A AHMEDABAD MUNICIPAL CORPORATION

v.

NAWAB KHAN GULAB KHAN AND ORS.

OCTOBER 11, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Constitution of India, 1950 : Articles 19(1)(e) and 21.

Pavement—Dwellers—Unauthorised encroachments of pavements—
C *Eviction of—Principles of Natural Justice—Compliance with—Removal of such encroachments—By Municipal Corporation—Held : such unauthorised encroachments affected pedestrians' right to free passage and also created unhygenic ecology, traffic hazards and risk to lives of pedestrians—Hence, Municipal Corporation entitled to remove encroachments without any delay, for, if it allowed encroachers to remain for a long period they might claim of*
D *semblance of right—But such removal of encroachers must be according to the procedure which should be just, fair and reasonable—Such a procedure should be pragmatic and realistic to meet given fact—Situation—If encroachment was of recent origin no need to follow principles of natural justice—But if encroachers were settled for a long time normally notice of two weeks or 10*
E *days would be necessary to meet fairness of procedure—Bombay Municipal Corporation Act, 1955—Bombay Provincial Municipal Corporation Act.*

Pavement—Dwellers—Right to shelter—Held : formed part of fundamental rights—Though no person had right to encroach on footpaths, pavements or public streets, State/Municipal Corporation had constitution-
F *al/statutory duty to provide housing accommodation to the weaker sections of society, if necessary by acquiring surplus land under Urban Land Ceiling Act—However, in all cases of ejectment of encroachers, it was not obligatory to provide alternative accommodation—No absolute principle of universal application could be laid down in this regard and it would depend upon facts*
G *of each case.*

Articles 38, 39, 46, 243-G, 243-W—Pavement—Dwellers—Right to shelter—Socio-economic justice for SCs, STs, OBCs, rural and urban poor—Unauthorised encroachment of pavements—Problem of—Held : In view of constant migration of people from rural to urban areas resulting in mushroom
H *growth of slums and encroachment of pavements, Government should pro-*

vide infrastructural facilities in rural areas by proper planning and execution—Local bodies such as Gram Panchayats, Zila Parishads and Municipalities should prepare plans in accordance with Articles 243-G and 243-W—Scheme for housing accommodation should be evolved for SCs, STs, OBCs and rural and urban poor as an integral plan—State should earmark separate allocation in annual budget for implementation of such a scheme—Transfer of such housing accommodation allotted to these persons would be void ab initio—Comprehensive legislation in this regard recommended.

Articles 32, 226 and 136—Pavement—Dwellers- Encroacher—Right to approach court—Held : Encroachers of pavement also have right to approach court against their ejectment by Municipal Corporation—Court—Required to examine if encroacher had any right to relief—State or local bodies should assist court by placing factual and legal position.

Administrative Law:

Natural Justice—Audi alteram partem—Applicability of—Held : Grant of hearing or notice not necessary for undoing an illegality of a recent origin—High handed and unauthorised acts did not call for opportunity of hearing which would be a tedious and time consuming process—Only if illegality was allowed to continue for a long time whereby semblance of right could be claimed an opportunity of hearing was necessary.

The respondents were pavement-dwellers in unauthorised occupation of footpaths in a main road of the city. The respondents had constructed huts thereon. When the appellant- Corporation sought to remove their encroachments, the respondents approached the High Court by way of a writ petition. The High Court directed the appellant-Corporation not to remove the respondents' huts until suitable accommodation was provided to them. The High Court also further held that before removing the unauthorised encroachments the procedure of hearing, consistent with the principles of natural justice should be followed. Being aggrieved the appellant-Corporation preferred the present appeal.

The questions before this Court were (1) Whether the respondents were liable to ejectment from the encroachments of pavements of the roads and whether the principle of natural justice, viz., *Audi Alteram Partem* required to be followed and, if so, what was its scope and content? (2)

A whether the appellant was under an obligation to provide permanent residence to the hutment dwellers and, if so, what would be the parameters in that behalf?

Allowing the appeal, this Court

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HELD: 1.1. Footpath, street or pavement are public property which are intended to serve the convenience of general public. 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 roads. The main reason for laying out pavements is to ensure that the pedestrians C are able to go about their daily affairs with a reasonable measure of safety and security. That facility which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of D traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. Pavement dwellers should allow passing and re-passing by the pedestrians. No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. Every municipal Corporation has statutory obligation to provide free flow of E traffic and pedestrians' right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allow the encroachments on the pavements or footpaths which is a constant source of unhygenic ecology, traffic F hazards and risk prone to lives of the pedestrians. Encroachment of public property undoubtedly obstructs and upsets planned development, ecology and sanitation. Public property needs to be preserved and protected. It is but the duty of the State and local bodies to ensure the same. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to G prevent construction thereon and to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

Sodan Singh v. *New Delhi Municipal Committee & Anr.*, [1989] 2 SCR H 1038 and *Olga Tellies* v. *Municipal Corporation of Greater Bombay,* [1985]

3 SCC 545, followed. A

1.2. The removal of encroachment needs urgent action. The competent authority should ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the B pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places . On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no C one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time D for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and E principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the F procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. G

2.1 . Article 19(1)(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 H

A 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. 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 and 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 caste, sect or religion pose grave threat to affinity equality and fraternity. Social democracy means away 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. 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 it's largesse 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. That apart, Section 284(1) of the Act also imposes a statutory duty on the Corporation to make provision for accommodation. This duty is a part of the Constitutional mandate. Under the Urban Ceiling Act, the excess urban vacant land is earmarked to elongate the above objective.

