

**Court No. - 05**

**Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 775 of 2019

**Petitioner :-** Rajesh Yadav

**Respondent :-** State Of U.P. And 9 Others

**Counsel for Petitioner :-** Jitendra Shanker Pandey

**Counsel for Respondent :-** C.S.C.,Ramesh Chandra Upadhyay

**Hon'ble Surya Prakash Kesarwani,J.**

1. The petitioner claiming himself to be a bonafide citizen, has filed the present public interest litigation (for short PIL) for removal of encroachment and illegal possession of respondent Nos.6 to 10 from khasra plot No.325/350 area 0.20 decimal, khasra plot No.325/351 area 0.08 decimal and khasra plot No.325/348 area 0.10 decimal of village Pakhanpura, Pargana Kopachit, Garvi, Tehsil Rasara, District Ballia, which according to him were recorded in the revenue records as 'khel ka maidan', 'khalihan' and 'khad ka gaddha' respectively.
2. Briefly stated facts of the present case are that by order dated 14.02.1994, the Sub-Divisional Magistrate, Rasara exchanged aforesaid khasra plot No.325/351 area 0.08 decimal, khasra plot No.325/348 area 0.10 decimal and khasra plot No.325/350 area 0.20 decimal, total area 0.38 decimal with plot No.314 area 0.08 decimal, khasra plot No.324M area 0.10 decimal and 324M area 0.20 decimal. Mutation was accordingly made in the revenue records and accordingly the above noted areas of khasra plot No.325/348, 325/350 and 325/351, were recorded as banjar and the exchanged khasra plot No.314 area 0.08 decimal, khasra plot No.324M area 0.10 and khasra plot No.324M area 0.20 were recorded in the revenue records as 'khalihan', 'khad ka gaddha' and 'khel ka maidan' respectively.
3. The Land Management Committee, Pakhanpura passed a resolution dated 19.01.1994 and 10.04.1994 for allotment of the aforesaid

newly recorded banjar land for residential purposes to 19 persons. The allotments were made by Sub-Divisional Officer by order dated 28.10.1995. After allotment of land for residential purposes, the respondent No.6, 7, 8, 9 and 10 constructed their houses (huts and tinshed) and they are still residing. Undisputedly, the respondent Nos.6 to 10 are landless agricultural labourers and are very poor persons and have no shelter except the aforesaid shelter.

4. As per report of the lekhpal dated 29.01.1994 forwarded by the higher authorities and affirmed by Sub-Divisional Officer, Tehsil Rasra, District Ballia, the exchange of land was made on account of the fact that khasra plot No.325/348 area 0.10 decimal, 325/350 area 0.20 decimal and 325/351 area 0.08 decimal, total area 0.38 decimal had converted in abadi long back and consequently the proposal for exchange was made. After exchange as aforesaid, allotments to poor landless agricultural labourer in possession were made for residential purpose after following due procedure of law. Area of the land allotted to the respondent Nos.6 to 10 is as under:

Sl. No.	Name of the allottee	Cast	Khasra plot No.	Area decimal in
1.	Respondent No.6-Indradev	Bhar	325/350M	0.02
2.	Respondent No.7-Abhay Narayan	Ahir	325/348M	0.03
3.	Respondent No.8 –Durgawati	Bhar	325/348M	0.03
4.	Respondent No.9 – Tileswari	Bhar	325/350M	0.03
5.	Respondent No.10 –Budhan	Ahir	325/350M	0.02½

5. As per conversion table, 1 decimal area is equivalent to 48 square yard. Thus, the allotments of very small pieces of land for residential purposes to poor labourers being respondent Nos.6 to 10 were made over which they had constructed long ago their huts by brick-walls and tin-shed and still they are residing therein.

