Gujarat High Court
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Peoples Union For Civil Liberties ... vs State Of Gujarat And Ors. on 5 September, 2000
Equivalent citations: (2001) 1 GLR 547
Author: D Dharmadhikari
Bench: D Dharmadhikari, B Patel
JUDGMENT

D.M. Dharmadhikari, C.J.

1. This writ petition as also the connected writ petitions (Spl.C.A. Nos. 2251, 2255, 3172, 3185, 4041 and 4384 of 1999 and Spl.C.A. No. 4202 of 1995) have been filed as Public Interest Litigations by voluntary service-oriented organisations, namely, Peoples' Union of Civil Liberties, Shishu Milap, Samvad, Council of Social Justice and a few individuals for and on behalf of hutment dwellers. They seek directions for their resettlement and for payment of compensation to them for their forcible removal in violation of their constitutional and human right.

2. The petitioners who have approached individually and for and on behalf of the hutment dwellers do not dispute that the land on which they were living in their huts were public properties, belonging to the State of Gujarat and within the control of either the Municipal Corporations, Urban Development Authorities or the Housing Boards at Ahmedabad and Vadodara.

3. On behalf of hutment dwellers, it is complained by the petitioners, some of whom are affected individuals and other service organisations, that the State and the various public authorities possessed of muscle powers through police and bulldozers have ruthlessly crushed their hutments with their belongings. Thus, with the use of physical force, they have been evacuated from the lands on which they were living. A few of the hutment dwellers before us in this batch of petitions have approached this Court on apprehension of their evacuation in ruthless manner mentioned above. A few of the hutment dwellers, who have already been forcibly evacuated and their hutments removed, state that in the absence of any alternative site for living made available or permissible to them nearby the place of their humble occupation and working, they had no option but to squat near the same place from where they were evacuated.

4. Before dealing with the cases separately in the facts and backgrounds of individual cases, it would be necessary to state the stand almost consistently taken by and on behalf of the public authorities, i.e., the Municipal Corporations, Revenue authorities of the State, Urban Development Authorities and Housing Boards. It is stated that the hutment dwellers are occupying lands, such as reserved for proposed roads under the housing schemes, on the banks of rain water channel, on public roads and other objectionable sites. They cannot be allowed to remain there to the detriment of the general interest and convenience of other members of the society, who expect proper development of urban areas to ensure uncongested and unpolluted environment. On behalf of the public authorities, it is submitted that planned development of cities for inhabitants is the need of the society. Individual or collective rights of hutment dwellers will have to be sacrificed for planned urban development, which is in general public interest. It is submitted that the hutment dwellers were duly served with notices reasonably in advance to give them time and period to vacate the encroached lands with their families and belongings. It is only when after such notices the hutment dwellers refused to vacate or leave the encroached lands, that minimum required physical force was used, to evict them. Some of the public authorities have stated that the hutment dwellers living on public properties were duly identified on the basis of their names in the electoral rolls, ration cards and other public documents. Such identified hutment dwellers after their removal have been provided with alternative sites, but this procedure was followed only in respect of hutment dwellers or encroachers who were living on the land prior to 1976. On behalf of the public authorities, it is submitted that each and every encroacher of the land, where the encroachment is comparatively of recent origin, cannot be provided with alternative site to live, as it is not within the financial resources and capacity of the public bodies. It is contended that no law or the Constitution

recognises any fundamental right to live by committing encroachment on public properties. It is submitted that the public authorities have taken action permissible under the relevant laws, such as, the Bombay Provincial Municipal Corporations Act, the Gujarat Town Planning and Urban Development Act and the Bombay Land Revenue Code. It is pointed out that under the provisions of the State enactments, the public authorities are empowered to remove encroachments on public land, for the purpose of fulfilling the objects of those enactments, namely to regulate the municipal administration in cities, to make planned and systematic development of urban areas and to protect the public properties and lands for public use. It is submitted that the Constitution Bench decisions of Supreme Court in Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., AIR 1986 SC 180 and Ahmedabad Municipal Corporation v. Nawabkhan Gulabkhan & Ors., AIR '1997 SC 152 : [1997 (3) GLR 1998 (SC)] permit the civic authorities to adopt the procedure followed in these cases for restoring possession of properties for public use, by removing illegal encroachments.

5. The submission made on behalf of public authorities is that the Constitution recognises fundamental 'right of living' which is extended to cover 'means of livelihood' and further extended to include 'right to shelter'. Such fundamental right is, however, subject to reasonable restrictions. Nobody can exercise his right so as to cause obstruction to public and public activities or to cause inconvenience and annoyance to other sections of the society. It is submitted mat the public authorities have meticulously and scrupulously followed all the directions and safeguards desired to be adhered to by the two Supreme Court decisions in the case of Olga Tellis and Nawabkhan (supra).

6. On behalf of the hutment dwellers, arguments were advanced by Senior Counsel Shri H. M. Mehta and Shri Girish Patel. Learned Senior Counsel Shri Mehta extensively read the observations of the Supreme Court in the case of Olga Tellis (supra) and contended that the five member Constitution Bench decision in Olga Tellis could not have been indirectly overruled or disregarded by the two-member Bench of the Supreme Court in the case of Nawabkhan (supra).

7. We have read along with the learned Counsel the judgments of the Supreme Court in the two cases i.e., Olga Tellis and Nawabkhan (supra). On a careful reading, we find no substantial conflict in the views expressed by the Supreme Court in the two cases (supra). So far as the High Court is concerned, when two judgments of Supreme Court appear to be inconsistent on common issues brought before it in two different cases, it is expected to follow both the verdicts and try as best as possible to resolve seeming conflict, if any, between the two decisions of the Supreme Court.

8. On behalf of the petitioners, it is submitted thus :

Migration of unemployed labour from villages to cities is a compulsion for those migrating. The urban population needs labour for urban development. No urban development can be achieved without involvement of manual labour. The landless agriculturists or unemployed labour who migrate to cities are employed for national growth, housing, raising of multi-storey complexes, construction of roads, sewerages, canals, electricity and telephone lines, pathways and various other kinds of public and private works. Some unemployed labour not so utilised seek private employment for work in the factories or domestic work in the houses. To earn a living, such poor persons are compelled to squat by the side of the roads and sometimes to erect hutments or slum colonies on vacant available public land. Sometimes such labour employed on a work site are allowed to squat or live just near the work site or at a distance from such sites. When the work or need of employment for them is over at one place, they are asked to immediately shift and sometimes even without giving them a reasonable notice. In urban development, the unemployed poor are engaged for the needs of affluent sections of the society for providing the latter shelters and sometimes better shelters. Those who are employed for providing shelters to others cannot be allowed to be rendered without shelter.

9. Learned Senior Counsel Shri Girish Patel narrated a poignant event which is a global phenomena. A poor homeless person was sleeping in the premises of a Court. The Marshal came and scolded him. He was asked to go away. The man who was woken up from his slumber said 'I am prepared to leave this place, but tell me

at which place I should sleep'. The Marshal had no answer.

10. After narrating the above story, learned Counsel submits that the Marshal had no answer to the query of the homeless person and no one in Government or in public bodies or those forming the affluent sections of the society have any answer to the question of the helpless, homeless person. This is a tragic phenomena of poor, unemployed and homeless persons all over the world.

11. Learned Senior Counsel Shri Girish Patel in his petition on behalf of forcibly evicted hutment dwellers of Vadodara (in Special Civil Application No. 3426 of 1998) in his affidavit-in-rejoinder has surveyed the International Law which recognises rights of the homeless persons. He has also annexed extracts from several sociological research papers, particularly from the Article "Homelessness and the Issue of Freedom" by Jeremy Waldron published in book titled "Contemporary Political Philosophy - An Anthology" edited by Robert Goodin and Phillip Pettit (Blackwell Publishers, 1977).

12. On behalf of the hutment dwellers, who were allegedly removed from near a rain water channel in Vadodara and whose huts and belongings were crushed under the iron wheels of a bulldozer, learned Senior Counsel Shri Girish Patel has raised certain questions of general public importance based on the constitutional rights, if any, of the homeless in India. Section 68 of Gujarat Town Planning and Urban Development Act, 1976 permits the Authorities of the Housing Board to forcibly remove encroachments of persons in course of implementation of its approved housing schemes. It is contended that the provisions of the said Act have to be interpreted and implemented without invading the fundamental 'right to life' of homeless persons, lest, they would be ultra vires the Constitution, particularly, Arts. 14, 19 and 21 thereof. It is submitted in the affidavit-in-rejoinder on behalf of the petitioners that large number of poor people in Gujarat and all over India live in slums or huts. Some of these people are those whose social and economic base has been destroyed or weakened in the rural areas by various forces compelling them to migrate to the cities in search of livelihood. When they come to the cities they are in search of work and means of livelihood. Such poor people in need of work and means of livelihood must have some place to live. Unfortunately, the lands in the cities are either public lands which are within the control of several public bodies or institutions to be utilised for different public purposes or there are some private lands. The public lands are not available to the poor people. The private lands are so costly that the poor people cannot afford even a piece of it, sufficient to construct a hut. As a consequence of these conditions, these poor people try to live wherever they get opportunity. This is how hutments are built and slum areas are created. A large number of such hutments or slum colonies thus become a permanent and inseparable pan of cities.