2.2. The right to life enshrined under Article 21 includes meaningful right to life and not merely animal existence. Right to life would include

right to live with human dignity. Right to life has been assured as a basic human right under Article 21. Though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of his living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live.

Olga Tellis **v.** *Municipal Corporation of Greater Bombay*, **[1985] 3 SCC 545;** *Chameli Singh & Ors.* **v.** *State of U.P. & Anr.*, **[1996] 2 SCC 549;** *Shantistar Builders* **v.** *Narayan Khimlal Totame*, **[1990] 1 SCC 520 and** *P.G. Gupta* **v.** *State of Gujarat*, **[1995] Supp. 2 SCC 182, followed.**

3.1. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/footpaths etc. Therefore, it would be for the Union of India, all the State Governments and the planning Commission, which are Constitutional functionaries, to evolve such policies and schemes as are necessary to provide continuous means of employment in the rural area so that in the lean period, after agricultural operations, the agricultural labour or the rural poor would fall back upon those services to eke out their livelihood. The middle class and upper middle class people in the rural areas, due to lack of educational and medical facilities, migrate to the nearby urban areas resulting in constant increase in urban population. Once infrastructural facilities are provided by proper planning and execution, necessarily the urge to the migrate to the urban areas would no longer compel the rural people for their transplantation in the urban areas. It would, therefore, be for the executive to evolve the schemes and have them implemented in letter and spirit.

3.2. The Gram Panchayats, the Zilla Parishads and municipalities are local bodies. Parts IX and IXA of the Constitution have brought, through Articles 243 to 243ZG, the Panchayats,, Zilla Parishads and

A municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the rule of law. Article 243G and 243W enjoin preparation of plans for economic development and social justice. The State, i.e., the Union of India and the State Governments and the local bodies constitute an integral executive to, implement the directive principles contained in Part IV through planned development under the B rule of law. The appellant-Corporation, therefore has Constitutional duty and authority to implement the directives contained in Articles 38, 39 and 46 and all cognate provisions to make the fundamental rights available to all the citizens as meaningful. It would, therefore, be the duty of the appellant-Corporation to enforce the schemes in a planned manner by C annual budgets to provide right to residence to the poor.

3.3. Courts cannot give direction to implement the scheme with a particular budget as it being the executive function of the local bodies and the State to evolve their annual budget. As an integral passing annual D budget, they should also earmark implementation of socio-economic justice to the poor. The State and consequentially the local authorities, are charged with the Constitutional duty to provide the weaker sections, in particular the Scheduled Castes and Scheduled Tribes with socio-economic and political injustice and to prevent their exploitation and to protect them from injustice. When the State, namely, Union of India or the E appropriate State Government or the local bodies implement these schemes for housing accommodation of the Scheduled Castes and Scheduled Tribes or any other schemes, they should, in compliance with mandates of Articles 46, 39 and 38 annually provide housing accommodation to them within the allocated budget and effectively and sincerely F implement them using the allocations for the respective schemes so that the right to residence to them would become a reality and meaningful and the budget allocation should not either be diverted or used for any other scheme meant for other weaker sections of the society. Any acts in violation thereof or diversion of allocated funds, misuse or misutilisation, would be in negation of constitutional objectives defeating and deflecting the goal G envisioned in the Preamble of the Constitution. The executive forfeits the faith and trust reposed in it by Article 261 of the Constitution. Similarly separate budget would also be allocated to other weaker sections of the society and the backward classes to further their socio-economic advancement. As a facet thereof, housing accommodation also would be evolved H and from that respective budget allocation the amount needed for housing

accommodation for them should also be earmarked separately and implemented as an on-going process of providing facilities and opportunities including housing accommodation to the rural or urban poor and other backward classes of people. A

4.1. The policy of the Government in executing the policies of providing housing accommodation either to the rural poor or the urban poor, should be such that the lands allotted or houses constructed/plots allotted be in such a manner that all the sections of the society, Scheduled Castes, Scheduled Tribes, Backward Classes and other poor are integrated as cohesive social structure. The expenditure should be met from the respective budgetary provisions allotted to their housing schemes and in the respective proportion be utilised. All of them would, therefore, live in one locality in an integrated social group so that social harmony, integrity, fraternity and amity would be fostered, religious and caste distinction would no longer remain a barrier for harmonised social intercourse and integration. The facts in this case do disclose that out of 29 encroachers who have constructed the houses on pavements, 19 of them have left the places, obviously due to such pressures and interests of rest have come into existence by way of purchase. When such persons part with possession in any manner known to law, the alienation or transfer is opposed to the Constitutional objectives and public policy. Therefore, such transfers are void *ab initio* confering no right, title or interest therein. In some of the States law has already been made in that behalf declaring such transfers as void with power to resume the property and allot the same to other needy people from these scheme. Other States should also follow the suit and if necessary the Parliament may make comprehensive law in this behalf . The Union Law Commission would examine this question. B C D E F

4.2. It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Judicial review is the basic structure of the Constitution. Every citizen has a fundamental right to redress the perceived legal injury through judicial process. The Constitutional Court, therefore, has a Constitutional duty as sentinel quivive to enforce the right of a citizen when he approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief . In that behalf, it is the salutory duty of the State or the local G H

A bodies or any instrumentality to assist the Court by placing necessary factual position and legal setting for adjudication and for granting/refusing relief appropriate to the situation. Therefore, the mere fact that the encroachers have approached the Court would be no ground to dismiss their cases. The contention of the appellant-Corporation that the intervention of the Court would aid impetus to the encroachers to abuse the B judicial process is untenable. If the appellant-Corporation or any local body or the State acts with vigilance and prevents encroachment immediately, the need to follow the procedure enshrined as an inbuilt fair procedure would be obviated.

