

Two Women Fight A Historic Case

Against the Forced Eviction of Pavement Dwellers In Bombay

ON July 23, 1981, the Bombay municipal corporation, in pursuance of a verbal order from the Maharashtra chief minister, swooped down on 8,000 pavement dwellers in Bombay city, destroyed their homes, and deported them out of Maharashtra state. This operation was carried out without any prior warning. The corporation also planned to evict the rest of Bombay's 250,000 pavement dwellers over the next few days.

Olga Tellis, a woman journalist, who has for years been vitally concerned with the problems of the poor in Bombay, and has been actively campaigning for adequate housing facilities for them, filed a petition in the supreme court against the municipal corporation's arbitrary action. Indu Jaisingh, a woman lawyer, is arguing the case, claiming the right for pavement dwellers to squat on pavements since it is no fault of theirs that they cannot afford any other dwelling place. The supreme court has passed an interim order restraining the corporation from carrying out any further demolitions and evictions. The case will come up again this month. We talked to Olga and Indu about this case which is a landmark in legal history as it attempts to define a concept of justice which will be available to all, not just to those few who are rich and influential enough to "buy" justice and twist it around to suit their interests.

Indu Jaisingh: "Many people have been living on the pavements for generations. I remember in my childhood having seen these same families living along Tulsi Pipe Road. And these people, who were born on the pavements, who know no other home, were thrown out without warning. Even to put up their rough shelters made of plastic sheets, bamboo and rags on the pavements, they have to pay substantial sums of money to local *dadas* and to police. In regular slums, a miserable space to construct a hut which can be demolished at any time, costs anything upto Rs 30,000! However, slum dwellers are more organized and they have some minimum though highly inadequate facilities such as toilets, drinking water and electricity. But pavement dwellers are the most deprived, the poorest of the poor, with almost nothing they can call their own. They were totally unprepared and defenceless

against the police onslaught. If the corporation had carried out its further plans, this would have been one of the largest forced evictions in world history.

However, the People's Union for Civil Liberties filed a petition in the Bombay high court for a stay order. When the judge asked their lawyer whether he was claiming a right to squat on the pavement, he said he was not. All he asked of the government was some clemency due to the monsoon season, so the government agreed to show mercy, and to postpone the eviction operation to October 15. But the PUCL lawyer had to give an undertaking on behalf of the pavement dwellers that they would not resist eviction and demolition of their homes after that date.

Olga was in court, listening to the case being argued, and she felt really upset at the way the rights of the pavement dwellers were being bartered

away by the declaration that they had no right to residence just because they could not afford to buy or rent one. So she wrote a letter to Justice Bhagwati's legal aid committee, pointing out that these people are refugees from rural areas and it is strange that the Indian constitution, which is one of the lengthiest in the world, has not a word to say about their status. Are they stateless? Have they no rights as Indian citizens? The committee agreed to admit it as a petition in the supreme court.

We decided to claim constitutional rights for these people who have been deprived of all rights. The constitution says everyone is born with certain rights. But in reality today, if you cannot pay for a dwelling place, you have no right to stay in the city and you can be thrown out at any time. Therefore, by arguing this case, I wish to make the point that fundamental rights should be a reality for 90 per cent of the people—those who have been deprived of adequate buying power.

We are clear that we are not asking for alternative accommodation but for the right to squat on the pavements. We insist that because their poverty prevents them from hiring accommodation near their workplace, these people have a right to live on the pavements. Dumping them in a far-flung slum is no solution. When the chief justice asked me: "How can you claim a right to squat on pavements?" I replied: "My right to life is my right to squat on pavements. I would be extinct otherwise." In answer to the argument that inconvenience would be caused to pedestrians, I reminded the chief justice of one of his earlier judgments, in which he had said that the liberty of the few may have to be curtailed in order to make liberty meaningful for millions.

