find employment, start residing in the cities subjecting themselves to live in inhumane conditions. In fact, they are the victims of non-development back home specifically in villages. The right to livelihood and shelter has not been defined in so many words in the Constitution as a fundamental right.

The year 2011 Census of our country is 15th census since 1872, according to which the urban population is surging at a higher pace as compared to the rural population.

It appears that in our country, emphasis is laid down on the development of big cities, paying little attention to the villages and small towns which have, virtually, been left to fend for themselves. The

absence of employment opportunities besides inadequate education and health facilities have driven thousands of rural people seeking better economic opportunities to metropolitan and thriving cities for earning livelihood. The need of the hour is to arrest massive rural urban migration. The migrants come to the cities with earnest desire for livelihood and meager requirements of two square meals and a roof over their heads. The sky-rocketing prices of the property lead them to stay on the pavements and the property of Government lying vacant. In those places, they make their shanties in the shape of clusters and live in unhygienic and inhumane conditions to make both ends meet. In fact, the migrants are source of manpower for big cities as they act as house-maids, helpers, drivers, washer-men, vegetable sellers etc. They are not being provided with any subsidy as are being provided to the big business houses by the Government. They earn their livelihood for themselves and their family members by doing hard labour throughout the day. The demolition of their shanties without any notice and not providing alternative accommodation, as has been held by the Hon'ble Supreme Court in *Olga Tellis v. Municipal Corporation of Greater Bombay*, (1985) 3 SCC 545, appears to be an inhumane action of the respondents.

The Hon'ble Supreme Court in *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*, AIR 1981 (SC) 746 has held as under:

“9. But the question which arises is whether the right to life is limited only to protection of limb or

faculty or does it go further and embrace something more. 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 human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness : it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against

torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21. unless it is reasonable, fair and just.”

In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**, AIR 1997 (SC) 152, the Hon'ble Supreme Court held as under:

“25. Article 19(e) of the Constitution provides to all citizens fundamental rights to travel, settle down and reside in any part of the Bharat and none have right

to prevent their settlement. Any attempt in that behalf would be unconstitutional. The Preamble of the Constitution assures integrity of the nation, fraternity among the people and dignity of the person to make India an integrated and united Bharat in a socialist secular democratic republic. The policy or principle should be such that everyone should have the opportunity to migrate and settle down in any part of Bharat where opportunity for employment or better living conditions are available and, therefore, it would be unconstitutional and impermissible to prevent the persons from migrating and settling at places where they find their livelihood and means of avocation. It is to remember that the Preamble is the arch of the Constitution which accords to every citizen of India socio-economic and political justice, liberties, equality of opportunity and of status, fraternity, dignity of person in an integrated Bharat. The fundamental rights find the directive principles and the Preamble being trinity of the Constitution, the right to residence and to settle in any part of the country is assured to every citizen. In a secular socialist democratic republic of Bharat hierarchical caste structure, antagonism towards diverse religious belief and faith and dialectical difference would be smoothened and the people would be integrated with dignity of person only when social and economic democracy is established under rule of law. The difference due to cast, sect or religion pose grave threat to affinity, equality and fraternity. Social democracy means a way of life with dignity of person as a normal social intercourse with liberty, equality

and fraternity. The economic democracy implicits in itself that the inequalities in income and inequalities in opportunities and status should be minimised and as far as possible marginalised. The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers' case, Olga Tellies case and the latest Chameli Singh's case and host of other decisions which need no reiteration. Suffice it to state that right to life would include right to live with human dignity. As held earlier, right to residence is one of the minimal human rights as fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence.”

In ***M/s. Shantistar Builders v. Narayan Khimalal Totame***, (1990) 1 SCC 520, the Hon'ble Supreme Court held that basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilised 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 that of a human being for shelter has to be kept in view. For an 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.

In ***Chameli Singh v. State of U.P.***, AIR 1996 (SC) 1051, the Hon'ble Supreme Court held as under:

“7. 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 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 to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be 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. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional right.”

In sum and substance, the right to life guaranteed by Article 21 of the Constitution of India includes the right to livelihood. If a person

is evicted from the place where he is residing unauthorizedly and his shanty is demolished, he will certainly lose his livelihood too, for to work he must live somewhere. Perhaps for this reason, the Hon'ble Supreme Court directed that alternative land sites must be allotted to the slum dwellers, not at a too far away distance from their place of work. Otherwise also, it is the duty of the State to look into the needs and necessities of poor people who are not in a position to acquire the minimum three needs of a person i.e. "food, clothing and shelter". These are the basic needs of every human being.