C 5.1. It is true that in all cases it may not be necessary, as a condition for ejectment of the encroacher, that he should be provided with an alternative accommodation at the expense of the State which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case D is required to be examined on the given set of facts and appropriate direction or remedy be evolved by the Court suitable to the facts of the case. Normally, the Court may not, as a rule, direct that the encroacher should be provided with an alternative accommodation before ejectment when they encroached public properties.

E 5.2. Since the Municipal Corporation has a constitutional and statutory duty to provide means for settlement and residence by allotting the surplus land under the Urban Land Ceiling Act and if necessary by acquiring the land and providing house sites or tenements, as the case may be, according to the scheme formulated by the Corporation, the financial F condition of the Corporation may also be kept in view but that would not be a constraint on the Corporation to avoid its duty of providing residence/plot to the urban weaker sections. It would, therefore, be the duty of the Corporation to evolve the schemes. In the light of the schemes now in operation, opportunity should be given to the 10 named petitioner-encroachers to opt for any one of the three schemes and the named two G persons who are carrying on commercial activities should immediately stop the same. If they intend to have any commercial activity or hawking, it should be availed of as per the directions already issued by this Court in *Maha Gujarat Hawkers Vyapar Mahajan's* case and no further modification or any directions contra thereto need to be issued. Out of these 10 H persons, if they are eligible within the terms of the schemes and would

satisfy the income criterion, they would be given allotment of the sites or the tenements, as the case may be, according to their option. In case they do not opt for any of the schemes, 21 days' notice would be served on them and other encroachers and they may be ejected from the present encroachment. As regards other persons who have become encroachers by way of purchase either from the original encroachers or encroached pending writ petition/appeal in this Court, they are not entitled to the benefits given to the, 10 encroachers. As regards those who are eligible according to the guidelines in the schemes and also fulfil the income criterion, it may be open to the Corporation to extend the same benefits in either of the three schemes, if they ,so desire. It is, however, made clear that no specific direction is being given in this behalf lest it would amount to encouraging the people to abuse the judicial process to avail of such a remedy by encroaching public property.

Maha Gujarat Hawkers Vyapar Mahajans **v.** *Ahmedabad Municipal Corporation,* **SLP Nos. 47-51/96, referred to .**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12992 of 1996.

From the Judgment and Order dated 20.2.91 of the Gujarat High Court in S.C.A. No. 5351 of 1982.

Arun Jaitley, Shakil Ahmed Syed and Ms. Kirti Raval for the Appellant.

D. Dave, Mrs. K. Sharda Devi, T.R. Andhyarujina and Yashank Adhyaru for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

This appeal by special leave arises from the judgment and order made on February 20, 1991 by the Gujarat High Court in Special Civil Application No. 5351 of 1982.

The admitted facts are that 29 persons had filed the writ petition in the High Court. They are pavement-dwellers in unauthorised occupation of footpaths of the Rakhial Road in Ahmedabad which is a main road.

A They have constructed huts thereon. When the Corporation sought to remove their encroachments on December 10, 1982, they approached the High Court under Article 226 of the Constitution. The High Court granted interim stay of removal of the encroachment. By the impugned judgment, the High Court directed the Municipal Corporation not to remove their huts until suitable accommodation was provided to them. The High Court B also further held that before removing the unauthorised encroachments the procedure of hearing, consistent with the principles of natural justice should be followed.

We requested Shri Dushyant Dave, the learned senior counsel of the C Bar to assist the Court as *amicus curiae* and Smt. K. Sharda Devi has been assigned as legal Aid counsel to argue on the behalf of the respondents since they are not appearing either in person or through counsel. By order dated September 11.1995 this Court directed the appellant thus :

> "We think that the Municipal Corporation should frame a Scheme D to accommodate them at the alternative places so that the hutmen can shift their residence to the places of accommodation provided by the Corporation to have permanent residence. Corporation is accordingly directed to frame a scheme and place before this Court within two months from today".

E Pursuant thereto, a Scheme has been framed and placed before this Court. It would appear that only 10 persons out of original petitioners in the High Court whose names have been mentioned in the supplementary affidavit are residing there; of them Nurmahommad Samsuddin and Hakimuddin Karimudin have converted their huts into commercial units F run on the pavement. This road is 80 feet wide with 10 and 8 feet wide foot-paths on two sides of the road. At present 56 persons, obviously including 10 original encroachers are in occupation of hutments erected on the footpaths and whereabouts of 19 original petitioners who have left the area in consideration of money they have accepted, are not known. In their G place, others have occupied the huts by making payments.