6. It appears that at the instance of the petitioner, a Case No.59/2007 under Section 115P of the U.P.Z.A. and L.R. Act was registered by the Additional District Judge (F/R), Ballia and by ex parte order dated 07.09.2007, aforesaid residential leases granted to 19 persons including the respondent Nos.6 to 10 were cancelled. Thereafter, the petitioner moved an application dated 13.01.2015 before the District Magistrate followed by application dated 24.05.2016 by his son Pankaj Yadav for removal of shelters of the respondent Nos.6 to 10. According to the petitioner, since no action was taken, therefore, he has filed the present petition as PIL.

**7. Learned counsel for the petitioner submits as under:**

(i) The land of which lease for residential purposes was granted to the respondent Nos.6 to 10, is a land falling under Section 132 of the U.P.Z.A. and L.R. Act. In such land no bhoomidhari rights shall be created since it is set apart for public purposes. Therefore, the lease was illegally granted and the respondent Nos.6 to 10 are illegally occupying and using it for residential purposes.

(ii) The ex parte order dated 07.09.2007 passed by the ADM (F/R), Ballia cancelling the lease has not been challenged by the respondent Nos.6 to 10. Therefore, they cannot continue to occupy and use the leased land for residential purposes

**8. Learned Standing Counsel** reiterates the averments made by the State-respondent in their counter affidavit dated 22.05.2019 and submits that the present P.I.L. is not only wholly devoid of substance but it is also abuse of process of Court. The petitioner has completely failed to disclose his credential to invoke the P.I.L. jurisdiction of this Court under Article 226 of the Constitution of

India. The petition has been filed with oblique motive, suppressing the material facts particularly those mentioned in paragraphs 4 and 5 of the counter affidavit.

9. I have carefully considered the submissions of the learned counsels for the parties and with their consent, the **following questions have been framed for determination:-**

**QUESTIONS:-**

- (i) Whether removal of shelter of the respondents No.6 to 10 who are poor landless agricultural labourers belonging to backward classes and who have raised their houses/ shelter over the disputed residential leased land in the year 1995 or even before, would amount to infringement of their fundamental rights guaranteed under Article 19(1)(e) read with Article 21 of the Constitution of India?
- (ii) Whether under the facts and circumstances of the case, removal of shelter of respondent Nos.6 to 10 as a consequence of cancellation of lease dated 28.10.1995 by ex parte order of the ADM (F/R) dated 07.09.2007, can be enforced by the State-respondents without providing alternative accommodation/ shelter to the respondent Nos.6 to 10?
- (iii) Whether relief may be granted in the present PIL which may result in infringing fundamental right to shelter of the respondent Nos.6 to 10 under Article 19(1)(e) read with Article 21 of the Constitution of India?

**DISCUSSION AND FINDINGS:-**

10. Since all the questions are interlinked, therefore, all are being considered together.
11. There cannot be any dispute that lease of a land earmarked for

public purposes cannot be granted but the facts of the present case are that over the disputed land, abadi of landless agricultural labourer had developed even before the year 1994. Therefore, the disputed lands which were part of some public utility land, were exchanged by order of the Sub-Divisional Officer dated 14.02.1994, which was passed after due inquiry and spot inspection by the revenue authorities. Thus, the disputed land, after the order dated 14.02.1994 was passed, stood recorded in the revenue records as banjar. In exchange of the disputed land, the land of khasra plot No.314 and 324 with equal area, were given and recorded in the revenue records under the same head of public utility. The order dated 14.02.1994 of the Sub-Divisional Officer, Rasara, District Ballia for exchange of land with the disputed land, has neither been set aside nor modified by any higher authority. The lease of the disputed land to the respondent Nos.6 to 10 and certain other persons were granted by the competent authority on 28.10.1995, after following due procedure of law.