13. It is submitted that the slum dwellers and hutment dwellers because of their poverty, illiteracy and being unorganised become victims of exploitation in the cities. The land on which they live does not belong to them, and therefore, they face continuous threats of eviction and demolition. The hutment dwellers live in such precarious conditions. To earn their living, they are engaged in various types of productive activities. Thus, to some extent, they contribute to the material wealth of the cities by supplying goods, services and labour. It is estimated that about 40% to 50% of the production of the city is contributed by these people. In modern terms, they are described as informal Sector of Economy. Yet, unfortunately, they have no place to live in the cities.

14. On behalf of the hutment dwellers, it has been contended in the affidavit-in-rejoinder that right to housing is an internationally recognised ingredient of human rights. Reliance is placed upon the International Covenant on Economical, Social and Cultural Rights of the Year 1966, as adopted by the United Nations General Assembly on 14-12-1966. Reference is made to Article 11 of the Covenant on Social and Cultural Rights which reads :-

"..... an adequate standard of living for himself and his family, including adequate food, clothing and housing and the continuous improvement of living conditions."

15. The universal declaration of human rights as adopted by General Assembly of the United Nations on 10-12-1948 enunciate right to housing as a basic right under Article 25. It is pointed out that India has ratified such declaration.

16. On behalf of the hutment dwellers, it is submitted that the United Nations Declarations adopted by India is a very useful guide in interpretation of National Laws. It is submitted that the provisions of Municipal Law should be judicially so interpreted as to make them accord, as much as possible, with the relevant international declarations, specially those which are ratified by India. Reference is made to the observations of the Hon'ble Supreme Court of India in the case of Jolly George Verghees v. Bank of Cochin, AIR 1980 SC 870. The contention advanced on behalf of the hutment dwellers is that the provisions of the State enactments, such as the Bombay Provincial Municipal Corporations Act, the Gujarat Town Planning and Urban Development Act and the Bombay Land Revenue Code and such other laws, conferring powers on the public authorities to remove encroachments for their various developmental activities and to protect the public properties, must be interpreted in the light of international obligations of India as a result of adoption of United Nations declarations and resolutions to which India is a party. The pathetic condition of homeless people is thus recognised throughout the world. Except human beings, even animals and birds have place to reside.

Where the land is divided into public land and private land, the question naturally arises -- those who have no land at all have no right to sleep, to eat, to urinate or to defecate or to take bath or to perform other biological functions? Thus, homeless means, the denial of most basic rights of human being. In fact, a human being without having any earth or place to sit or stand or sleep is in worst condition as compared to animals.

17. The case of hutment dwellers is pleaded thus ;

If a man is born on earth, a reasonable place on it for him to eat, drink and sleep and for that purpose to raise a shelter is his human right by birth. To evacuate human beings, crush their hutments with their belongings by bulldozer and to drive them and their families from alleged encroached land in a ruthless manner, are acts in gross violation of their human rights. It is a deprivation of shelter without providing an alternative one to live with bare necessities of human existence.

18. The concept of fundamental right of life and liberty, is founded on natural rights or human rights. Fundamental rights in Indian Constitution are subject to reasonable restrictions. The Indian Constitution uses the expression 'interest of the general public' in clauses (5) and (6) of Article 19, as a ground of permissible limitation to the freedoms of movement, residence and profession guaranteed under Article 19(1)(e) and (g) of the Constitution.

19. In determining whether the measure is in the interest of general public, the Court has to assess whether the measure would further the welfare or progress of the society as a whole (Joti v. Union Territory, AIR 1961 SC 1602) even though it might cause hardship to a section of a community, owing to the peculiar conditions in which they are placed.

20. As fundamental rights which are also human rights are available against the State. In cases of conflict between the interest of the individual and the State, guarantee of human rights must necessarily contain the limitations or exceptions. The guarantee of human rights will prevail subject to these limitations, so that the collective interest may not be jeopardised. It is, therefore, always necessary for the Court to balance the need for the protection of the guaranteed individual rights with social justice which the State is enjoined by the Constitution to protect. In other words, the Constitution protects the rights and freedoms only within the limits of reason and the Court can interfere where the State has exercised its power in a "manifestly unfair or arbitrary manner".

21. In ascertaining the reasonableness of the restrictions on fundamental rights, the Court has to look at the objective of the law as well as means chosen to implement that object. The reasonableness of the means

involves -(i) the means chosen shall not be arbitrary and (ii) it should impair as little as possible the right of freedom under consideration. In protecting, therefore, a fundamental right to life and liberty with its extended meaning as given by the Supreme Court in the cases reviewed above, and taking into consideration that reasonable restrictions in general public interest can be imposed on such rights, in cases of slum dwellers, homeless and squatters on public pavements or roads, on their complaint of violation of their human rights or fundamental rights, they should be given the relief, keeping in view the needs and requirements of general public. It is, therefore, always necessary to reach a just balance between the rights of an individual and society. When there is unequal contest on such vital issues involving human rights of individuals, between rich and poor, or strong and the weak, persons with shelter and those without it - the issues need to be resolved as far as possible to protect the rights of the weak and the needy sections of the society and to promote at the same time the interest of the society in general.

22. Mr. H. M. Mehta, Senior Counsel appearing in this batch of petitions for slum dwellers in his zeal and intense feelings for the deprived section of the people, whom he represents, while addressing this Court created an impression as if the Members of the Bench are totally heartless and insensitive to the woes of these poorest section of the society. He had to be reminded that a Judge on assuming office during his tenure sits cut-off from the society as he cannot continue to be in public life, but as he also comes from the society with his own experience of it, he is better stationed at a distance from the problems of the society to view them in a more objective, detached and dispassionate manner, man those involved in it, and for that reason, he is more suited to resolve conflicts and competing claims of the individual and the society.

23. Learned Counsel then appealed fervently to this Court to be merciful and compassionate towards hutment dwellers. We are aware that law is heartless, and therefore, it requires medium of mercy to implement it. We do not think that in balancing rights of individuals and society, we would be less kind and merciful towards the sections which justly deserves it.

24. At the same time as observed by the Supreme Court in the case of Nawabkhan (supra), the needs of the general society of urban area cannot be disregarded while protecting the alleged violation of human rights of hutment and slum dwellers. The following observations in Nawabkhan's case do not appear to us to be in any manner in conflict with the law laid down by the Constitution Bench in the case of Olga Tellis case (supra) :-

"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 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, 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 appellant is without force."

25. In the latest decision of the Supreme Court in Almiira H. Patel & Anr. v. Union of India & Ors., 2000 (2) SCC 679, dealing with disposal of solid waste for cleaning up Delhi to protect environment from pollution on large scale slum colonies coming up in cities like Delhi, the following observations keeping in view the societal needs came to be made :-

"Establishment or creating of slums, it seems, appears to be good business and is well organised. The number of slums has multiplied in the last few years by geometrical proportion. Large areas of public land, in this way, are usurped for private use free of cost. It is difficult to believe that this can happen in the capital of the country without passive or active connivance of the land-owning agencies and/or the municipal authorities. The promise of free land, at the taxpayers' cost, in place of a jhuggi, is a proposal which attracts more land-grabbers. Rewarding an encroacher on public land with a free alternative site is like giving a reward to a

pickpocket. The Department of Slum Clearance does not seem to have cleared any slum despite its being in existence for decades. In fact, more and more slums are coming into existence. Instead of "slum clearance" there is "slum creation" in Delhi. This in turn gives rise to domestic waste being strewn on open land in and around the slums. This can best be controlled at least, in the first instance, by preventing the growth of slums. The authorities must realise that there is a limit to which the population of a city can be increased, without enlarging its size. In other words, the density of population per square kilometer cannot be allowed to increase beyond the sustainable limit. Creation of slums resulting in increase in density has to be prevented. What the Slum Clearance Department has to show, however, does not seem to be visible. It is the garbage and solid waste generated by these slums which require to be dealt with most expeditiously and on the basis of priority."

26. In granting, therefore, relief to homeless in cities and those compelled by circumstances and poverty to encroach on land for living in huts, a word of caution given by the Supreme Court in the case of Nawabkhan (supra) and Almitra (supra) have to be taken note of, lest such recognition of right of hutment dwellers to live would indirectly encourage encroachments by land-grabbers who are part of land mafia operating in cities in the name of poor and needy.