Shri Dushyant Dave has also further submitted proposals as alternative to the Scheme. Having heard the counsel on both sides, we reserved the case for consideration. At the outset, we express our deep appreciation for the valuable assistance rendered by Shri Dushyant Dave and also H for the fair arguments advanced by Shri Arun Jaitley, learned senior

counsel appearing for the Corporation. A

The questions for consideration are: (1) whether the respondents are liable to ejectment from the encroachments of pavements of the roads and whether the principle of natural justice, viz., *audi alteram partem* requires to be followed and, if so, what is its scope and content? (2) whether the B appellant is under an obligation to provide permanent residence to the hutment dwellers and, if so, what would be the parameters in that behalf? The questions are dealt with later. on the first question, Sections 63(1)(19) of the Bombay Municipal Corporation Act, 1955 (as applicable to Gujarat) or Section 231 of the Bombay Provincial Municipal Corporation Act (BPMC Act) empowers the Commissioner to remove any wall, fence, C rail,post, step, booth or other structure or fixture, permanent or moveable, which shall be erected or set up in or upon any street or upon or over any open channel, drain, well or tank, contrary to the provisions of sub- section (1) of Section 312 after the same came into force in the city of Ahmedabad or in the Super-bazars after the Bombay Municipal (Extension of Limits) D Act, 1950 came into force or in the tended suburbs after the date of the coming into force of the Bombay Municipal Act, 1955 (for short, the "Act"). The power to remove encroachments on street, pavement or footpath was conferred upon the Commissioner, the highest officer of the Municipal Corporation, who acts with high degree of responsibility and duty to implement the provisions of the Act. Every citizen has a right to pass or E repass on the pavement, street, footpath as general amenity for convenient traffic. A constitution Bench of this Court in *Sodan Singh Etc. Etc.* v. *New Delhi Municipal Committee & Anr. Etc.*, [1989] 2 SCR 1038 *was confronted with and had considered the question* "can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he F can squat and engage in trading business? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. Hawkers cannot be allowed to, or be permitted to, carry on trade or business on every road in the city. If the G road is not wide enough to conveniently accommodate the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say on Sundays when the rush considerably thins out." Thereby, this Court has minimised the hardship to pedestrians and the hawkers in doing their business by hawking on the public street and at the same time has protected the public from free passes or re-passes of the traffic on the road, pavement H

A or footpath. In *Olga Tellis* v. *Municipal Corporation of Greater Bombay*, [1985] 3 SCC 545, another constitution Bench had held that "we are, therefore of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of the encroachment on the footpath over which the public has right of passage cannot be B regarded as unreasonable, unfair or unjust. There is no static measure of reasonableness which can be applied to all situations alike. Indeed, the question "Is this procedure reasonable?" implies and postulates the inquiry as to whether the procedure prescribed is reasonable in the circumstances of the case."

C It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for D which they are carved out from portions of public roads. The main reason for laying out pavement is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. E The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and re-passing by the pedestrians. No one has a right to make use of a F public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

G This view firmly laid down by this Court in *Olga Tellis* case thus :

> "No person has a right to encroach by erecting a structure or otherwise on footpaths and pavements or other place reserved or earmarked for a public purpose like (for e.g. garden or H playground) and that the provision contained in Section 314 of the

Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case." A

The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To B become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment C needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of D regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the E procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then F necessarily a *modicum* of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure G and principle of giving opportunity to remove the encroachment by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice. H

A It is not in dispute that Rakhial Road is one of the important main road in the city of appellant-Corporation and it needs removal of encroachment for free passing and re-passing of the pedestrians on the pavements/footpaths. But the question is: whether the respondents are entitled to alternative settlement before ejectment of them?

B Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself C and his family; it includes food, clothing, *housing*, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the con- D tinuous improvement of living conditions. In *Chameli Singh & Ors.* v. *State of U.P. & Anr.*, [1996] 2 SCC 549, a Bench of three Judges of this Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. In paragraph 8 it has been held thus :

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> "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 F 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, sociel and cultural rights enshrined in the Universal Declaration of Human G 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 H 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 civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a 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 culture 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."

Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its preamble. *Articles 39 and 38* enjoins the State to provide facilities and opportunities. *Articles 38 and 46* of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavour to eliminate inequalities in status. *In that case*, it was held that to bring the Dalits and the Tribes into the mainstream of national life, the State was to provide facilities and opportunities as it is the duty of the State to fulfil the basic human and constitutional rights to residents so as to make the right to life meaningful. In *Shantistar Builders* v. *Narayan Khimalal Totame*, [1990] 1 SCC 520, another Bench of three Judges had 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.

A 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 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 B would allow him to grow in every aspect-physical, mental and intellectual. The surplus urban-vacant land was directed to be used to provide shelter to the poor. In *Olga Tellis* case (supra), the Constitution Bench had considered the right to dwell on pavements or in slums by the indigent and the same was accepted as a part of right to life enshrined under Article 21; their ejectment from the place nearer to their work would be depriva- C tion of their right to livelihood. They will be deprived of their livelihood if they are evicted from their slum and pavement dwellings. Their eviction tantamounts to deprivation of their life. The right to livelihood is a traditional 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 D abrogation. Such deprivation would not only denudes life of its effective content and meaningfulness but it would make life impossible to live. The deprivation of right to life, therefore, must be consistent with the procedure established by law. In *P.G. Gupta* v. *State of Gujarat*, [1995] Supp. 2 SCC 182, another Bench of three Judges had considered the mandate of human E right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and had held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The aforesaid principles have been expressly F embodied and in-built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person. Article 22 of the Declaration of Human Rights envisages that everyone has a right to social security and is entitled to its realisation as the economic, social and cultural rights are indispensable for his dignity and free development of his personality. It would, therefore, be clear that G though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to H make the right to life meaningful, effective and fruitful. Right to livelihood

is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the constitutional objectives.