I emphasized the fact that these people have not come to Bombay because of the so-called "lure of the city" but due to economic compulsion. They have not come here to look at the neon lights and visit discotheques, but to eke out a meagre living which they were deprived of in the rural areas. So their right to live with dignity gives them the right to live on the pavements.

The government of Maharashtra lawyer argued that pavement dwellers obstruct traffic. I answered that there is a difference between roads and pavements. I have been living in Bombay for 40 years and no one obstructs me when I walk to work every day. After a long discussion on the distinction between pavements and roads, he raised the point that these people are a nuisance, they are filthy, they do their washing on the street, and they are anti-social elements, indulging in activities like distilling of illicit liquor, and prostitution. The municipal corporation has a duty to keep the city clean so how can they tolerate this? I pointed out that the municipal corporation does its duty very selectively. Recently I had filed a petition against the corporation when a seven year old boy from Laldongar Slum in Bombay fell into an open sewage tank which had not been drained since 1974. That is how efficiently they are doing their duty!

This case is significant because it poses very sharply the question of the fundamental rights of the underprivileged. By claiming a right to squat on pavements, we went against all accepted notions of law and legal argument. Though we were making what appeared to be an outrageous claim, we showed that if this claim was refused, the constitution would be a meaningless document for all those who cannot buy the fundamental rights to reside in the country and to carry on their occupations freely.

Nowhere in the world has such a claim been made but then the eviction too was on an unprecedented scale. In countries like Brazil and Philippines, there are squatter colonies as large as those in India but governments there have never tried demolishing them. To ask 250,000 people to vacate their homes is like a Nazi style operation.

In his order, the chief justice remarked that in a situation when a flat in Bombay costs one lakh, and upto four lakhs in the black market, people cannot be just thrown out. The state must take some responsibility for the houseless. He therefore passed an order that all those who were living on the pavements before

1976 will be given alternative pitches of land but even those who came after 1976 cannot be removed unless it can be shown that they are obstructing vehicular traffic on the roads. Since these people live on pavements, not roads, they are safe from eviction. However, the case will come up again in the supreme court in November. The case was widely reported in newspapers and received a very favourable response from pavement dwellers in other big cities.

The case is also important in so far as Olga was one of the petitioners. Though not directly affected by the



Olga Tellis(left) with Indu Jaisingh

eviction, she filed the petition claiming that she has a “substantial interest” in the issue and moved this by the fact that she as a journalist has for many years been writing about the problems of the urban poor.”

Olga Tellis: “This is not the first eviction carried out in Bombay. Last November, when pavement dwellers were evicted from Nariman Point, I wanted to do something about it, but couldn’t. However, this time I felt I had to do something. I was not in a position to organize the people to resist eviction.

So I decided to fight the case and demand that these people have a fundamental right to live on the pavement. They are victims of the

government policy which keeps millions in poverty. By working for low wages they create the profit margin for the state and the capitalists. Yet they can be hounded out of the city. Even dogs have the SPCA which tries to protect their interests. Just because these people will never be able to buy a house, does it mean they have no rights? All these evictions are just a cosmetic need to “beautify” the city for the rich and the tourists.

The government lawyer kept insisting that the pavement dwellers should be shifted to Malawi. I would like

all these big men who make laws and distribute justice to go to Malawi just for 15 minutes. It is nothing but a garbage dump— no drainage, open gutters, swarming with flies and mosquitoes. All the people living there have red eyes because they can’t sleep at night. If there is a hell on earth, this is it. Also, many of the pavement dwellers have to reach Sassoon dock by 7 am for the fish auction. From Malawi, it would take them two hours to reach, so that if they miss the 4.30 bus to the station, they will lose their employment.”

We reprint below extracts from the petition filed in the supreme court by Indu Jaisingh on behalf Olga Tellis and two pavement dwellers, ‘(petitioner),

against the Bombay municipal corporation, the state of Maharashtra and the commissioner of police, Bombay, (the three respondents.)