27. Mr. Mehta contends that the Court has to follow the larger Bench decision in the case of Olga Tellis and not Nawabkhan,

28. In the case of Olga Tellis (supra) the contentions raised on behalf of the respondents were dealt with by the Court. The figures were given as to what amount was spent or disbursed by way of loan etc. to provide accommodation. On the basis of census carried out in 1976, pavement dwellers were offered alternate developed pitches at Malwani where they could construct their own houses. According to the census, about 2500 hutments on pavements were in existence in Bombay. It was contended before the Court, (as it appears from paragraph 16 of the judgment), that there were about 47.7 lakhs pavement dwellers/slum dwellers which constituted about 50% of the total population of Bombay.

29. In paragraph 24 of the judgment, it was pointed out that :

"The Urban Land (Ceiling and Regulation) Act, 1976 has failed to achieve its object as is evident from the fact that in Bombay, 5% of the land-holders own 55% of the land. Even though 2952.83 hectares of Urban land is available for being acquired by the State Government as being in excess of the permissible ceiling area, only 41.51% of this excess land was, so far, acquired."

30. It is in view of the aforesaid facts and circumstances the Apex Court observed :

"The reason why there are homeless people in Bombay is not that there is no land on which homes can be built for them, but that the planning policy of the State Government permits high density areas to develop with vast tracts of land lying vacant. The pavement dwellers and the slum dwellers who constitute 50% of the population of Bombay, occupy only 25% of the city's residential land. It is in these circumstances that out of sheer necessity for a bare existence, the petitioners are driven to occupy the pavements and slums. They live in Bombay because they are employed in Bombay and they live on pavements because there is no other place where they can live."

31. The Court negatived the claim of the pavement dwellers that they have competing claim and that their claim should be preferred to the claims of pedestrians. The Apex Court held as under in paragraph 43 of the judgment :-

"In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the 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 streets. The main reason for laying out pavements 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. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and re-passing, are competing claims and that the former should be preferred to the latter. No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavement by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of passage, and even the pedestrians have but the limited right of using pavements for the purpose of passing and re-passing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser."

32. The judgment clearly points out that encroachments promote public nuisance, constitute grave traffic hazards and jeopardise public safety, health and convenience. These aspects are to be kept in mind while deciding the matter.

33. No one has a fundamental right to encroach upon public property and to put up dwelling units on the public footpath, public road 'or public place. Right to enjoy property which belongs to public at large belongs to every one and that right is to be exercised in the manner as prescribed. For example, no one can put up a hut to reside in a public garden saying that a garden is open to all. The usage should be only for the particular purpose and may be subject to restrictions such as time etc. The Apex Court, in Olga Tellis, protected the hutment dwellers for a very limited period and benefit was extended to persons who were or who happened to be censused in 1976 (para 51 of AIR).

34. The Apex Court, in Olga Tellis case, pointed out in paragraph 28 as under :-

"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."

35. In the present cases, none has furnished any record. None has placed on record that removal from the public place will invariably lead to deprivation of his means of livelihood.

36. In the case of Olga Tellis, the Apex Court has pointed out that no one has a right to encroach upon public footpaths, pavements on roads, State/ Municipal Corporation has constitutional as well as statutory duty to provide residential accommodation to the poor and indigent weaker sections of the society by utilising the excess urban vacant land available under Urban Land (Ceiling & Regulation) Act. The Apex Court further held that in all cases of ejectment of the encroachers, it is not obligatory on the part of the State/ Corporation to provide alternative accommodation, no absolute principle can be laid down in this regard and it would depend upon facts of each case.

37. Public properties are usually not protected by means of wire fencing or compound wall or by guard/watchman, and the concerned authorities are not taking enough care to ensure that the properties, particularly open land, are not encroached. Therefore, not only that huts have been erected on such open plots, but in certain cases, even high-rise buildings have been built up by encroachers. If such encroachers have encroached upon public property for whatever reason and have erected huts or unauthorised construction, can it be said that they cannot be ejected despite the fact that there is illegal and unauthorised construction and that property is required for a public purpose? The duty of the Court is to strike a balance between the two.

38. It may happen that due to negligence/inaction of public servants or due to pressure on the public servants from superior officers or other persons who are actively taking interest in other fields, no action is taken by

the public servants either preventing persons from encroaching on open land or for removal of encroachments. They might have allowed in a given case on an assumption that the trespassers after getting job will find out their own accommodation. But the fact is, once a hut is constructed, it remains there and it is also known that the huts are sold and the advantage is taken subsequently in some cases by some builders also. The Apex Court, in Olga Tellis has observed that some slumlords are providing space on payment where a dwelling house or a hut is erected.

39. In view of what is stated above, it is not obligatory on the part of the State/Corporation to provide alternative accommodation, and it cannot be argued for a moment that in view of the judgment of the Supreme" Court, it is the right of an encroacher either to stay at the encroached place permanently or to get an alternative accommodation. Even the Apex Court has not laid down an absolute principle that in all cases of removal of encroachments, the State/Corporation must provide alternative accommodation. It depends upon facts and circumstances of each case. At the cost of repetition, we would say that the Apex Court pointed out the facts situation and particularly ratio of free hold land, population etc. and yet granted benefit to the people settled prior to 1976.

40. As pointed out in the case of Nawabkhan, in view of consistent influx of rural people to the urban areas and consequential growth of encroachments and slums affecting ecological balance, sanitation and safety of pedestrians, Government should provide infrastructural facilities for rural areas by proper planning and execution. It may be required to be stated that the efflux is not only intra-State but also inter-State.

41. Huge land is available with the State Government for disposal which was acquired under the provisions contained in the Urban Land (Ceiling & Regulation). Act. If from this land some portion is reserved for providing alternative accommodation to the hutment dwellers by making a scheme, the problem can be solved.

42. One must not also forget the fact that a person who has migrated to an urban area might have his own land or building in his home town/State. This aspect is also required to be considered while giving alternative accommodation. Merely because a person is residing in a hut after migrating to an urban area, it cannot be said that such a person is a poor person. Therefore, this aspect is also required to be kept in mind white fixing the norms for allotment.

43. It is also required to be noted that in cities, land is very scarce. Therefore, the State Government should be vigilant to see that opportunities are made available to the public at different distant places (de-centralisation) so as to avoid accumulation of population at a particular place. It is with this intention that Industrial Estates are planned in rural areas which not only provide employment to residents of the rural area, but also prevent efflux of rural public into urban areas. Therefore, when Industrial Estates are planned, it should be planned in such a way that schemes for residential houses are also provided to downtrodden persons coming to take employment in such Industrial Estates. More and more opportunities should be made available in rural areas so that people from urban areas may shift to rural areas.

44. With regard to employment that can be offered to residents of rural areas, the Apex Court, in Nawabkhan's case, pointed out that "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."

45. The Court further pointed out that "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 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".

46. Article 39 of the Constitution of India directs the State regarding certain principles of policy to be followed by the State. Article 39 reads as under :-

"39. The State shall, in particular, direct its policy towards securing -

(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women.

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

47. Article 41 is also relevant in this regard, which reads as under :

"41. The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

48. Article 45 refers to compulsory education for children upto the age of 14 years. Article 46 refers to promotion of educational and economic interests of Schedules Castes, Scheduled Tribes and other weaker sections.

49. In the case of Indra Sawhney v. Union of India, reported in 1992 Supp. (3) SCC 217, the Apex Court has clarified that the expression "weaker sections" of the people is wider than the expression "backward class" of citizens, which is only a part of the weaker sections. Backward classes comprise only those which are socially or economically backward. The term weaker sections does not necessarily refer to a group or a class. It connotes all sections of the society which are rendered weaker due to various causes, e.g. poverty, natural calamity or physical handicap. The State has other duties in view of this provision. One thing is certain; so far as right to work, to education and to public assistance in cases of unemployment are concerned, Article 41 refers to limits of its economic capacity. Therefore, while securing right to work, to education and to public assistance, economic capacity is required to be considered.

50. When one turns to Article 39, policy for securing right to adequate" means of livelihood is noticed. To achieve the target as indicated in Part III the Government must come heavily with the family planning. Those who are seeking benefit of any scheme of the Government must have adopted family planning measures approved by the Government. The State can effectively discharge its obligation if there is control over population. Therefore, if any citizen wants to avail of any benefit of any scheme offered by the Government, he must have undergone family planning measures. The Government must consider to implement the family planning scheme by making necessary changes in the conditions of service of even Government employees and public sector employees intending to avail benefit of any scheme offered by the Government. Then only the State will be able to distribute its largesses between the citizens and bring equality amongst its citizens.