That apart, Section 284(1) of the Act also imposes a statutory duty on the Corporation to make provision for accommodation enjoining upon the Commissioner, if it is satisfied that within any area or any part of the City it is expedient to provide housing accommodation for the poor classes and that such accommodation can be conveniently provided without making an improvement scheme, it shall cause such areas to be defined on a plan. The Corporation is required to pass a resolution authorising the Commissioner who shall thereupon have power to provide such an accommodation either by erecting buildings or in any other manner on any land belonging to the Corporation or any land acquired by the Corporation for the purpose or by conversion of any building belonging to the Corporation into dwelling for poor classes or by enlarging, altering or repairing or improving any buildings, which have, or an estate or interest which has been acquired by the Corporation. This duty is apart of the Constitutional mandate, Under the Urban Ceiling Act, the excess urban vacant land is earmarked to elongate the above objective.

The appellant-Corporation has stated that in its resolution No. 544 dated August 17, 1976 it was resolved that no pavement dwellers/hut dwellers existing as on May 1, 1976 would be removed by the corporation without providing alternative accommodation. This cut off date was introduced for the reason that they had conducted a detailed survey of slum-dwellers residing in the city and had identified 81,255 hutments/pavements comprising of 4,15,000 slum dwellers. They were photographed and identity cards were given to them so that they could get the protection from removal until alter accommodations were provided to them. Out of 81,255 hutments, 1864 are pavement dwelling units. In furtherance thereof, they evolved several schemes. Of them three schemes are in operation. The first scheme relates to the open plots at Narol. As per that scheme plots of land each admeasuring 25 square metres had under Urban Land Ceiling and regulation Act, 1976 comprised in the total land of an extent of 38,749 square metres in Survey No. 41, were directed to be allotted to the urban

A poor. The Government by its resolution has decided that an urban poor family whose annual income is below Rs. 18,000 is entitled to the allotment of said plots. They have suggested in their affidavit filed by Rasikbhai, Deputy Commissioner of the appellant-Corporation that they had addressed the Collector of allotment regarding 35 plots reserved for hut-
B ments. It is further stated that if the 10 persons who were original petitioners in the writ petition are willing to vacate the present encroachments they are prepared to have the 25 sq. mtr. plots in Narol Scheme allotted to them. The second alternative scheme suggested was the Vinzol Site and Services Scheme evolved by the Gujarat Slum Clearance Board. Under the scheme, plots were available at Vinzol and Vivekananda Nagar
C respectively. At Vinzol, cost of a plot admeasuring 32 sq. metres. of land is Rs. 9,468. The initial payment to be made is Rs. 3,941 and thereafter monthly instalment of Rs. 107 for 11 years is required to be paid. The accommodation provided in that scheme includes plinth area plus W.C. In the Slum Clearance Scheme of Vivekananda Nagar, plots admeasuring
D 19.52 sq. mtr. of land would be available at a cost of Rs. 8,910. The initial payment is Rs. 5,282 and the monthly instalment payable thereafter is of Rs. 145 for a period of 11 years. It includes plinth area plus W.C. and Chokadi. There are around 700 to 1000 unallotted units available and if the respondents are willing they would be provided with the accommodation in the said Scheme. Thirdly, it was stated that there are hutment
E dwelling units at Vinzol/Lambha Part I and Lambha Part II of Economically Weaker Sections Scheme operated by Gujarat Slum Clearance Board. Therein, at Vinzol plot admeasuring 15.50 sq. mtrs. or 14.76 sq. mtrs. of land at Lambha with facility of one room, W.C. and Chokadi are available. 142 tenements are available at Vinzol. 140 tenements are available at
F Lambha Part I and 150 tenements are available at Lambha part II. This was the information furnished by the Gujarat Slum Clearance Board. The schemes are floated for economically weaker sections of the society and the cost of each tenement at Vinzol is Rs. 16,187 and of tenement at Lambha Part I and Part II is Rs. 17,094 and Rs. 18,030 respectively. The initial payment to be made for the accommodation at Vinzol is Rs. 6604
G and in respect of tenement at Lambha Part I is Rs. 7,476 and for Part II it is Rs. 7,200. The monthly instalment for Vinzol tenement is Rs. 131 to be paid for 9 years 7 months and for Lambha Part I, the instalment is of Rs. 141 per month to be paid for 10 years and for Part II it is Rs. 142 per month to be paid for 14 years. The annual family income limit for these
H tenements is also Rs. 18,000. Those family units of Vinzol who qualify the

income criteria are eligible for allotment. A

In the statement made on behalf of the hutment dwellers, Shri Dushyant Dave has stated that the aforesaid units are situated at a far away place and direction to vacate the pavements and occupation of the premises thereat would deprive the respondents of their livelihood and render them without shelter and means of livelihood. A further affidavit was filed on behalf of the Corporation wherein it is stated that all infrastructural facilities are available at the respective places. They are fully developed areas with all basic amenities. They are at a distance of about 8 kms. from the city. Near about those places are many factories and other commercial organisations where the respondent-encroachers can find out their livelihood by working in the factories. Public transport is also available there. It was also stated, that Vinzol, Vivekanand Nagar and Lambha are developed areas and, therefore, it is easy to find out work in the vicinity of those areas. About 15,000 persons are at present living in each of the three Schemes, with all basic amenities. Shri Dave has given suggestions and submitted that the Corporation should be directed to evolve the scheme under Section 284 (i) of the Act to discharge the constitutional obligations and to provide near about the place in Rakhial Road so that the respondents would work in the neighbourhood and would eke out their livelihood. To this it was stated by the appellants that the open lands available near Rakhial Road were earmarked for the schools, park/public amenities and there is no vacant land in the nearby place.

