

**Daily Order**

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<b>CHIEF JUSTICE AND S VISHWAJITH SHETTY</b>	<b>WP 7737/2020</b>	<b>04/12/2020</b>	<p data-bbox="669 268 976 300"><b>W.P.No.7737/2020 c/w</b></p> <p data-bbox="669 352 919 384"><b>W.P.No.6720/2020</b></p> <p data-bbox="669 604 1502 1297"><b>W.P.No.7737/2020 is a suo motu writ petition. The writ petition is based on the shocking incidents in the city of Bengaluru which took place on 24th March 2020 and 30th March 2020. The incidents are of burning of huts of poor labourers constructed on a Government land in Sy.No.153, Kacharakanahalli Village, Kasaba Hobli, Bengaluru North Taluk. These two incidents were followed by another shocking incident of destruction of large number of huts by using JCB machines. Most of the affected families are from other Districts of the State or from other States. When the incident took place, many of the families had left their houses due to lockdown. The shelters of the poor workers were either burnt or destroyed. The photographs on record will show that the huts were completely razed. Their belongings were lost. These are the incidents which shocked the conscience of the Court.</b></p> <p data-bbox="669 1440 1502 1633"><b>2. By this order, we propose to pass an interim order for rehabilitation of the affected families in the context of the right to shelter being an integral part of the fundamental rights guaranteed by Article 21 of the Constitution of India (for short 'the Constitution').</b></p> <p data-bbox="669 1692 1502 2011"><b>3. Smt. Vaishali Hegde, a Member of the Bar practicing in this Court, addressed a letter to the Chief Justice on 29th May 2020 inviting the attention of the Chief Justice to the shocking incidents which have taken place in the city of Bengaluru. On the basis of the said letter, a direction was issued to initiate suo motu writ petition under Article 226 of the Constitution. Accordingly, W.P.No.7737/2020 has been filed. In the said writ petition, later on, the</b></p>

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			<p>respondent Nos.8 to 60 as well as the respondent No.61 have been impleaded. The respondent Nos.8 to 60 are the affected persons and the last respondent No.61 is a Non-Governmental Organization (NGO) which has taken up the cause of 33 affected families. W.P.No.6720/2020 has been filed by the petitioners who are directly affected by the shocking acts.</p> <p>4. Before we go into the issue of violation of the constitutional rights, a few factual aspects will have to be noted. To the suo motu writ petition, the State Government filed an affidavit dated 22nd June 2020 of Sri Ravi Prasad .P, the Assistant Commissioner of Police, Banasawadi Sub-Division, Bengaluru. He has stated that the Government land in Sy. No.153 in Kacharakannahalli Village, Bengaluru North Taluk measuring 57 acres 26 guntas has been earmarked for different purposes. He has stated that the labourers of various Districts in Karnataka have illegally constructed huts on the said land. The huts were constructed by using coconut leaves, tarpaulin, old cement sheets, plastic banners etc.</p> <p>5. As a result of pandemic of COVID-19, on 22nd March 2020, there was a Janata Curfew as per the appeal made by the Hon'ble Prime Minister. On 23rd and 24th of March 2020, there was a partial lockdown in the city as per the directions of the State Government. The nationwide lockdown was announced from 25th March 2020 onwards. As a result of the lockdown, a judicial notice can be taken of the fact that the labourers started moving away from the city of Bengaluru. In fact, they started returning to their native places. That is borne out from the record of some of the writ petitions pending in the Court. According to the said affidavit, the first incident was reported on 24th March 2020 in the afternoon. The Fire Accident Certificate annexed to the affidavit records that about 15 huts were destroyed due to fire. It is mentioned therein that even the ration kits, clothes and other household items of the occupants were destroyed due to fire. The</p>