51. Turning to procedural law, the Apex Court, in the case of Olga Tellis, has pointed out that the action must be within the scope of the authority conferred by law and it must be reasonable. If any action within the scope of the authority conferred by law is found to be reasonable, it must mean that the procedure established by law under which that action is taken is itself reasonable. On the facts of the case before it, the Apex Court held that the procedure under the B.P.M.C. Act, 1949 was reasonable and eviction of pavement and slum dwellers of Bombay city under Section 314 was not violative of Article 21 on the ground of procedural unreasonableness. In view of this, facts are required to be pleaded by petitioners to establish whether the procedure followed was reasonable or unreasonable.

52. It is also necessary to refer to paragraph 9 of the Apex Court's judgment in the case of Nawabkhan (supra), which reads as under :

"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. ..... 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 needs urgent action. ... .. 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 foot-paths 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 one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for highhanded 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 see, 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 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. Thus considered, we hold that the action taken by the

appellant-Corporation is not violative of the principal of natural justice."

Before expressing opinion in paragraph 9, the Apex Court pointed out in paragraph 7 as under :-

"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 indeed, their use for a private purpose frustrates the very object for which they carved out from portions of public roads. ..... No one has a right to make use of a 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."

Thus, it is clear that no one has a right to make use of public property for private purposes.

53. In paragraph 8, the Court has reiterated the views laid down by the Apex Court in Olga Tellis case, which reads as under :

"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 playground) and that the provision

contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case".

54. It is required to be noted that the Apex Court in the case of Nawabkhan, after considering the resolution of A.M.C., held as under :-

"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. They were photographed and identity cards were given to them so that they could get the protection from removal until alternative accommodations were provided to them."

55. The Court considered various schemes proposed by A.M.C. for allotment to hutment dwellers. At Narol, Vinzol, Vivekanand Nagar, Lambha Part I and Part II, plots were reserved. Units consisting of one room., kitchen, W.C., chokdi etc. were offered to hutment dwellers at a very reasonable price with instalments.

56. A cut-off date is determined by the Apex Court. Every year slums are increasing. It is not necessary that all are from outside. As the family size increases, more space is required. There may be partition of a family and the persons separating would encroach on other land. There is absolute scarcity of land in the urban area. It will be practically impossible for the Corporation to provide alternative accommodation to all those slum dwellers coming up every year. If a direction to provide alternative accommodation to slum dwellers coming up year after year, or after certain interval, is given, it will be an indirect incentive to the public to encroach public property. If such a direction is not given, it will have a deterrent effect on the public not to encroach upon public property. In this view of the matter, determining a cut-off date is not altogether violative of any fundamental right. Even argument was made before the Apex Court (see paragraph 14 and 15 of Nawabkhan's case) that the date should be extended and instead of census of 1976, census of 1991 should be adopted (Page 160, Paragraph 15) for providing alternative accommodation. In paragraph 29 in Nawabkhan's case, affidavit was considered and it was pointed out by the Court as under :

"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 is required to be examined on the given set of tacts and appropriate to the tacts 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, but, as stated earlier, each case required examination and suitable direction appropriate to the facts requires modulation. Considered from this perspective, the apprehensions of the appellant is without force."

57. In case of Olga Tellis, before the Court, the undisputed facts were that the pavement dwellers and the slum dwellers contributed 50% of the population of Bombay and 5% of the landholders in Bombay owned 55% of the land. These aspects were very much relevant and in these cases, such is not the situation. Lateron in Nawabkhan's case, the Supreme Court pointed out that encroachers have no right to claim alternative site. They were occupying public property and considering the facts, held that persons residing prior to 1976 were entitled to the benefit of the Scheme. Even in Olga Tellis case, the benefit was extended to persons residing prior to 1976 and hence, the petitioners are not right in contending that irrespective of period of occupancy benefit should be extended.

58. Thus, the net effect of the decisions of the Apex Court is that alternative accommodation is to be offered based on the facts and circumstances of each case, and no random directions can be given.

59. In the aforesaid case, facts and figures were placed before the Apex Court. In Nawabkhan's case 1997 (3) GLR 1998 (SC) also facts and figures were placed before the Apex Court and the Court considered the same

in paragraphs, 13, 14 and later part of paragraph 17. In view of these facts, the Court arrived at a conclusion that protection is not available to those who have come up after 1-7-1976 - the cut-off date. When the Apex Court has refused to entertain the prayer for extending the cut-off date, it is not open for this Court to extend the date. Specific plea raised before the Apex Court to extend the cut-off date and to accept census of 1991 instead of 1976 was rejected by the Apex Court. It will not be, therefore, open to the petitioners residing within the Ahmedabad Municipal Corporation limit to contend that all hutment dwellers/slum dwellers are entitled to get alternative accommodation irrespective of a period of residence.

SPECIAL CIVIL APPLICATION NO. 3426 OF 1998

60. The petitioners have come out with a case that on 25-3-1998, with the help of police force, fire brigade, bulldozers, and heavy vehicles etc. their huts were demolished. Their huts were situated in Dholikui Slums situated between Akashwani and G.I.D.C. road at Makarpura in Vadodara on either sides of a canal, spreading over a kilometer area. According to the contention, large part of the slum is situated on the land belonging to the State and marginally there is encroachment upon the adjacent land belonging to the respondent-Housing Board. It appears that the Housing Board issued public notice Annexure 'B' pointing out that the land belongs to the Housing Board; that some persons have encroached upon the land and constructed huts thereon, and the same have been removed on 25-3-1998. By this notice, the concerned persons were called upon to collect their articles within 7 days.

61. Gujarat Housing Board, by filing affidavit, has pointed out that the land belongs to the Gujarat Housing Board. The encroachment was already removed on 25th March 1998. Thereafter, petition was filed on 29th April 1998 without disclosing the fact that the encroachment was removed obtained ex pane order, and under the guise of interim relief, all the encroachers re-occupied and built huts upon the land. On behalf of the Housing Board, panchnama, photographs etc. are placed on record. It is pointed out that there is open land on which there was rain water drain (in Gujarati it is known as 'kans'), touching the Housing Board's Colony occupied by the allollees of the Gujarat Housing Board. It is further pointed out that the hutments even obstructed the rain water drain with the result that the rain water coming from the nearby area was obstructed and the whole area was flooded which caused health hazard to the occupiers of the Housing Board's buildings. The allottees of the Housing Board have made several complaints. Despite asking the hutment dwellers to remove the construction made by them illegally and to remove the obstructions, they went on increasing the strength and took illegal electric connection, water supply, drainage connection etc. without permission of either the Housing Board or the Baroda Municipal Corporation.

62. In reply to the affidavit filed by the Housing Board, one Anand Yagnik, on behalf of the petitioner, has filed an affidavit. There is nothing on the record to show that the said deponent has any personal knowledge. Reading the contents of the affidavit-in-rejoinder, it appears that it is in the form of written submissions.

63. Suffice it to say that in the instant case, notice has not been issued for taking any action against the petitioners by the Housing Board who claims to be the owner of the land or by the Municipal Corporation, and without giving notice action has been taken, the action must be held to be bad. If they were occupying the kans not belonging to the Housing Board, the Housing Board had no right to take any action. Only part of the property belonging to the Housing Board, as submitted by Mr. Patel, was encroached upon and notice ought to have been given. As without notice the action has been taken, the action must be condemned.

64. On behalf of the Baroda Municipal Corporation affidavit is filed by one M. P. Sutharia stating that by putting up illegal hutmenis in Dholikui kans, encroachment was made. It is further stated that the kans was for storm water drainage and encroachment was required to be removed as the same was creating health hazard. It is further stated that if the encroachment was not removed, it could have lead to stagnation of the water mixed with sewage which could have lead to serious health problems.

65. On behalf of the State, no affidavit is filed. Action at the hands of the respondents must be held to be bad looking to the facts and circumstances of the case. The petition is partly allowed, as action of removing the huts without notice is held as illegal in the facts and circumstances of the case. So far as direction with regard to allotment of alternative accommodation is concerned, we shall deal with the same at a later stage.

66. It is also required to be noted that if the huts/dwellings were already removed, the petitioners had no right to reconstruct at the same place without any order. It appears that in several matters, after orders of status quo, the parties, by committing breach of the order, take action which amounts to Contempt of the Court. The petitioners are represented by an Advocate. It is the responsibility of the Advocate to communicate the order in true spirit. He is not only the mouthpiece of his client, but he has to discharge his duties as an officer of the Court also. In the instant case, the Advocate is stating that on behalf of poor and uneducated persons, he has taken up the cause. If after demolition of huts, the petitioners approached the Court, the Advocate being aware about the same, it was his duty to convey the order passed by the Court. In view of the affidavit, it appears that the petitioners were not conveyed. If they would have been informed, they would not have acted in violation of the Court's order. If they were informed, then by committing breach of the order, they erected structures.