During the course of arguments, it has been brought to the notice of this Court that residents of same area filed CWP-19910-2014 wherein certain directions have been issued by this Court. Learned State counsel submits that instant petition may be disposed of in terms of the order dated 25.04.2016 passed in CWP-19910-2014.

This Court is of the opinion that encroachment is not required to be encouraged and right to residence can also not to be held as a fundamental right, but the fact remains that something is required to be done and some alternative arrangement should be made for re-settlement and rehabilitation of the poor people, who live in shanties, in view of law laid down by the Hon'ble Supreme Court in ***Olga Tellis's case (supra)*** and other judgments. In view of the statement made by learned State counsel, the present writ petition is disposed of in terms of the order dated 25.04.2016 passed in CWP-19910-2014.

With the aforesaid observations, CWP-19148-2010 is disposed of accordingly.

However, there is nothing on file on the basis of which it can be proved that the contemnors violated the orders of this Court.

Resultantly, COCP Nos.2139 of 2011 and 1135 of 2012 stand dismissed.

Before parting with the judgment, issue raised by the learned State counsel to the effect that the concerned State from where the migrant people come and unauthorizedly occupy the land in another State, be burdened with financial liability to provide all the amenities for a dignified living and for their rehabilitation and re-settlement. It is true that Article 19 (1) (d), (e) and (g) of the Constitution of India gives right to the citizens of India to move freely throughout the territory of India, to reside and settle in any part of territory of India and to practice any profession, or to carry on any occupation, trade or business. Article 38, of the Constitution mandate the State to secure social order for promotion of welfare of the people. Article 39 directs the State towards securing the citizens, men and women equally, have the right to adequate means of livelihood. Ownership and control of the material resources of the community are so distributed as best to subserve the common good etc. Article 46 of the Constitution mandates that the States shall promote with special care the educational and economic interest of the weaker sections of the society and shall protect them from social injustice and all forms of

exploitation. In the light of these Articles, *inter*-State migration takes place and the observations in this regard have been made in ***Ahmedabad Municipal Corporation's case (supra)***.

Now the question arises can the State, where the migrants start residing, although may be poor and weaker sections of the society, can be burdened with all liabilities qua their dignified living, for affording opportunity of employment and their well being? This is a larger issue which is required to be examined at the national level and by the parliamentarians and legislatures before framing appropriate policy and law. Inter state migration management is necessary for facilitation as well as control of migration for this purpose trans-state cooperation in shaping and implementing migration policy is required. The Central Government in consultation with the State Governments is required to frame a migration policy and implement the same in the interest of weaker sections of the society as the migration occurs due to non-development and less opportunities of employment in the home State. It is true that the States have authority to decide individually how they want to manage migration to their own territory. The States have primary responsibility for their own domiciles. The States make planning, programming and budgeting according to their financial resources. The accountability of the States to citizens is often stated explicitly in State laws and the constitutions. It is the corner stone of budgeting. In some areas, the States exercise their authority and take responsibility specifically with regard to migrant workmen/labourers, under 'The Inter-

state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and rules framed thereunder. Learned counsel for the parties have failed to bring to the notice of this Court existence of any inter-State migrants policy or enactment framed by the Central Government for re-settlement and rehabilitation of inter-State migrants, who start living in shanties in inhumane conditions. Inter-State migration management policy is a necessity and is required to be framed by the Central Government in consultation with the concerned States with due respect to Article 21 Protection of life and personal liberty – the fundamental right to life is right to residence, livelihood and human rights. Article 19(1) (d) (e) mandates freedom of movement and to reside and settle. The Preamble of the Constitution of India mandates social, economic and political justice, equality of status and opportunity for all. But for the masses, it is actually a dream more than a reality. All dreams if made real, can turn this country into a country of social responsibility. The Centre and States are responsible for the well-being of its citizens specifically deprived, downtrodden and weaker sections of the society. I am sure that the social justice will not cause economic collapse. In view of the constitutional provisions, the Centre and the States from which the migrants move to the other States for earning better livelihood etc., should bear at least a part of the financial burden when they are to be rehabilitated and re-settled in a State other than the home State. The Central Government is requested to examine this issue and frame a policy in this regard after deliberation with the States. The States may adopt and

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consistently follow such policy.

Copy of this order be sent to the Union Law Ministry and
Law Commission of India for consideration and appropriate action.

29.04.2016

parveen kumar

**(Paramjeet Singh Dhaliwal)
Judge**