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			<p>second incident is of 30th March 2020 reported after 9.30 p.m. The incident is of cluster of huts being destroyed due to fire. Even in this case, in the Fire Accident Certificate, it is recorded that the ration kits, clothes and other household articles were destroyed due to fire. The report also records that about 40 huts were destroyed due to fire. Notwithstanding these two serious incidents, criminal law was not set in motion by any of the Authorities. No attempt was made to ascertain whether it was an accident or a deliberate act. On 1st May 2020, in the morning, one Mr.Bhadrapa visited K.G.Halli Police Station and reported that on 5th April 2020 in the morning, about 10 to 15 unknown persons arrived at the site with JCB machines and destroyed number of vacant huts. It is only thereafter that a First Information Report was registered on 1st May 2020 for various offences. Thereafter, the investigation started. The affidavit records that during the investigation, it was revealed that two owners of the neighbouring choultry were intending to utilize the said Government land next to their choultry for their business and parking. It is stated that taking undue advantage of the lockdown when all the officers were busy with COVID-19 duty and the fact that most of the residents of the huts had moved back to their native places, the accused firstly set fire to the vacant huts and thereafter, by using JCB machines, destroyed several other huts.</p> <p>6. There is another affidavit filed by the said Officer (Assistant Commissioner of Police) on 6th July 2020 which brings on record the following facts:</p> <p>(a) About 45 to 50 destroyed huts belonged to a particular community from Tamil Nadu and they had left the State due to lockdown;</p> <p>(b) The said Officer could ascertain the location of 33 affected families who were found to be residing in different places in Bengaluru District;</p> <p>(c) About 170 families lost their homes due to destruction</p>

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			<p>of the huts by using JCB machines. Though the affected families had left for their native places, they have come back and started living by carrying out some repairs to the destroyed huts. It is stated that steps were being taken to identify the remaining affected persons.</p> <p>7. There is an affidavit filed by Sri Rakesh Singh s/o Bharath Prasad Singh, Additional Chief Secretary of the Government in which he has stated the factual position regarding allotment of the land in Sy.No.153. It is stated that though the land was earlier notified for acquisition for the purpose of development of Bengaluru Development Authority Layout, the said land is permanently recorded in the name of the Revenue Department.</p> <p>8. The memo dated 23rd July 2020 records the steps taken for compensating the 170 families. The affidavit dated 11th August 2020 of the Tahsildar records that an order has been issued on 5th August 2020 by the Deputy Commissioner, Bengaluru Urban District directing payment of Rs.6,100/- to each family whose houses have been destroyed. As per the order of this Court dated 11th August 2020, the State Government reconsidered the quantum of compensation and enhanced the same to Rs.14,100/-.</p> <p>9. The applicants in I.A.No.1/2020 have been already impleaded as the respondent Nos.8 to 60 who have brought on record one important factual aspect that the said land was declared as a slum area under Section 11 of the Karnataka Slum Areas Development Act, 1973. The applicants in the said application claimed that they were driven out of their respective residences.</p> <p>10. I.A.No.2/2020 has been filed by Good Quest</p>

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			<p>Foundation, an NGO, on behalf of the 33 families whose huts were destroyed. The details of those 33 families have been placed on record. The same applicant filed I.A.No.3/2020 seeking authorization to put up shelters for the 33 slum dwellers.</p> <p>11. Another fact which is brought on record by the State Government by filing the statement of objections in W.P.No.6720/2020 is that the Deputy Commissioner, Bengaluru Urban District has issued an order dated 16th September 2020 directing transfer of 2 acres of land at Giddenahalli, Dasanapura Hobli, Bengaluru North Taluk to the Karnataka Slum Clearance Board for rehabilitating 278 families residing on the said land in Sy.No.153. We may also note here that the respondent No.4 in W.P.No.6720/2020 filed statement of objections contending that the slum in which the destructed houses were situated is on tank bund area and therefore, in situ rehabilitation is not possible.</p> <p>12. Before we go to the submissions, we must record here that the identification of the affected families who are entitled to receive compensation of Rs.14,100/- has been completed and the process of making payment of compensation is in progress. We must note here that the compensation is on account of the loss caused to the affected families by destruction of ration kits, clothing and other household articles in their houses. It is not the compensation payable for rehabilitation.</p> <p>13. The learned counsel appointed as Amicus Curiae in W.P.No.7737/2020 has taken us through the factual aspects and submitted that status quo ante must be restored in view of violation of rights of the affected families under Article 21 of the Constitution. The same are the submissions of the learned counsel representing the added affected persons by relying upon various decisions</p>

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			<p>of the Apex Court. He submitted that the site which is now allotted by the State Government is more than 30 kms away from the said land and is not at all suitable for rehabilitation as the members of the affected families are working in and around the city of Bengaluru to earn their livelihood.</p> <p>14. The learned counsel representing the applicant-NGO in I.A.Nos.2/2020 and 3/2020 submitted that the applicant is willing to build houses for 33 families at its own cost and therefore, the applicant may be permitted to do so.</p> <p>15. The stand of the State Government is that the compensation as ordered will be paid to all the eligible families. Secondly, steps are being taken to rehabilitate the affected persons at the site referred earlier. The submission on behalf of the State Government is that in situ rehabilitation is not possible as the structures were on tank bund area and the same were erected by encroaching upon the Government land.</p> <p>16. It is an admitted position that poor labourers working in and around the city of Bengaluru who were either from other parts of the State of Karnataka or other neighboring States had erected huts on the said land which is a Government land. As narrated earlier, after the nationwide lockdown was announced, the occupants started moving away from the city of Bengaluru for reaching their native places. Going by the stand taken by the State Government, two persons who are having a choultry on the Government land took the law into their own hands and set fire to the huts on two different dates and thereafter, destroyed large number of huts by using JCB machines. The State Government on its own did not act to redress the grievances of the affected persons and took no steps against the wrongdoers. The State Government was a silent spectator to the plight of these poor people</p>