67. The officers demolished the hutments constructed illegally. On filing an application, Court directed the parties to maintain status quo. By this order the land was not to be put to any use either by the petitioners or the respondents. The petitioners were not authorised to construct the huts. How they were prompted to act contrary to the orders passed by the Court? The order in the instant case did not authorise to re-construct. Under the order, no one was allowed to enter the property. We are of the opinion that the Advocates are duty-bound to advise their clients not to act contrary to the order passed by the Court. In this case, nothing is placed before us by the petitioners about the reconstruction of huts despite the fact that Respondents have pointed out that huts were demolished, and thereafter, the petition was filed. It is the petitioner's case that respondents in a collective action, demolished the entire Dholikqi slum, on 25-3-1998. The Division Bench, on 29-4-1998 passed an order as under :-

: K. Shridhamn, C.J. and A. R. Dave, J.

29-4-1998

"Urgent notice to the respondents returnable on 4 May, 1998. In the meantime, the respondents are not to take any steps to evict persons, who are already there in the property involved in this case. We may also make it clear that under the cover of this order no one should be allowed to enter into the property. Direct service permitted."

68. The petitioners came out with a case that all people are staying at the place over debris of their huts. The respondent has placed on record material to show that the some of the hutment dwellers have erected huts and some have commenced the work of erection of huts on 2-5-1998. The petitioners have also not explained their conduct. No affidavit is filed on record to convey as to what the petitioners were informed about the order. Whether petitioners acted of their own or where informed about the order passed by the Court ought to have been placed on record in a case like this. SPECIAL CIVIL APPLICATION NO. 2251 OF 1999 69. Para Vistar Zupada Samiti, Ahmedabad, through its President has approached this Court inter alia praying to declare that the action of demolition carried out by Ahmedabad Municipal Corporation (for brevity, the A.M.C., hereinafter) is void, illegal and has prayed for direction to Ahmedabad Municipal Corporation to restore the hutments at Machipet area.

70. In this matter, Deputy Estate Officer has filed his affidavit on behalf of A.M.C. It is pointed out that the petitioners have illegally occupied Final Plot No. 81 in T.P. Scheme No. 4 which is reserved for T. P. Scheme road. The Corporation issued notice to the occupiers to remove the encroachments within 21 days "so that the Corporation can implement the T. P. Scheme. It is submitted by the Corporation that the notice was issued

under the scheme framed by it which is approved by the Honourable Supreme Court in the case of Nawabkhan. As per the Municipal records, there were 49 hutment dwellers residing in the said land illegally and hence they were given notices. The Corporation framed a scheme for hutment dwellers and according to the said scheme it was decided to give alternative accommodation to those hutment dwellers who were residing before 1976. The said scheme was approved by the Honourable Supreme Court. Standing Committee also passed a resolution dated 12-11-1998 to provide alternative accommodation to the hutment dwellers according to the said scheme. The Corporation has provided alternative accommodation to 26 hutment dwellers who were residing before 1976 on the lands in question i.e. T. P. Scheme Road. It is pointed out by the deponent that 49 hutment dwellers were on T. P. Scheme road, and it was not possible for the Corporation to implement the scheme. Therefore, after following the legal procedure, they were removed on 17-3-1999. In paragraph 5 of the affidavit, it is stated that "if the concerned occupier satisfy the authority about their occupancy prior to 1976, the Commissioner is empowered to provide alternative accommodation to them". Therefore, even according to the Corporation, if it is pointed out that they were occupying before 1976, they would be provided alternative accommodation. Having not done so, they cannot make a grievance ' before this Court in view of the decision of the Apex Court in the case of Nawabkhan. The Apex Court has specifically rejected the contention raised by the hutment dwellers that those who occupied after 1976 should be held entitled, and therefore, this petition is required to be rejected.

71. In the petition, the petitioners have tried to suggest that 65 persons whose names are appearing at Annexure 'AA' were considered at the time of census. The petitioner has stated that some of them also have registered cards furnished to them by the A.M.C. The petitioner has by way of illustration annexed Annexures 'A', 'B' and 'C', copies of census card given to S/Shri Chhaganbhai Vaghri, Pratapji Barot and Ratilal Dantani. It is further alleged that at the time of demolition, Municipal authorities have collected such cards and they were told that in order to verify as to who were staying there since 1976, and also to provide alternative accommodation to persons who are occupying prior to 1976, cards are required. List Annexure 'AA' refers to 65 persons. The petitioner has contended, by giving three names that all were in possession of the cards issued by the Corporation. Name of the three persons who are given are not found in list at Annexure 'AA'. There is one name at S. No. 6 which reads as Ratilal Balchand Dantani, but it is difficult to say that the person is the same. The Corporation has come out with the case that persons who were possessing cards and residing prior to 1976 were provided with alternative accommodation. According to the respondents, petitioners may be occupying after 1976.

72. On the record, map is also placed. The encroachment is on the T. P. scheme road. If there is encroachment on the public road, numerous health hazards and question of safety would arise. To avoid the problem, action is required to be taken to remove such encroachment. Since no* civic amenities can be provided on the roads, use of the road would become impossible for the users. It would not be in the interest of public to allow encroachments on the road. An occupier should not occupy the area meant for road. If some persons have occupied the roads, it is likely to cause several problems. As the Corporation has stated that if the hutment dwellers are in a position to produce evidence that they were occupying before 1976 the Corporation will provide alternative accommodation, the Municipal Corporation is directed to provide alternative accommodation if the hulment dwellers are in a position to produce evidence that they are in occupation prior to 1976.

73. As the action has been taken after issuance of notice, the action cannot be stated to be unauthorised or illegal. So far as alternative accommodation is concerned, we will deal with it later on.

SPECIAL CIVIL APPLICATION NO. 2255 OF 1999

74. The petitioner and 10 others claim that they are residing in small hutments at Vastrapur village, and they have right to occupy as they are residing there since last 15 to 20 years. Plot No. 286 of T. P. Scheme No. 1 of Vastrapur is alleged to have been illegally occupied by slum dwellers. In February, 1999 it is alleged that Ahmedabad Urban Development Authority (for short, A.U.D.A.) collected amount from the hutment dwellers

for the purpose of providing alternative accommodation. On 16th March, 1999 A.U.D.A. commenced demolition drive near Lakeview Apts., Vastrapur without even affording an opportunity to collect personal belongings. By filing this petition, petitioners have prayed that A.U.D.A. should be directed to restore the hutments of all the petitioners and similarly situated hutment dwellers in Vastrapur area affected by the demolition drive.

75. A.U.D.A. has come out with a case that work order was issued to Bhavna Property Developments Ltd., on 14th May, 1999 for construction of 108 units for weaker sections of the Society, each unit containing one room, kitchen and other amenities like electricity, water supply, common plot, sewerage etc. Encroachers have no right to continue on the said piece of land and were required to be removed. It is pointed out that even after removal, some of them have again encroached upon the said piece of land and are not allowing the respondent and the contractor to put up units under the scheme, which is in the interest of the weaker sections of the society. It is submitted by A.U.D.A. that representation has been made to Chairman, A.U.D.A. for suitable relief. Assurance is given to the Court that the petitioners would be shifted from the site at once and the builder/contractor would be permitted to put up, the construction with immediate effect and those who were permitted on 6th April, 1999 would be given a priority for allotment of the units in the said scheme for economically weaker sections as per the terms and conditions to be laid down by A.U.D.A, It is pointed out that nine persons who were illegally staying in Final Plot No. 286 on 6-4-1999 when the action was taken to remove the encroachment. It is submitted that the petitioners have not only encroached upon the said land again, but are not permitting the respondent-authorities and the contractor to use the land in question for putting up construction for houses for weaker sections of the society.

76. In view of what is stated hereinabove, it is directed that since according to the A.U.D.A. only 9 hutment dwellers shown in list Annexure 'E' have been forcibly evacuated and it is proposed to accommodate them in the housing scheme, the said 9 hutment dwellers having already obtained allotment under the housing scheme, shall be provided alternative sites for living, if have still no place to live and shall be paid a compensation of Rs.1000/- to each family, which is the approximate damage caused to them because of their forcible removal from the place of their residence.