B C D E

Shri Dave further suggested that the Corporation would relax their census of 1976 and adopt 1991 census and all those who are residing in the city for at least 10 years prior to January 1, 1995 should be provided with built up accommodation so that it would provide an alternative viable right to residence. If the land belonging to the Corporation is available, the same could be implemented by constructing the houses. If it is not available, lands could be acquired and houses could be constructed and accommodation provided in terms of the directions given by this Court so that pavement dwellers would have right to residence and the planned construction could not be affected. It was stated in the additional affidavit of the respondents in this regard that in 1991 they had identified 5 lakhs slum dwellers or pavement dwellers out of population of 29 lakhs and for acquisition and construction of the houses, the budget estimates would be Rs. 220 crores. The Government has stopped giving assistance to the

F G H

A Corporation for construction of houses.

This Court in SLP No. 47-51/96 titled *Maha Gujarat Hawkers Vyapar Mahajans Etc.* v. *Ahmedabad Municipal Corporation* had given directions to regulate hawking. The Corporation has regulated, in terms of the said order, the hawking business on the pavements by dwellers in the city of
B Ahmedabad within the specified areas and identified some as non-hawking zones in the Scheme which is operated in the city of Ahmedabad. No direction in derogation thereof would be given permitting the pavement dwellers to convert the hutments for commercial purpose. It is also suggested that with the co-operation of the Non-Governmental Organisations
C and financial participation of the slum dwellers and industrialists the Corporation has introduced Slum networking Project. Under the scheme, they have provided 35,000 built up individual toilets in the slum areas. Subsidy component to the hutment dwellers has been raised to 90 per cent w.e.f. April 1, 1996.

D As per the scheme, the following are the benefits provided in the slum areas for the hutment dwellers:

"(i) House-to-house water supply;

(ii) House-to-house drainage connection;

E

(iii) Full pavement of internal street;

(iv) Individual toilet;

(v) Provision of storm water drain;

F

(vi) Solid waste management services;

(vii) Street light, etc.

Besides the physical services, a package of community development services is also offered which includes:

G

(i) Primary education;

(ii) Primary health care;

H (iii) Income generating activities etc.

This project is estimated to cost Rs. 326 crores. A photocopy of the said Project Report dated July 1995 and prepared by H Parikh Consulting Engineers..... A

The aforesaid benefits of the Project are proposed to be extended to all the slums except those situated on lands which are required for public purpose by the Corporation. With a view to provide these services in the slums and chawls situated on private lands, an amendment has also been proposed to the State Government in the BPMC Act to enable the Corporations to provide all essential services in the slums situated on the private lands without prejudice to the right, title and interest of the owner of the land and without affecting their rights to remove such hutments by following due process of law. This amendment is considered necessary to maintain health and sanitation in the slums situated on private lands and for improving the quality of life of the slum dwellers till they exist on the private lands. This project having partnership concept of slum dwellers is now in the process of implementation. Efforts are being made to give priority to the unserved/underserved areas under the Project. It is believed that through this project, a large number of slum dwellers will be in a position to avail of the essential services at the place they are situated and improve their quality of life. However, it is beyond the present means of the Corporation to provide rehabilitation to every slum dweller by providing alternate accommodation. B C D E

However, this is not to say that the Corporation has permitted section 261(I) to remain on the statute book only. 9754 houses have been duly constructed by the Corporation under the Slum Clearance Scheme for accommodation slum dwellers and allotted to them and another 2220 houses have been constructed under the HUDCO Scheme for economically weaker sections and low income group people and allotted. Besides this, the Corporation has also provided land with necessary infrastructure to 315 hutment dwellers under the site and service scheme and has constructed another 2260 houses for the flood affected hutment dwellers under the Integrated Urban Development Programme. F G

So far 733 hutments which existed prior to May 1976 (cut off H

A date) have been shifted from their earlier location in the interest of public and all of them have been given alternate site by the Municipal Corporation which includes 709 pavement dwelling families also. This protection is not available to those who have come up after 1-5-1976 (cut off date)".

B The Corporation has been further subsidising 80% cost of construction of individual latrines by slum dwellers and under this scheme over 35,000 individual toilers have been built up in the slums and chawls in past few years and this subsidy component has been further raised to 90% with effect from Ist April, 1996. As per the government's resolution dated May C 30, 1987 State level and District/City level officers are nominated to monitor the working of the scheme.

In view of the above factual background the question that arises is: whether there is compliance with the directions issued by this Court D referred to hereinbefore and whether any further modulation is needed in that behalf?

Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom E growth of slums and encroachment of the pavements/ footpaths etc. Every municipal Corporation has statutory obligation to provide free flow of traffic and pedestrians' right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any F direction not to remove, or to allot the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and risk prone to lives of the pedestrians. It would , therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and G should not allow encroachments of the pavement and footpaths. As soon as they notice any encroachment they should forthwith take steps to have them removed and not allow them to settle down for a long time. It is stated in their affidavit that they are giving 21 days notice before taking action for ejectment of the encroachers. That procedure, in our view, is a H fair procedure and, therefore, the right to hearing before taking action for

ejectment is not necessary in the fact- situation. But the Commissioner should ensure that everyone is served with a notice and as far as possible by personal service and if it is not possible for reasons to be recorded in the file, through afixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians.