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			<p>till this Court issued orders in the suo motu petition.</p> <p><b>17. At this stage, we may refer to the decisions of the Apex Court dealing with the right to shelter. The first relevant judgment is in the case of M/s SHANTHISTAR BUILDERS v. NARAYAN KHIMALAL TOTAME &amp; OTHERS . In paragraphs 9 and 10, the Apex Court held thus:</b></p> <p><b>“9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.</b></p> <p><b>10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population, Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.”</b></p>

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			<p>(emphasis added)</p> <p>The Apex Court held that the right to food, the right to clothing, right to a decent environment and right to a decent accommodation to live in are a part of right to life guaranteed in any civilized society. In paragraph 10, the Apex Court took judicial notice of the fact that considering the scarcity of accommodation in cities, millions of people live on the pavements in different cities in India.</p> <p>18. The second decision which is very material for our consideration is of the Apex Court in the case of CHAMELI SINGH AND OTHERS v. STATE OF U.P. AND ANOTHER wherein the Apex Court considered the scope of Article 21 of the Constitution. In paragraph 4, the Apex Court clearly held that the protection of the right guaranteed by Article 21 of the Constitution encompasses within itself the allied right to shelter with a view to enjoy a meaningful life. The Apex Court referred to Article 46 of the Constitution which is a part of the Directive Principles of State Policy which enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The Apex Court considered its earlier decision in the case of SHANTHISTAR BUILDERS (supra). In paragraphs 4 and 8, the Apex Court held thus:</p> <p>“4. It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural</p>



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			<p><b>Rights, 1966 laid down that State Parties to the Covenant recognise the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions.' The State parties will take appropriate steps to ensure realisation of this right. In P.G. Gupta v. State of Gujarat 2, a Bench of three Judges of this Court considering the mandate of human right to shelter read it into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The Preamble to the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of person so as to fasten fraternity among all Sections of society in an integrated Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker Sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the State to promote with special care social, economic and educational interests of the weaker Sections of the society, in particular, Schedules Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life. It was therefore, held that right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of massive housing schemes. The right to allotment of houses constructed by the Housing Board to the weaker Sections, lower income- group people under Lower Income Group Scheme, was held to be constitutional strategy, an economic programme undertaken by the State and that the weaker Sections are entitled to allotment as per the scheme.”</b></p>

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			<p><b>“8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities</b></p>

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			<p>and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”</p> <p>(emphasis added)</p> <p>19. Thus, the right to shelter guaranteed by Article 21 of the Constitution available to the families who were staying in the destructed huts was clearly violated. While we say so, we are not suggesting that anyone has a right to encroach upon public properties and construct houses. But, if such poor labourers encroach upon public property and erect huts, the same can be removed only after following the due process of law. However, consistent with the right to shelter which is an integral part of Article 21 of the Constitution, the right of rehabilitation of the slum dwellers is required to be considered when an action is being taken to remove the encroachments on the public lands. This will have to be considered in the context of the fact that in a city like Bengaluru, these poor people cannot afford to acquire residential accommodation.</p> <p>20. In the facts of the case, the State Government was duty bound to protect the right to shelter available to the affected families which was guaranteed under Article 21 of the Constitution. Though the agencies of the State were fully aware of the two incidents in March and April 2020, as can be seen from the affidavit dated 23rd June, 2020, there was a complete inaction on the part of the machinery of the State. The fire accident certificates at Annexures-R.1 and R.2 show that the Karnataka State Fire and Emergency Services were aware of the incidents of 24th and 30th March, 2020. The fire accident certificates record not only of the destruction of the houses, but also of destruction of ration kits, clothes and other household items. Still no action was taken for dealing with the miscreants. It is only after 1st May, 2020 when one Shri Bhadrappa complained that an action was initiated by the</p>