SPECIAL CIVIL APPLICATION NO. 3172 OF 1999

77. The petitioner, a voluntary social organisation has filed this petition for the benefit of 300 hutment dwellers in the slum known as Ektanagar situated on land bearing Revenue Survey No. 401 of village Danilimda. It is submitted that some of the hutments are situated within the limits of Ahmedabad Municipal Corporation as extended prior to 1975-76. Names of the hutment dwellers are given at Annexure 'A' to the petition at page 15. Reading the same, it appears that in all 279 persons were the occupiers of the hutments at Ektanagar. The petitioner has placed on record vide Annexure 'B' a copy of notice dated 17-4-1999 giving 21 days lime to remove the encroachment. A copy of Resolution passed by the Corporation, vide Annexure 'D' is also placed on the record, indicating that as per the policy, all hutments which were in existence as on 1-5-1976 would be provided with alternative accommodation and without alternative accommodation, they shall not be removed. The resolution also states that the programme should be undertaken with the assistance of the State Government. There is a resolution dated 6-3-1990. There was original plot No. 33 which has been re-plotted in T.P. Scheme No. 2 Odhav (pre-final). Persons occupying the part of the plot were to be given alternative accommodation. There is a resolution of the Corporation approving the resolution passed by the Standing Committee referred to earlier.

78. C. A. No. 4870 of 1999 is preferred in this matter by the petitioners on 3-5-1999 for restraining the Corporation from taking any further action for removal of Ektanagar hutment dwellers and their articles.

79. On behalf of the respondent-Corporation, Civil Application No. 14020 of 1999 was preferred inter alia praying to vacate the ad interim relief granted in Civil Application No. 4870 of 1999. It seems that this matter was placed before the Division Bench and on 17-12-1999, the Division issued notice returnable on

22-12-1999 by passing the following order :-

"Notice returnable on 22nd December, 1999. Mr. K. M. Malkan waives service of notice on behalf of the respondents. If the respondents want to file any affidavit, copy thereof must be served or on before 21st December, 1999."

80. In C. A. No. 4S70 of 1999, on behalf of the A.M.C., reply is filed by P. S. Patel, Estate Officer. It is pointed out therein that Final Plots No. 76 and 78 are reserved and earmarked for Municipal Corporation purposes, i.e. for water tank, garden and drainage pumping station. It is further pointed out that F. P. No. 77 is of the ownership of the State Government. It is further pointed out that in F. P. No. 77 there were only 69 hutment dwellers. It is also pointed out that each hutment dweller was served with notice to remove the encroachment within 21 days of receipt of the notice failing which the Corporation was to take steps for such removal. It is also pointed out that there were 6 hutment dwellers on F. P. No. 77 who have been provided alternative accommodation because there was evidence to show that they were covered under the 1976 resolution of the Corporation. The Corporation has also annexed a statement showing names of 45 hutment dwellers and six others who have been offered alternative accommodation. So far as the hutment dwellers on F. P. No. 76 and 78 are concerned it is pointed out that they have been served with notice under the provisions of Section 68 read with Rule 33 of the Gujarat Town Planning & Urban Development Act. The names of the persons residing in F. P. No. 76 and 78 are mentioned in list Annexure 'B'. It is denied that there are 279 hutment dwellers as alleged by the petitioners but there are only 172 hutment dwellers on these plots. The Corporation has also furnished names of persons in list Annexure 'C', who were never in occupation of the plots when the survey was carried out. In all, there are names of 160 persons who were not found according to the respondent and it appears that their names were not included in the list.

81. In C. A. No. 10420 of 1999 filed by the Ahmedabad Municipal Corporation it is pointed out that at the initial stage the Court did not grant any interim relief. The encroachment was removed on 27-5-1999. Thereafter, C. A. No. 4870 of 1999 was preferred inter alia praying that they should not be removed from Ekta nagar. After the statement was made that the encroachment has been removed, the order of status quo was passed. Reading the order, it is clear that when the application was moved by the petitioner, statement was made on behalf of the respondent-Corporation that the plot in question is vacant and there is no encroachment. Parties were directed to maintain status quo. On behalf of the Corporation it is pointed out in the application that by misusing the order of status quo, the original petitioners not only forcibly re-entered the plot, but also attacked the security party of the Corporation, and thereafter, they made construction and according to the Corporation, it is nothing but abuse of the order passed by the Court. In the application, it is pointed out by the Corporation that the land was to be used for the purpose of constructing water tank and pumping station. Residents of the locality are complaining about shortage of water and that in fact one Municipal Councillor threatened to go on fast if the Corporation was not to construct underground water tank. The said Corporator also came with a huge rally of people to A.M.C. office on 16-11-1999 raising slogans for construction of tank and other water supply facilities. It is further pointed out that Work Order dated 29-5-1999 has already been issued specifying that the project should be completed within 15 months which shows the urgency and the great need for the work to be completed.

82. In paragraph 4 of the reply to the application preferred by the Corporation (C. A. No. 14020 of 1999), the original petitioners have come out with a case that the Corporation has threatened hutment dwellers with the demolition, and therefore, a telegram was sent. It is further stated that "however, the applicant-Corporation took high-handed action in demolishing the hutments, but the hutment dwellers were not removed. They were constrained to approach this Hon'ble Court by way of filing Civil Application No. 4890 of 1999 (sic) in S.C.A. No. 3172 of 1999 wherein this Hon'ble High Court has ordered to maintain status quo". The deponent, on behalf of the petitioner has stated that since the hutment dwellers were not removed, there is no question of re-entering on the land. According to the petitioners, even if there is need for underground water tank on account of water scarcity, the hutment dwellers cannot be removed without providing alternative accommodation.

83. One thing is clear that the Corporation undertook a survey and the persons who were at the relevant time in occupation and entitled to get alternative accommodation as per Scheme, were provided with alternative accommodation and those who came subsequently on the land as trespassers were not considered by the Corporation. The Corporation has followed the principles laid down in Nawabkhan's case wherein the Supreme Court has rejected the contention that the persons who have constructed the hutments after 1976 should be considered as persons entitled for the benefit. When the Apex Court has rejected the request made on behalf of all hutment dwellers, it is now not open for them to make the prayer before this Court. Reading the order passed in C. A. No. 4870 of 1999 it is very clear that it is in the presence of the learned Advocate for the petitioners, the learned Counsel for the respondent stated before the Court that the property in question is vacant and is occupied by none. It is in that situation that the Court directed to maintain status quo. Yet they have forcibly re-entered the land. This speaks a lot about the high-handed action on the part of the hutment dwellers.

84. In view of the fact that the Corporation has followed due process of law for removal of encroachment, and in view of the judgment in the case of Nawabkhan, the petitioners are not entitled to any relief as prayed for. However, as regards alternative accommodation, we shall deal with the same hereinafter.

SPECIAL CIVIL APPLICATION NO. 4202 OF 1995

85. About 66 families consisting of over 300 persons were-removed from the area called Mahadevnagar slum. The names of the hutment dwellers who were forcibly removed has been mentioned in list Annexure 'A' to the petition. According to the Corporation, only certain hutment dwellers could claim alternative accommodation being pre-1976 occupants. During pendency of this petition, on 2-7-1999 this Court recorded statements of the Counsel for the parties that about 66 persons were in occupation on the land belonging to the Corporation and all 66 persons have been given alternative accommodation. At the time of passing of the above order, only 16 persons who were occupying a portion of the public road were to be accommodated at some alternative site. This Court, therefore, direct that 16 persons who are in occupation of the public road may also be provided alternative sites and be rehabilitated. We make the said order absolute. It is directed that the Corporation, with the help of the petitioners, identify those 16 hutment dwellers who were removed from the public road and they be provided alternative accommodation if not by this time had already been rehabilitated.

SPECIAL CIVIL APPLICATION NO. 4041 OF 1999

86. For 12 hutment dwellers, the present petition is filed. On oath it is contended in the petition that the respondent-Corporation had issued notice dated 3-1-1991 or thereabout informing the hutment dwellers that land bearing Original Plot No. 84/2 (Survey No. 7/1 & 7/2) is covered under T.P. Final Naroda-1 and that the land bearing original plot No. 84/2 vests in the Municipal Corporation. It is stated that by this notice, the hutment dwellers were called upon to hand over peaceful and vacant possession of the land shown in yellow colour in the map attached with the show-cause notice. The petitioners have contended that the A.M.C. has passed a resolution that the hutments registered at the slum census carried out by A.M.C. on 1-5-1976 shall not be removed without providing alternative facilities to such slum dwellers and as the petitioners are occupying since 1975, they cannot be evicted without providing alternative accommodation. Name of 11 persons who are occupying Survey No. 84/2 is indicated in Annexure 'A'. It is prayed that the action of demolishing hutments be declared as illegal and void. It is also prayed that the respondents be restrained from demolishing the hutments.