In the additional affidavit of the appellant-Corporation, it raised and addressed four important questions of constitutional dimensions. The first question raised was to prevent the constant influx of the rural people to the urban areas and consequential growth of slums and encroachments; the second one relates to the need for preservation of the public property like road margin, street, place of public resorts like parks etc. to maintain ecological balance,sanitation and safety of pedestrians; the third question relates to lack of resources in the budgetary provisions to construct and allot houses for the poor and migrants of urban areas; and the fourth one relates to interference by the courts protecting the encroachers from ejectment, the delay in disposal of the cases and resultant rights accruing to the encroachers. These questions bear vital dimensions which need careful examination and answers.

As regards the first question, it is axiomatic that India lives in villages. The traditional source of employment or avocation to the rural people generally is the agriculture. It is rather unfortunate that even after half a century from date of independence, no constructive planning has been implemented to ameliorate the conditions of the rural people by providing regular source of livelihood or infrastructural facilities like health, education, sanitation etc. It would be for the Union of India, all the State Governments and the Planning Commission, which are Constitutional functionaries, to evolve such policies and schemes as are necessary to provide continuous means of employment in the rural area so that in the lean period, after agricultural operations, the agricultural labour or the rural poor would fall back upon those services to eke out their livelihood. The middle class and upper middle class people in the rural areas, due to lack of educational and medical facilities, migrate to the nearby urban areas resulting in constant increase in urban population. Once infrastructural facilities are provided by proper planning and execution, necessarily the urge to migrate to the urban areas would no longer compel the rural

A people for their transplantation in the urban areas. It would, therefore, be for the executive to evolve the schemes and have them implemented in letter and spirit.

Article 19(1)(e) of the Constitution provides to all citizens fun-
B damental 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
C 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
D 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 and 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
E 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 caste, sect or religion pose grave threat to affinity, equality and
F 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
G 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.
H 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.

The Gram Panchayats, the Zilla Parishads and municipalities are local bodies. Parts IX and IXA of the Constitution have brought, through Articles 243 to 243ZG, the Panchayats, Zilla Parishads and municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the rule of law. Article 243G and 243W enjoin preparation of plans for economic development and social justice. The State, i.e., the Union of India and the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planed development under the rule of law. The appellant-Corporation, therefore, has Constitutional duty and authority to implement the directives contained in Articles 38, 39 and 46 and all cognate provisions to make the fundamental rights available to all the citizens as meaningful. It would, therefore, be the duty of the appellant to enforce the schemes in a planned manner by annual budgets to provide right to residence to the poor.

As regards the question of budgeting, it is true that Courts cannot give direction to implement the scheme with a particular budget as it being the executive function of the local bodies and the State to evolve their annual budget. As an integral passing annual budget, they should also earmark implementation of socio- economic justice to the poor. The State and consequentially the local authorities, are charged with the Constitutional duty to provide the weaker sections, in particular the Scheduled Castes and Scheduled Tribes with socio-economic and political injustice and to prevent their exploitation and to prevent them from injustice. The Union of India have evolved Indira Avas Yojna Scheme exclusively to provide housing accommodation to the Scheduled Castes and Scheduled Tribes and separate annual budgets are being allotted in that behalf by the Parliament and the appropriate Legislatures in allied matters. In that behalf, in implementation of the housing scheme evolved for them, the

A budgetary allocation should exclusively be spent for them and should not be diverted to any other projects or similar schemes meant for others. The Planing Commission has evolved the principle of allotment of a specified percentage for the overall developments of the Scheduled Castes and Scheduled Tribes. As a facet of it, the annual budget including for housing accommodation is being prepared and passed by the Parliament. Similarly for other schemes covered by the State budgets. Therefore, when the State, namely, Union of India or the appropriate State Government or the local bodies implement these schemes for housing accommodation of the Scheduled Castes and Scheduled Tribes or any other schemes, they should, in compliance with mandates of Articles 46, 39 and 38, annually provide housing accommodation to them within the allocated budget and effectively and sincerely implement them using the allocations for the respective schemes so that the right to residence to them would become a reality and meaningful and the budget allocation should not either be diverted or used for any other scheme meant for other weaker sections of the society. Any acts in violation thereof or diversion of allocated funds, misuse or misutilisation, would be in negation of constitutional objectives defeating and deflecting the goal envisioned in the Preamble of the Constitution. The executive forfeits the faith and trust reposed in it by Article 261 of the Constitution.

Similarly separate budget would also be allocated to other weaker sections of the society and the backward classes to further their socio-economic advancement. As a facet thereof, housing accommodation also would be evolved and from that respective budget allocation the amount needed for housing accommodation for them should also be earmarked separately and implemented as an on-going process of providing facilities and opportunities including housing accommodation to the rural or urban poor and other backward classes of people.