“...There are approximately two lakh pavement dwellers settled in the city of Greater Bombay. All these persons are permanent residents of the city. A vast number of them are gainfully employed and several are dependents of others who are employed. The nature of their employment varies from being domestic servants, workers in factories, peons, to self-employed persons such as hawkers, vendors, sellers of toys, those who repair chappals and umbrellas. Only two per cent of all the pavement dwellers in Bombay are unemployed. About 53 per cent of the pavement dwellers are self-employed while another 38 per cent are in the wage-employed category. Several of them are working as temporary workers on lower wages than their co-workers. Several employers such as the Indian Railways, Bombay Telephones and the textile mills deliberately follow a policy of employing casual temporary workers, thus paying lower wages. It is these pavement dwellers who form the labour force of temporary, *badli* and casual workers who are grossly exploited and underpaid.

These two lakh persons have been residing in Bombay for periods ranging from 5 to 20 years. The migration from the rural to urban areas is due to the immiserization of the rural poor, who are

pushed into the cities by economic compulsions.

The Reserve Bank All India Debt Investment Survey conducted in 1961-62 and 1971-72 shows that between the two periods, the share of the bottom 80 per cent of households in the total assets had come down from 26 to 23 per cent and the share of the top 10 percent of households had gone up from 59 to 62 per cent. The All India Rural Labour Enquiries reveal that in the ten years' span between 1964-65 to 1974-76 the number of agricultural labourers in the rural areas had shot up by 62 per cent. These Rural Labour Enquiries also show that the average number of days of employment available declined from 208 in 1964-65 to 185 in 1974-75 for male agricultural workers and 138 to 129 for women agricultural workers. Indebtedness in the said ten years' period also rose sharply. A combination of these factors has led to the migration from rural to urban areas.

Thus it is apparent that the policies pursued by the state, far from minimizing the inequities in income, have actually increased them. Even the employment opportunities available under the Maharashtra employment guarantee scheme are declining. Statistics indicate that almost 50 per cent of the population of Greater Bombay lives in slums and on pavements.

Pavement dwellers have no choice but to stay on pavements. They are

victims of the lopsided colonial development policies of the state. The housing policy of the state allows agglomeration in south Bombay, whereby a few wealthy people accumulate huge plots of land for private use, high-rise buildings and luxury constructions such as five star hotels come up in the city. In face of acute scarcity of land, this has led to intense speculation in land prices. Even to procure a dwelling in so-called low income housing projects is impossible since the minimum cost of a dwelling is Rs 200 per square foot. There are vast expanses of vacant land in the city of Bombay, which can be utilized for housing pavement dwellers. The Bombay housing board itself has 3,000 acres of land.

The petitioners submit that they have a fundamental right to move freely throughout the territory of India, to reside throughout and in any part of the territory of India and to carry on any trade, profession or occupation. On or about 13.7.81 the chief minister of Maharashtra Mr. A.R. Antulay made an announcement that all the pavement dwellers in Bombay will be forcibly deported out of the city of Bombay to their places of origin. The petitioners state that this decision is violative of their fundamental rights in articles 19 and 21 of the constitution of India. With effect from 24.7.81, the respondents, with the help of the police force, have acted upon

WHAT THE LAW SAYS

Constitution of India

Article 14. The State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India.

Article 19. All citizens shall have the right...

d) to move freely throughout the territory of India.

e) to reside and settle in any part of the territory of India.

g) to practise any profession or to carry on any occupation trade or business.

Article 21. No person shall be deprived of his (sic) life or personal liberty except according to procedure established by law.

ABOUT INDU AND OLGA

Olga Tellis was one of the first Indian women journalists to take to political journalism. It was she who started the *Garibi Hatao* column in Blitz magazine, and ran it for ten years. She

was the first to campaign against the Asiad, where two years ago, she pointed out that the poor would be brought in servitude to the rich, and made to construct amphitheatres for their sports. This is just one example of the many issues she has raised on behalf of the downtrodden.