12. In Paragraphs-4, 5, 6, 10 and 11 of the counter affidavit of Shivdhar Ram, Tehsildar, Tehsil Rasara, District Ballia filed on behalf of respondent Nos.3 and 4, it has been stated as under:

*“4. That in reply to the contents of paragraph No.5 of the writ petition, it is only admitted that Gata No.325/350 is Khel Ka Maidan, Gata No.325/351 is Khalihan and Gata No.325/348 is Khad Ka Gaddha in revenue record Akar Patra Pa (Ka) 11 of the Fasali year 1401 related to Village Pakhanpura, Pargana Kopachit Garvi, Tehsil Rasra, District Ballia, later on vide order dated 14.02.1994 passed by Sub Divisional Magistrate, Rasra, Araji No.325/351 area 0.08 decimal, Khad Ka Gaddha Araji No.325/348 area 0.10 decimal and Khel ka Maidan Araji No.325/350 area 0.20 decimal total three plot and total area 0.30 decimal was changed and recorded in Banjar and in exchange banjar plot No.314 area 0.08 decimal was recorded as Khalihan and Araji No.324Mi. Area 0.10 was recorded as Khad Ka Gaddha and Araji No.324Mi. Area 0.20 decimal was recorded as Khel Ka Maidan and the amaldaramad of the above plots were done by Registrar-Kanoongo dated 02.08.1994. Rest of the allegation in the paragraph is not correct hence denied.*

5. That in reply to the contents of paragraph No.6 of the writ petition, it is stated that Land Management Committee village Pakhanpura, Pargana Kochhi Garvi, Tehsil Rasra, District Ballia by proposal dated 09.01.1994 has granted lease to three persons named Smt. Durgawati wife of Hira Lal (caste Bhar), Abhay Narayan son of Ram Pyare (caste Ahir) and Tileshawari wife of Sukan (caste Bhar) and it was accepted on 14.02.1994 and by proposal dated 10.04.1994 which was accepted on 28.10.1995, lease was granted to 16 persons in which only Indradev son of Faujdar (caste Bhar), Buddhan son of Kapildev (caste Ahir) are living by making residence and is in possession, the other allottees are not in possession, **the persons who are in possession of the allotted land have no any residential land and so the lease was granted to them and they are laborer and economically poor person and are living their making bricks wall teen shed and huts from the date of allotment.**

6. That in reply to the contents of paragraph No.7 of the writ petition, it is only correct that Additional District Magistrate (F/R) Ballia vide his order dated 07.09.2007 cancelled the lease deed of the respondent but the aforesaid order was passed by Additional District Magistrate (F/R) Ballia in absence of defendants and as such it was an ex-parte order.

10. That, in reply to the contents of paragraph No.12 of the writ petition, it is stated that **the said representation is moved by the petitioner's son namely Pankaj Yadav in his personal interest and not by the villagers.** upon the said Tehsildar, Rasra was directed to remove the encroachment by the Sub Divisional Magistrate, Rasra, Ballia.

11. That, in reply to the contents of paragraph No.13 of the writ petition, it is stated that **the lease holders (respondents No.6 to 10) are very poor and needy labourer and they are residing there** by making wall of bricks, huts and sheds.”

13. The contents of Paragraphs-4, 5, 6, 10 and 11 of the counter affidavit of the State-respondents, have been replied by the petitioner in paragraphs-4, 5, 7, 11 and 12 of the rejoinder affidavit dated 25.05.2019, as under:

“4. That, the contents of paragraph no.4 of the counter affidavit need no reply, rest is matter of record.

5. That, the contents of paragraph No.5 of the counter affidavit in a manner stated is not correct. It is stated that after approval of Lease/ Patta over disputed plot out of 16 person, the respondent no.6 to 10 have occupied and living there by making bricks wall, tenn shed and huts from the date of allotment. Later on it is found in the report of Up-Ziladhikari, Rasra, District- Ballia dated 20.06.2006 that the aforesaid disputed land in question is recorded as Khalihan, Khad Ka Gaddha and Khel Ka Maidan in the revenue record, which comes under the purview of Section-132 of U.P.Z.A. and L.R. Act, so the aforesaid lease cannot granted on such land of Section-132 of U.P.Z.A. and L.R. Act, Rest if matter of record.

7. That, the contents of paragraph no.6 of the counter affidavit need no

comments.