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			<p>police by registering a First Information Report. Though the incident of demolition of the houses by the use of JCB is of 5th April, 2020, the First Information Report was registered on 1st May, 2020. No steps were taken by the State to extend a helping hand to the affected families.</p> <p>21. Even going by the stand of the State Government, it is stated that the act of destruction was done by the owners of a choultry. The State Government was duty bound to protect the right of residence of the poor labourers. Thus, the State Government remained passive for a long time and made no effort not only to take any action against the miscreants, but also to rehabilitate the affected families. Therefore, in our considered view, prima facie, the State Government has failed to uphold the fundamental right to shelter which is covered by Article 21 of the Constitution.</p> <p>22. Even as far as compensation is concerned, the entire exercise commenced after this suo motu writ petition was filed on 25th August, 2020. It is not as if three sets of houses were destroyed on one day. On 24th March, 2020, some huts were burnt, on 30th March, 2020, few more huts were burnt and in April, several huts were destroyed by the use of JCB. Thus, this is not a case of a solitary incident. The entire machinery of the State was aware of these incidents. Till this Court intervened, there was no attempt made for rehabilitation of these poor people. This conduct is shocking considering the accepted concept of a welfare state.</p> <p>23. One of the arguments canvassed is that now allotment of another site has been made by the Slum Development Board for rehabilitating these persons by construction of houses. However, nothing has been placed on record to show that the site allotted is already developed and the construction of houses has commenced. No time lines have been fixed and there is no scheme in place for</p>

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			<p>effective rehabilitation of the affected families. Moreover, the proposed site is at a long distance from the existing place of residences of the affected families. Prima facie, it appears to us that there is no possibility of the affected families being rehabilitated in near future. Thus, apart from paying compensation to the affected families for the loss of their household articles, food, etc., there is no genuine attempt made by the State Government to rehabilitate the affected families.</p> <p>24. In the capital city of Bengaluru, hutments of poor people on a Government land were allegedly destroyed by third parties who were interested in making encroachments on the said Government land. The State Government completely ignored such high-handed conduct on the part of the miscreants who blatantly destroyed the huts taking undue advantage of the lockdown. Proper rehabilitation of the occupants has not been made till today, eight months after the incident. There is no possibility of the occupants being rehabilitated in the near future. Hence the only option which is available before us is to direct the State Government to reconstruct the structures of all the affected families by adopting a uniform design. The reconstruction will obviously not create any equity in favour of the occupants. If the structures which were destroyed were illegally constructed, action can be taken strictly in accordance with law to remove the reconstructed structures and evict the occupants. But this will be subject to their right of rehabilitation.</p> <p>25. The applicant in I.A. Nos.2 and 3 of 2020 has offered to construct shelters for only 33 families out of a large number of affected families. All the occupants who have lost their huts will have to be treated on par with each other and therefore, all of them must get identical type of structures.</p>

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			<p data-bbox="670 239 1502 310"><b>26. In view of the aforesaid discussion, we pass the following interim directions:</b></p> <p data-bbox="670 449 1502 562"><b>(i) The process of payment of compensation of Rs.14,100/- shall be completed in relation to the identified families within a maximum period of three weeks from today;</b></p> <p data-bbox="670 701 1502 856"><b>(ii) The State Government shall ensure that the structures/hutments of the identified affected families are reconstructed at its cost and the reconstructed structures shall be of the same pattern and size;</b></p> <p data-bbox="670 995 1502 1066"><b>(iii) The work of reconstruction of the structures shall be completed within a maximum of two months from today;</b></p> <p data-bbox="670 1205 1502 1528"><b>(iv) Reconstruction of the structures by the State Government will not create any equity in favour of the families to whom the said structures are allotted. If the original structures constructed by them were illegal and constituted encroachment on the Government land, the authorities concerned are free to take action of removal of the reconstructed structures subject to the right for rehabilitation of the occupants;</b></p> <p data-bbox="670 1667 1502 1906"><b>(v) As far as possible, the reconstructed structures shall be made at the same place where the destructed structures were in existence. Immediately after completion of the construction, the respective houses shall be allotted to the affected families by the State Government;</b></p>

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			<p data-bbox="670 239 1498 310"><b>(vi) Compliance with the above interim directions shall be reported on or before 6th February, 2021;</b></p> <p data-bbox="670 449 1498 604"><b>(vii) We make it clear that the State Government is free to take the assistance, either monetary or otherwise, from NGOs for reconstruction of the structures including the NGO which is the applicant in I.A. Nos.2 and 3 of 2020.</b></p> <p data-bbox="670 743 1498 814"><b>List these petitions on 11th February, 2021 for reporting compliance with the interim orders.</b></p>

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