87. Copy of notice given to one Manaji Aslaji under Section 68 of the Gujarat Town Planning & Urban Development Act read with Rule 33 of the Rules framed under the said Act, is placed on record. In this notice it is pointed out that on finalisation of T. P. Scheme, original Plot No. 84/2 is divided into two plots namely No. 236 and 237. It also appears that similar notice in vernacular was also given to other occupants and along with the affidavit-in-reply, A.M.C. has produced xerox copy of one such notice issued to Fataji Taraji. Corporation has also produced copy of the reply dated 8-1-1991 filed by the said Fataji Taraji. It is stated

therein that he shall hand over possession as soon as alternative shelter is provided. In reply to his aforesaid communication dated 8-1-1991, the Estate Officer has pointed out that the Corporation has no policy of granting alternative accommodation. It is further pointed out that even if he has been occupying the premises for the last 10 years, in view of the provisions of the Act, the occupier is required to hand over the possession. On behalf of the Corporation copy of the map drawn by the Surveyor is placed on record. It appears that original Plot No. 84/2 has been divided into two parts. The said Original Plot numbered as Survey No. 7/1 and 7/2. Final Plot No. 237 is shown in the map and as per the affidavit, the same has been allotted to Kesubhai Baldevbhai. So far as F. P. No. 238 is concerned, where the petitioner's hutments are situated, has been reserved for A.M.C.'s purpose for shopping centre, and thus, it is clear that in view of the scheme, the land vest in the Corporation and the plot is reserved for public purpose. When a public property is encroached upon, the law must take its own course.

88. However, subsequently, in rejoinder, the petitioners have come out with a case that they are residing in the land belonging to Hindustan Times Limited. The petitioners have relied upon a receipt issued by Naroda Nagar Panchayat, which is a tax-receipt vide Annexure 'F'. Relevant numbers such as house number or survey number is not given in the receipt, whereas name of one Rajubhai Vikrambhai as payee - Hindustan Times Limited, and account number 430/368 are given. The deponent has further averred that he carried out a search very recently and has obtained a certified copy of the village form No. 7/12, a copy of which is produced at Annexure 'F'. It may be noted that Annexure 'F' would go to show that the plot owned by Hindustan Times Limited is bearing Survey No. 9. It also indicates that occupier is the Hindustan Times Ltd. The copy is only upto a period from 71-72 to 84-85 during which period 'Kharif crop was also cultivated. The petitioner has also produced a copy of the panclmama. The said panchnama is undated and is not signed by anyone. It is not a certified copy. However it is interesting to note that it refers to Survey No. 2 wherein there are 300 huts. From the documents produced, the only inference that can be drawn is that Survey No. 2 which belongs to the Hindustan Times Ltd., was being cultivated upto '85 and thereafter, persons might have occupied the plot. So far as the present case is concerned, survey numbers were 7/1 and 7/2, original Plot No. 84/2 which was subsequently converted as Final Plot No. 237 and 238. It may be that in Survey No. 2 also there are other hutments, but the hutments in question are on Survey No. 7/1 and 7/2. If they are occupying Final Plot No. 238, their eviction cannot be said to be illegal. If, after following the procedure action is taken, no relief can be granted.

89. The officer of the Corporation would be certainly a better person to state. He has produced on record the map and has stated on oath about the encroachment. The Corporation has also right to enter the land of Hindustan Times Ltd., to remove erection which is in contravention of the Act and to demolish dwellings after following the procedure as per the Act. But it is not the say of the Corporation that they would like to remove the hutments from plot No. 2. However, as they were on the land, which vests in the Corporation, it has a right to take action. If the petitioners are occupying the land belonging to Hindustan Times Ltd., A.M.C. is not interested in evicting them. But from the record it is clear that the petitioners have changed their stand and are claiming to occupy Survey No. 2, while the say of the Corporation is that they are occupying part of F. P. No. 237 (old Survey No. 7/1 and 7/2 Final Plot No. 237 and '238). Under the circumstances, eviction notice for Final Plot No. 237 cannot be said to be illegal. The petitioners have to vacate the part of F. P. No. 237 which they are occupying.

SPECIAL CIVIL APPLICATION NO. 4384 OF 1999

90. Samvad, a Public Charitable Trust as mentioned in the cause title, has filed this petition for the benefit of 34 hutment dwellers who are claiming to have been residing behind N.I.D., Paldi, Ahmedabad. The hutment dwellers whose names are mentioned in Annexure 'B' have indicated that they are in occupation over a period ranging from 4 years to 25 years. In the list at Annexure 'B' against the names of some persons it is mentioned that they have got ration cards or birth certificates etc., however, against the names of various persons, nothing is indicated. It is interesting to note that copies of ration card, or birth certificate etc, are not produced and nothing is mentioned to indicate as to how these documents will indicate as to since when they are

residing there. Vide Annexure 'C', copy of identity card issued by the Election Commission of India in the name of Dutt Mukeshbhai Babubhai dated 22-3-1996 and ration card issued in the name of Vaghri Jayarainbhai Pujari are placed on record. So far as Dutt Mukeshbhai is concerned, his residential address is given as Hutments adjoining to Harsha Flats, Narayannagar, Ellis Bridge. So far as Vaghri Jayarainbhai is concerned, address given is huts behind Ashiyana Flats, Paldi, Ahmedabad, Except this, no evidence is placed on record.

91. In sub-paragraph (d) of paragraph 1 of the petition, it is stated that on 3-6-1999, sixteen huts providing shelter to about 100 persons were demolished without any prior notice in respect of actual demolition procedure. It is stated that these huts were situated behind N.I.D, Ashiyana Flats, Varsha Flats, Modern Flats, Siddhi Flats. The demolition was without any prior notice, as stated in the petition. In sub-paragraph (b) of para 2 it is stated that "most of the slum dwellers are residing therein since about 25 years, while some of them residing there since last 4 to '10 years" (sic). Some of them were residing in their hutments which were situated opposite Jagdish Mandir, Jamalpur. Their hutments at Jamalpur were demolished on 2-11-1995 and having no other shelter, they settled behind N.I.D. where other huts were already there. It is alleged in the petition in sub-para (c) of paragraph 2 that at the time of demolition, Municipal authorities have collected several other documentary evidence from the hutment dwellers. It is further stated that they were told that the documents were necessary in order to verify the fact about their stay, and therefore, many of them do not have copies of the original documents given to the A.M.C. Authorities at the time of demolition. It is, therefore, submitted in this paragraph that the A.M.C. authorities may be asked to produce before this Court all the documents obtained from them at the time of demolition. Ultimately, it is prayed to direct A.M.C. to restore the hutments at its cost to all the hutment dwellers in N.I.D. area, or in the alternative to provide alternative accommodation.

92. The petitioners have drawn a rough sketch and placed it on record at Annexure 'A' to indicate the place. From the map it appears that on right side of Sardar Bridge while going to Paldi, there is Kagdiwad slum while on the left side, on the proposed road, huts are shown which are behind N.I.D., Modern Flats, Rangvihar Flats, and Ashiyana Flats. On behalf of the Corporation, it was also pointed out that they are occupying the road site, and therefore, the Corporation is not in a position to provide road to the public at large and this hutment dwellers are creating hindrance and are not allowing to construct the road. It is a proposed road, and if the road is not constructed, it is stated that the Corporation will not be in a position to provide facilities to common people residing in the area and on the bank of the river Sabarmati near the bridge. On behalf of the Corporation, Mr. Desai submitted that the Corporation had taken a policy decision to provide alternative accommodation to hutment dwellers who are in occupation prior to 1976. However, on behalf of the Corporation, no reply is filed, despite the fact that learned single Judge issued notice on 23-6-1999 directing the parties to maintain status quo. On various dates, status quo granted earlier came to be extended by the Court, but it seems that the matter was placed before the Division Bench for the first time on 7-2-2000. The Division Bench also protected the petitioners by similar order. Till today, the

respondent-Corporation has not filed any reply. Mr. Desai on behalf of the Corporation orally submitted that from the contents of the petition that some of petitioners came to this site very recently after their huts near Jagdish Mandir, Jamalpur were demolished. He, however, stated that if the petitioners are in a position to place material indicating that they are in occupation of the huts prior to 1-5-1976, the Corporation will grant alternative accommodation, provided they are fulfilling the criteria laid down in Nawabkhan case. The Apex Court has considered the situation in the city of Ahmedabad and has thereafter issued directions, and therefore, the Corporation is duty-bound to carry out those directions in Nawabkhan case. In a Public Interest Litigation, the Apex Court refused to grant the relief which in the instant case, petitioners are asking to grant the relief.

93. On behalf of the petitioners, it was specifically contended that as directed by the Apex Court in Olga Tellis case, the Corporation is required to provide alternative accommodation to each and every hutment dwellers irrespective of the place which they are occupying or the period that they are in occupation. This

contention cannot be accepted in view of the decisions of the Apex Court referred to hereinabove.

