

# BOMBAY HIGH COURT

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STUDY GUIDE

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OLGA TELLIS

VS

BOMBAY MUNICIPAL  
CORPORATION

## THE HIGH COURT

The High Court is a state's highest court of justice. It is regarded as the second-highest in the nation, right behind the Indian Supreme Court. There are currently 25 High Courts in India, each located in a separate state.

## KEY POWERS AND FUNCTIONS

### **Original Jurisdiction:**

Original jurisdiction processes the power to control those cases that cannot be advanced in other courts other than high court. The original jurisdiction of the high court extends to the matters of admiralty, Will, matrimonial and contempt of court cases. High Courts have original jurisdiction over a wide range of civil and criminal cases.

### **Appellate Jurisdiction:**

Appellate jurisdiction, under the Indian Constitution, is defined as the rights of the higher courts to change or cancel the decision of the lower court.

**Advisory Jurisdiction:** Any government department, legislature or governor may mention and send a specific case for consideration to the high court if it has certain special arrangements; this power of the high court to control such cases is referred to as advisory jurisdiction.

### **Judicial review:**

High court is authorised to review any judgement or order developed by any subordinate court, with a perception of reducing any kind of mistake or error that can crept in the judgement; it is referred as Judicial Review. This is done in cases of errors of law, wrong judgement and fragrant error in procedure.

## **BACKGROUND OF THE CASE**

In 1981, the State of Maharashtra and the Bombay Municipal Corporation decided to evict pavement and slum dwellers in Bombay city as part of a city beautification drive. This decision impacted over 50,000 people living in informal settlements across the city. A public interest litigation was filed by Olga Tellis, a journalist, and other activists on behalf of the pavement dwellers, challenging the constitutional validity of the eviction notices.

The petitioners argued that the eviction would deprive them of their livelihood and expose them to greater poverty and hardship. Most of the pavement dwellers had migrated from rural areas or other states in search of employment and livelihood opportunities. With no permanent housing, they were forced to create makeshift dwellings on pavements and open spaces.

The petition contended that evicting them would violate their fundamental right to life under Article 21 of the Indian Constitution.

## **TIMELINE**

**1980**

The Bombay Municipal Corporation (BMC) began intensifying efforts to clear unauthorised slum areas, setting the stage for future legal disputes over residents' rights.

**December 10, 1981**

The Bombay Municipal Corporation (BMC) initiates a large-scale demolition drive targeting unauthorised slum settlements in Mumbai.

**January 15, 1982**

Olga Tellis, along with other affected residents, files a petition in the Supreme Court of India.

**March 1982:** The Supreme Court begins preliminary hearings. Arguments focus on the legality of demolishing slum dwellings without providing alternative housing.

**January 18, 1983**

The Supreme Court opens hearings in the case; the main points of contention are the effects of the BMC's demolition program on the rights of the residents.

**April 1983:** The Court continues to hear arguments, emphasising the need to consider the economic impact on slum dwellers.

**September 1984:** The Court gathers additional inputs from various stakeholders, highlighting the broader implications for urban policy

**March 5, 1984**

The Supreme Court convenes hearings wherein the parties exchange comprehensive arguments concerning the rights of underprivileged residents and the obligations of the Bombay Municipal Corporation.

**March 21, 1985**

The Supreme Court begins hearing the case, examining the legal implications of the demolitions and their impact on the right to livelihood.

# LAWS IN QUESTION

## **Constitution Of India, 1950**

- Article 14: Equality before law- This part of the article indicates that all are to be treated equally in the eyes of the law. This is a negative concept as it implies the absence of any privilege in favor of any person.
- Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Article 16: Equality of opportunity in matters of public employment. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- Article 19: Protection of certain rights regarding freedom of speech, etc. Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
- Article 21: Protection of life and personal liberty. It also states that no person shall be deprived of life or personal liberty except by procedure established by law.
- Article 22: Protection against arrest and detention in certain cases
- Article 25: Freedom of conscience and free profession, practice and propagation of religion
- Article 29: Protection of interest of minorities
- Article 32: Remedies for enforcement of rights conferred by this Part
- Article 37: Application of the principles contained in this Part
- Article 39: Certain principles of policy to be followed by the State
- Article 41: Right to work, to education and to public assistance in certain cases

## **Indian Penal Code, 1860**

The Indian Penal Code is the official criminal code of the Republic of India. It is a complete code intended to cover all aspects of criminal law. This involves Section 441.

## **Bombay Municipal Corporation Act, 1888**

The Bombay Municipal Corporation Act, 1888 is the piece of legislation that controls how Mumbai's municipal corporation operates. It outlines the foundation for urban government. It involves Section 312, 313 and 314.

## **PARTIES INVOLVED**

(Date of Judgement 10 July 1985)

Petitioner :- Olga Tellis and Ors.

Respondent :- Bombay Municipal Corporation and Ors.