It is common knowledge that when Government allows largess to the poor, by pressures or surreptitious means or in the language of the appellant-Corporation "the slum lords" exert pressures on the vulnerable sections of the society to vacate their place of occupation and shift for settlement to other vacant lands belonging to the State or municipalities or private properties by encroachment. The Scheduled castes and Scheduled Tribes who are settled in the allotted Government properties/houses/plots of lands are compelled or driven by pressures to leave the places to settle at some

other place. This would have deleterious effect on the integration and social cohesion and public resources are wasted and the constitutional objectives defeated. It would, therefore, be of necessity that the policy of the Government in executing the policies of providing housing accommodation either to the rural poor or the urban poor, should be such that the lands allotted or houses constructed/plots allotted be in such a manner that all the sections of the society, Schedules Castes, Scheduled Tribes, Backward Classes and other poor are integrated as cohesive social structure. The expenditure should be met from the respective budgetary provisions allotted to their housing schemes and in the respective proportion be utilised. All of them would, therefore, live in one locality in an integrated social group so that social harmony, integrity, fraternity and amity would be fostered, religious and caste distinction would no longer remain a barrier for harmonised social intercourse and integration. The facts in this case do disclose that out of 29 encroachers who have constructed the houses on pavements, 19 of them have left the places, obviously due to such pressures and interests of rest have come into existence by way of purchase. When such persons part with possession in any manner known to law, the alienation or transfer is opposed to the Constitutional objectives and public policy. Therefore, such transfer are void *ab initio* conferring no right, title or interest therein. In some of the States law has already been made in that behalf declaring such transfer as void with power to resume the property and allot the same to other needy people from these scheme. Other States should also follow the suit and if necessary the Parliament may make comprehensive law in this behalf. It would take care of the third question raised by the appellant. The Union Law Commission would examine this question.

Encroachment of public property undoubtedly obstructs and upsets planned development, ecology and sanitation. Public property needs to be preserved and protected. It is but the duty of the State and local bodies to ensure the same. This would answer the second question. As regards the fourth question, it is to reiterate that judicial review is the basic structure of the Constitution. Every citizen has a fundamental right to redress the perceived legal injury through judicial process. The encroachers are on exceptions to that Constitutional right to judicial redressal. The Constitutional Court, therefore, has a Constitutional duty as *sentinel qui vive* to enforce the right of a citizen when he approaches the Court for perceived legal injury, provided he establishes that he has a right to remedy. When

A an encroacher approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief. In that behalf, it is the salutory duty of the State or the local bodies or any instrumentality to assist the Court by placing necessary factual position and legal setting for adjudication and for granting/refusing relief appropriate to the situation. Therefore, the mere fact B that the encroachers have approached the Court would be no ground to dismiss their cases. The contention of the appellant-Corporation that the intervention of the Court would aid impetus to the encroachers to abuse the judicial process is untenable. As held earlier, if the appellant-Corporation or any local body or the State acts with vigilance and prevents C encroachment immediately, the need to follow the procedure enshrined as an inbuilt fair procedure would be obviated. But if they allow the encroachers to remain in settled possession sufficiently for long time, which would be a fact to be established in an appropriate case, necessarily suitable procedure would be required to be adopted to meet the fact-situation and that, therefore, it would be for the respondent concerned and also D for the petitioner to establish the respective claims and it is for the Court to consider as to what would be the appropriate procedure required to be adopted in the given facts and circumstances.

It is true that in all cases it may not be necessary, as a condition for E ejectment of the encroacher, that he should be provided with an alternative accommodation at the expense of the state which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case is required to be examined on the given set of facts and appropriate direction or F remedy be evolved by the Court suitable to the facts of the case. Normally, the Court may not, as a rule, directs that the encroacher should be provided with an alternative accommodation before ejectment when they encroached public properties, but, as stated earlier, each case requires examination and suitable direction appropriate to the facts requires modulation. Considered from this perspective, the apprehensions of the G appellant is without force.

As regards the direction given by the High Court to provide accommodation as a condition to remove the encroachment, as held earlier, since the Municipal Corporation has a constitutional and statutory duty to H provide means for settlement and residence by allotting the surplus land

under the Urban Land ceiling act and if necessary by acquiring the land and providing house sites or tenements, as the case may be, according to the scheme formulated by the Corporation, the financial condition of the Corporation may also be kept in view but that would not be a constraint on the Corporation to avoid its duty of providing residence/plot to the urban weaker sections. It would, therefore, be the duty of the Corporation to evolve the schemes. In the light of the schemes now in operation, we are of the view that opportunity should be given to the 10 named petitioner-encroachers to opt for any one of the three schemes and the named two persons who are carrying on commercial activities should immediately stop the same. If they intend to have any commercial activity or hawking, it should be availed of as per the directions already issued by this Court in the aforesaid judgment and no further modification or any directions contra thereto need to be issued. Out of these 10 persons, if they are eligible within the terms of the schemes and would satisfy the income criterion, they would be given allotment of the sites or the tenements, as the case may be, according to their option. In case they do not opt for any of the schemes, 21 days' notice would be served on them and other encroachers and they may be ejected from the present encroachments. As regards other persons who have become encroachers by way of purchase either from the original encroachers or encroached pending writ petition/appeal in this Court, they are not entitled to the benefits given to the 10 encroachers. As regards those who are eligible according to the guidelines in the schemes and also fulfil the income criterion, it may be open to the Corporation to extend the same benefits in either of the three schemes,if they so desire. It is, however, made clear that we are not giving any specific direction in this behalf lest it would amount to encouraging the people to abuse the judicial process to avail of such remedy by encroaching public property.

Accordingly, the appeal is allowed. The order of the High Court is modified as indicated above. The writ petitions stand disposed of accordingly. In the circumstances of the case, however, there will be no order as to costs.

V.S.S. Appeal allowed.