Indu Jaisingh is a feminist and specializes in trade union law. She is one of the founders of the lawyers' collective, a group of lawyers who refuse to abide by the current norm of the legal profession, whereby one argues anything passionately, so long as one is paid to argue it. When we asked if she would have refused had the municipal corporation approached her to argue their case, she replied: "I would not have just refused, I would have thrown them out."

She is handling the case of Rita Lala who was burnt to death for dowry (see Reports section). She is also arguing the case against the authorities of Nari Niketan, Delhi, who were exploiting and oppressing the inmates of this so-called "protective" home (report in forthcoming **Manushi**).

this decision and have forcibly destroyed the belongings and hutments of the petitioners and other persons on the Senapati Bapat Marg and Vileparle. They have deported several persons from the city of Bombay and forcibly transported them by bus and train outside the state of Maharashtra. This deportation is violative of their fundamental rights in article 19.

It appears that the municipal corporation is acting under powers conferred by section 314 of the Bombay municipal corporation act (which gives them the right to remove without notice any structure which obstructs the roads). The petitioners state that the temporary dwellings erected by them on the pavements do not in any manner form an obstruction to the streets wherein they are erected. In any event, having regard to their total inability due to poverty, section 312 which prohibits persons from erecting structures on the streets without the permission of the police commissioner, imposes unreasonable restrictions on their rights under article 19 and 21 of the constitution. The refusal of the commissioner to grant permission to them is therefore unreasonable and unlawful.

The petitioners state that they have not caused any obstruction or nuisance to the general public. The nuisance if any is caused by the municipal corporation which has failed to provide adequate basic facilities such as drainage, sanitation and garbage collection. A glance at the municipal budget will show that the bulk of expenditure is in the service of the rich at the cost of the poor. In any event, assuming without admitting that such obstruction has been caused, the municipal corporation, has no authority in law to act on the oral directions of the chief minister, and physically remove the pavement dwellers by force. The attempt of the corporation to forcibly evict the petitioners is unauthorized by law and therefore violative of the petitioners' rights under the constitution.

This action has been taken to facilitate policies which are in the interest of the urban rich, not in the interest of



Being Evicted During The Monsoon

the general public.

The two lakh pavement dwellers find it impossible to obtain any kind of accommodation in the city of Bombay. In the circumstances, the municipal corporation is duty-bound and obliged to permit these persons to reside in public places. Any other interpretation would lead to the absurd conclusion that the fundamental rights in articles 19 and 21 are available only to those citizens who have financial capacity to purchase and rent dwellings, but will not be available to those who are living below or at the poverty line.

The municipal corporation by its action has caused devastation and havoc in the lives of these two lakh persons. There is an imminent threat of the said two lakh people being dishoused and rendered homeless. It is in the interests of justice that this honourable court be pleased to restrain the respondents from removing the personal belongings of the petitioners and from evicting them from the city. If this relief is not granted, grave and irreparable loss and injury would be caused to the pavement dwellers by the illegal and unconstitutional acts of the corporation. They would be deprived of their only source of livelihood, with

consequent grave repercussions on their families.

It is prayed that this court may be pleased to :

1. Restrain the municipal corporation, the state and the police from removing the belongings of the pavement dwellers;
2. Restrain them from evicting the pavement dwellers from their dwellings and deporting them out of the city of Bombay ;
3. Restrain them from preventing the petitioners from resettling or continuing to reside on the public streets ;
4. Direct the corporation, state and police to provide immediate aid and assistance to those persons who have already been dishoused, and provide them with adequate compensation in respect of the destruction caused to them..."

While protecting the pavement dwellers from eviction, the supreme court took another laudable step. It has directed the state government to bear the entire expenditure of the case, because the petitioners (Olga and her lawyer Indu) are fighting this case in public interest, not for personal reasons. Whatever be the final outcome of the case, these two women have already set a major precedent in legal history by this attempt to redefine justice. □