Bench :- Hon'ble Justice V Chandrachud, C.J.; Vardarajan; Chinnappa Reddy; Murtaza Fazal Ali and D. Tulzapurkar

## **INTRODUCTION TO OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION**

Olga Tellis v. Bombay Municipal Corporation is a landmark 1985 High Court of Bombay case concerning the rights of pavement and slum dwellers in Mumbai. The state of Maharashtra in 1981 and the Bombay Municipal Corporation decided to evict the pavement dwellers and those who were residing in slums in Bombay

## KEY LEGAL ISSUES PRESENTED IN THE CASE

The Olga Tellis v. Bombay Municipal Corporation case raised several fundamental constitutional issues before the Supreme Court regarding the rights of pavement dwellers in urban areas. The key legal questions examined by the Court were:

- Whether evicting pavement dwellers violates their right to life and livelihood under Article 21 of the Indian Constitution ?
- Whether pavement dwellers have a right to shelter or housing as part of the right to life under Article 21?
- Whether evicting pavement dwellers without providing alternative accommodation violates their fundamental rights under Articles 19(1) and 19(1) of the Constitution?
- Whether the right to life under Article 21 only entails the right to bear means of subsistence, or does it also include the right to livelihood and shelter?
- Whether evicting pavement dwellers is a reasonable restriction on their constitutional rights under Article 19(5) in the interest of public health and order?
- Whether Articles 14, 19 and 21 should be read together while examining the rights of pavement dwellers?
- Whether the State has a duty to provide shelter and housing for the homeless under the Constitution?

## **ARGUMENTS IN FAVOUR OF THE PLAINTIFF**

### **Right to Life and Livelihood:**

The petitioners argued that the right to life under Article 21 of the Constitution includes the right to livelihood. They claimed that demolishing their homes without providing alternative accommodation violated this fundamental right.

### **Lack of Due Process:**

The petitioners contended that the BMC's actions lacked due process. They argued that residents were not given adequate notice or the opportunity to be heard before their homes were demolished.

### **Impact on Vulnerable Communities:**

They emphasised that the demolitions disproportionately affected marginalised communities, many of whom relied on their homes for their livelihoods. The petitioners highlighted the need for the state to consider the socio-economic conditions of these residents.

### **Public Interest:**

The argument was made that the state has a duty to protect the interests of its citizens, particularly those living in poverty. The petitioners maintained that urban policy should aim at inclusion, not exclusion.

### **Rehabilitation:**

The petitioners insisted that the state has an obligation to provide adequate rehabilitation and alternative housing to evicted residents, especially given their reliance on these homes for survival.



## **ARGUMENTS IN FAVOUR OF THE PLAINTIFF**

### **Authority Under Law:**

The BMC argued that their actions were within the legal framework established for maintaining public order and hygiene. They maintained that the demolitions were necessary for urban development and improvement.

### **Policy and Development:**

The respondents contended that the BMC had the authority to clear unauthorised structures as part of broader urban development policies aimed at creating better living conditions.

### **No Absolute Right to Shelter:**

The BMC argued that while the right to life is fundamental, it does not confer an absolute right to reside in a particular place. They claimed that individuals living in unauthorised structures could not claim a legal right to remain there.

### **Preventive Measures:**

The BMC emphasised the need for preventive measures against encroachments, stating that uncontrolled slum growth could lead to public health and safety issues.

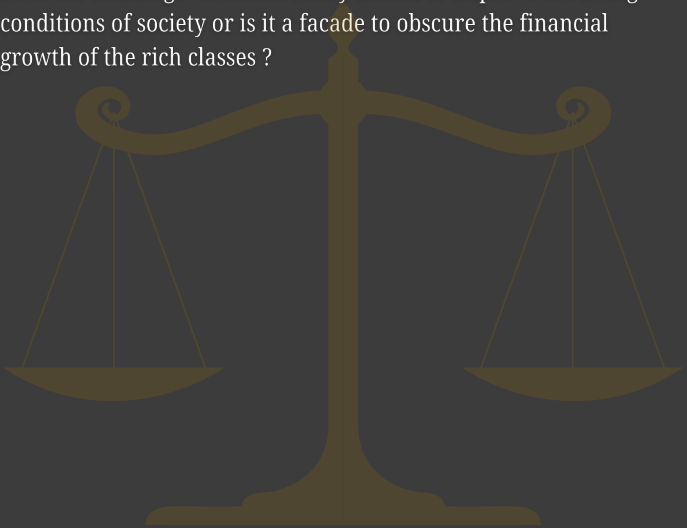
### **Alternative Housing:**

Although the BMC acknowledged the need for alternative housing, they argued that such arrangements were challenging to implement immediately and that the responsibility lay with the state and not solely with the municipal corporation.

## THOUGHT PROVOKING QUESTIONS

‘Due to bureaucratic and systemic delays the rehabilitation of roadside dwellers has not been very effective leaving large populations vulnerable to poor housing and shelter’.

Does the Indian government really intend to improve the living conditions of society or is it a facade to obscure the financial growth of the rich classes ?



## **BIBLIOGRAPHY**

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