94. On the facts and circumstances, which were placed in the case of Nawabkhan, the Apex Court even rejected the prayer to extend the cut-off date prescribed by A.M.C. to provide alternative accommodation.

95. Thus, it cannot be contended that the hutment dwellers who were occupying public property by making construction of huts have absolute right to get alternative accommodation. The petition is required to be rejected.

However, with regard to alternative accommodation, we shall deal with it later on.

SPECIAL CIVIL APPLICATION NO. 3185 OF 1999

96. Shishumilap & Anr. filed this petition for the benefit of 23 persons and their families whose names are referred to in Annexure 'A' to this petition. It is averred in the petition that behind Rajnigandha Apts., Opp. Vaccine Institute, on Diwalipura Main Road, Baroda, the persons referred to in Annexure 'A' were occupying dieir huts. On 21-4-1999 when the occupiers had gone for their work, officers of the Baroda Municipal Corporation arrived with bulldozers with force of 40 persons, police mobile and without any notice they removed the huts. It is further stated that no opportunity was given even to collect the household articles and they were thrown on the footpath. The petitioners have prayed that the action of demolition of the hutments be declared as bad, illegal and void and prayed for restoration of the hutments in question.

97. It appears that on 7-5-1999, the Division Bench issued notice returnable on 15-6-1999. No reply has been filed by the Corporation in this matter. The action of the respondent-Corporation in not filing reply requires to be depreciated. Before us, it was orally contended that the encroachment has been removed by the Corporation. The land which was occupied by the hutment dwellers was reserved for construction of houses for weaker sections.

98. In this group of matters, we find that in S.C.A. No. 4202 of 1995 filed by Shishumilap against Baroda Municipal Corporation, Deputy Municipal Commissioner has filed an affidavit. That case was relating to encroachment on the public road. There is a resolution to provide alternative allotment to the hutment dwellers who were encroaching the public road. In sub-para (B) of paragraph 6 of the reply filed in S.C.A. No, 4202 of 1995, it is specifically stated to the effect that the petitioners should approach the concerned authority of B.M.C. and follow the necessary procedure for getting the allotment of alternative site. Therefore, we direct the petitioners of this petition also to approach the concerned authorities of B.M.C. and follow the procedure for allotment of alternative site. If the petitioners are entitled to the benefit of the scheme, the same should be granted.

ALTERNATIVE ACCOMMODATION

99. Originally, the limits of the city of Ahmedabad was not very large, and that part of the city is known as the walled city. Later on, the limits of the city came to be extended from time to time. There has been impressive growth in the industrial activities of the city, but such growth is mainly in the extended areas of the city. Though the industrial growth is impressive on one side, but on the other side, it has also got its own' ill-effects of urbanisation and pollution. Slums which were very few in number earlier has grown out of proportion, and a large multitude of persons are residing in huts.

The Municipal Corporation as well as the State have framed various schemes.

100. It is reported that vast area of land is acquired by the State under the Urban Land (Ceiling & Regulation) Act, 1976.

101. Even under the Gujarat Town Planning & Urban Development Act, 1976 there is a provision for providing housing accommodation to the weaker sections of the society. As regards the area covered under the Act, there is also a scheme about improvement in Chapter XVI which requires to be taken a serious note. It refers to improvement scheme, clearance area, re-development area, provisions of housing accommodation for the poor class land acquisition, levy of betterment charges.

102. If the provisions contained in these two Acts are properly enforced by the law enforcing agencies, there should be no difficulty in providing alternative accommodation.

103. It is required to be noted that when the authorities arc fixing the norms for use of a particular area, and if that use is changed, that creates lot of problems. If in a residential area the Corporation is permitting the premises to be used for the purpose of industrial or commercial purpose, it is likely that people living there would suffer. The situation has arisen because of lack of planning or proper enforcement of scheme. The public properties are not protected by the officers. On the footpath, all of a sudden, there is erection, may be of hut or anything. It must be removed at the earliest so as to protect the property.

104. It is essential that when the State plans an industrial zone or commercial zone, provisions should also be made for providing residential accommodation/ housing facilities to the down-trodden class or the persons taking up employment in the industries and for persons providing ancillary services. Nearby all industrial zones, there should be arrangement for housing for weaker sections and for the persons working in the industries. This would serve two purposes : the staff would be able to reach their job sites without much expenses for travelling and wastage of time; there would be decentralisation so far as population in the urban area is concerned.

105. Similarly, nearby commercial zone, there must be provision for persons providing services. It is very unfortunate that the Ahmedabad Municipal Corporation has allowed the change of user by keeping its fingers on lips. As a result of this, entire residential zone has been converted into commercial zone. Officers of A.M.C. have allowed unauthorised construction and now it is sought to be regularised. The persons who are there to enforce the law are not only allowing wrong doers to commit wrongs but by their blessings the 'wrong' is converted as 'right' by regularisation of construction in contravention of all the provisions. Persons engaged in a petty work or an in ancillary services in a commercial zone, on account of poor earning cannot afford to stay at a longer distance for two reasons : (i) high cost of commuting and (ii) loss of time.

106. However, coming to the question of providing alternative accommodation to the present hutment dwellers before the Court, the Government has acquired vast area under the provisions of Urban Land (Ceiling & Regulation) Act. The purpose of the Act was to acquire excess land and to accommodate the citizens who are poor and/or needy in accordance with the policy. The State Government shall identify and earmark certain plots of lands acquired under the said Act for providing alternative accommodation to the slum dwellers or weaker sections of the society. For this, the Government and the Municipal Corporations shall formulate schemes in line with the principles laid down by the Apex Court in Nawabkhan's case. In doing so, care shall be taken to ensure that me land so vacated by the slum dwellers is not re-occupied by another cluster of slum dwellers, and the alternative site is utilised by the same citizens to whom it is allotted. Otherwise, it may happen that a particular person takes possession of the alternative accommodation and never goes there or dispose it of and the same person re-occupies the vacated premises or joins another cluster or slum dwellers in the vicinity. Moreover, the State/Municipal/Local authorities must take due care to protect open plots from preventing it to be occupied by encroachers. If due care is not taken, ejection of slum dwellers and providing alternative accommodation will be a never ending process. We direct the A.M.C. and B.M.C. -- the respondents in this group of matters, to take appropriate precaution and steps to protect the public property vested in them.

107. We direct the respondent-Municipalities to put officers in charge of vacant/open plots, pavement and other open sites so that they can be held responsible for not protecting the public property and a negligent

officer can be dealt with strictly. For this purpose, the respondent-Municipalities may divide the city into various parts/areas and put an officer in charge of a particular part/area, and it will be the duty of such officer to protect the vacant/open plots, pavements and other open sites from being encroached upon. Such officers would be personally answerable, accountable and responsible for any encroachment in the vacant/open plots, pavements and other open sites in the part/area in their charge. The respondent Municipalities are directed to complete this exercise, including framing of the Rules if required in this regard, and to report to this Court within a period of three months from today.

108. Under the circumstances, the State shall identify and earmark certain lands acquired under the Land Ceiling Act and frame a uniform policy to allot them in accordance therewith to the hutment dwellers represented in this batch of petitions before us and also others who are required to be rehabilitated. This exercise shall be completed within a period of six months from today. The State should not permit any new industries within the Corporation limits, if nearby the industry there is no provision for accommodation of working class. As a matter of fact, while planning for industrial and commercial zone, the State considering the extent of area, expected number of persons likely to be engaged in the ancillary services should make a provision for them. Industry providing housing facility to its workmen should be given precedence -- and State should consider this aspect in proper perspective. An industry willing to provide housing accommodation to employees till they are engaged should not only be given precedence but also for allotment of land insofar as housing accommodation is concerned. The State should consider this aspect while fixing the price for residential area. While providing industrial area, a common plot for providing accommodation to the persons till they are allowed to work should be provided. It would be for the State to examine this aspect so as to avoid various problems including the problem of accumulation of population and pollution.

109. We have heard these matters for final disposal and all the parties are represented by lawyers,

110. In the result, Special Civil Application Nos. 3426 of 1998 and 2255 of 1999 are partly allowed. Special Civil Application Nos. 2251 of 1999, 3172 of 1999, 4041 of 1999 and 4384 of 1999 are rejected; Notice is discharged. Rule is made absolute in Spl. C. A. No. 4202 of 1995 in terms of paragraph 85. Special Civil Application No. 3185 of 1999 stands allowed in terms of paragraph 98. Interim orders stand vacated in all the matters. Civil Applications No, 14020 of 1999 and 4870 of 1999 in Spl. C. A. No. 3172 of 1999 do not survive in view of the final disposal of the petition and these Civil Applications stand disposed of accordingly. State and the Municipal Corporations are directed to act as per the directions given in various paragraphs.

111. Orders accordingly.