11. That, the contents of paragraph no.10 of the counter affidavit in a manner stated is not admitted, it is stated that the representation moved by the Pankaj Yadav son of Rajesh, resident of Village-Pakthanpur, Ratsarh Khurd, Post- Sawan, Tehsil-Rasra, District-Ballia against the illegal encroachment by respondent No.6 to 10 after consent of villagers, thus after hearing the party concerned in Case No.59 of 2007, under Section-115 of U.P.Z.A. Act, the respondent no.3 has passed the order dated 07.09.2007 according to law.

12. That, the contents of paragraph no.11 of the counter affidavit is not admitted, it is stated that the respondent no.6 to 10 are not needed the lease allotted them illegally, irregularly, which was cancelled by the respondent no.3 dated 07.09.2007 has not been challenged the aforesaid order to save their allotment of lease/ patta in any court of law, so the aforesaid order become final”

14. Perusal of the contents of the aforesaid paragraphs of the counter affidavit of the State-respondents and its reply in the rejoinder affidavit of the petitioner reveals following undisputed facts:

(i) That an order for exchange of the disputed land with equal area of another land was passed by the Sub-Divisional Officer, Rasara, Ballia on 14.02.1994 and accordingly mutation was made in the revenue records, which has attained finality.

(ii) Lease for residential purpose was granted by the competent authority on 28.10.1995 on proposal of the Land Management Committee, to the respondent Nos.6 to 10, who are labourers and economically poor persons who have built huts by brick walls and tins-hed over the land allotted to them and are residing therein. They have no other residential accommodation.

(iii) By ex parte order dated 07.09.2007, the ADM (F/R), Rasara, District Ballia cancelled the lease of the respondent Nos.6 to 10. The representation was moved by the petitioner's son namely Pankaj Yadav in his personal interest and not by the villagers.

(iv) The respondent Nos.6 to 10, leaseholders are very poor

and needy labourer and they are residing over the residential leased land by making huts by brick walls and tin-shed.

15. Thus, undisputedly when the residential lease of the disputed land was granted to the respondent Nos.6 to 10, it was recorded in the revenue records as banjar land. They had built their huts in the year 1995 or prior to that and since then they are continuously residing therein. Clause (1) of Sub-Section 2 of Section 59 of the Code, 2006 provides that land, whether cultivable or otherwise, except land for the time being comprised in any holding or grove, may be entrusted to a Gram Panchayat or other local authority for superintendence, management and control in accordance with the provisions of the Code. Section 64 (1) of the Code provides for allotment of abadi sites. It provides a preference in allotment to agricultural labourer or a village artisan residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribes or other backward classes or a person of general category living below poverty line. Section 67A of the Code provides for settlement of certain house sites, as under:

***“67-A Certain house sites to be settled with existing owners thereof.- (1) If any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of this Code, not being land reserved for any public purpose, and such house exists on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.***

*(2) Where any person referred to in sub-section (1) of section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house exists on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.*

*Explanation. - For the purpose of sub-section (2), a house existing on November 29, 2000, on any land held by a tenure holder, shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family.”*

16. Undisputedly and even as per own admission of the State-



respondents in the counter affidavit, the respondent Nos.6 to 10 were granted residential lease in the year 1995 and since then they are residing. They belong to backward class referred to in sub-section (1) of Section 64. As per counter affidavit of the State-respondents, their houses still exist over the disputed land and they are residing therein. Therefore, in view of provisions of Section 67A of the Code, 2006, **the site of such houses shall be held by the owner of the house on such terms and conditions, as may be prescribed and it shall be deemed to have been settled with the owner of the house. Thus, the houses of the respondent Nos.6 to 10 cannot be removed in view of the provisions of Section 67A of the Code.**

17. Preamble, Articles 19(1)(e), 21, 38 and 39 of the Constitution of India are relevant for the purposes of deciding the questions, which are reproduced below:

#### **“Preamble**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:  
JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
EQUALITY of status and of opportunity;  
and to promote among them all  
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;  
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY, ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

#### **Fundamental Rights**

**Art. 19. Protection of certain rights regarding freedom of speech, etc.-**

(1) All citizens shall have the right-

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

**Art. 21. Protection of life and personal liberty.-**No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### **Directive Principles of State Policy**

**Art. 38. State to secure a social order for the promotion of welfare of the people.-**

(1) The State shall strive to promote the welfare of the people by

**securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.**

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

**Art. 39. Certain principles of policy to be followed by the State.-**  
The State shall, in particular, direct its policy towards securing-

(a) that the citizens, 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.”

*(Emphasis supplied by me)*

18. In **U.P. Awas and Vikash Parishad and another vs. Friends Cooperative Housing Society Ltd. and another, (1995) (suppl.) 3 SCC 456 (Para-8)**, Hon'ble Supreme Court held that **“Right to shelter is a fundamental right, which springs from the right to residence assured in Art.19(1)(e) and right to life under Art.21 of the Constitution.”**

19. In **State of Karnataka vs. Narasimhamurthy, [(1995) 5 SCC 524 (para-7)]** while considering a land acquisition matter, Hon'ble Supreme Court held as under:

*“Right to shelter is a fundamental right under Article 19 (1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor. Admittedly, final notification under sub-section (4) of Section 3 did contain the name of the first respondent.”*

*(Emphasis supplied by me)*

20. In **Chameli Singh and others vs State Of U.P. and another,**

[(1996) 2 SCC 549 (Paras-8, 9, 10, 11 and 12)], Hon'ble Supreme Court held as under:

*“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 oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a 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 and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.***

9. In *Kurra Subba Rao v. Distt. Collector* [ 1984 (3) APLJ 249 ], Andhra Pradesh High Court considering the obligation of the State to provide shelter to the weaker sections of the society by acquiring lands for public purpose and distribution thereof had held that in all stages of social development a man must have some property or capacity for acquiring property. **There could be no individual liberty without a minimum of property.** People who cannot buy bread cannot follow the suggestion that they can eat cake. People bowed under the weight of poverty are unlikely to stand up for their constitutional rights. Welfare State exists not only to enable the people to eke out their livelihood but also to make it possible for them to lead a good life. State strives to provide facilities and opportunities to them to improve excellence transcending all sections with diversities in the society so as to enable them to lead a good life assuring dignity of

person under legal order. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Liberty is freedom and justice is equality which are the bedrock of modern democracy. **The challenge of social justice is the challenge for equal opportunity not in form but in substance and the challenge of social justice a constitutional mandate has to be accepted and answered on the basis of day- to-day experience of the performance of law, articulating diverse provisions of the Constitution, while meeting the challenging situation in the society.** The Directive Principles are beacon light leading to reach the ultimate goal of economic equality and social justice to all. It accordingly had uphold the power of the State Government invoking urgency clause under Section 17(4) of the Act when the State discharged its constitutional mandate to provide shelter to the poor.

10. The need to provide right to shelter is not peculiar to India alone but is a global problem being faced by all the developing and developed nations. In 1980 the United Nations General Assembly in its Resolution No. 35/76 expressed the view that an international year devoted to the problems of homeless people in urban and rural areas of the developing countries could be an appropriate occasion to focus attention of the international community on those problems. In Resolution No. 37/221 of 1987 the International Year of Shelter for the Homeless was adopted and request was made to member States to sustain the momentum generated during the programme of the year and to continue implementing concrete and innovative activities aimed at improving the shelter and neighbourhoods of the poor and the disadvantaged and requested the Secretary-General of the UNO to keep it informed periodically of the progress achieved. At the close of the international year the General Assembly received and noted in Resolution No. 42/191 the reports of the executive director of the U. N. Centre for Human Settlement entitled "Shelter and services for the poor - a call to action". **It recognised that adequate and secure shelter is a basic human right and is vital for the fulfillment of human aspirations and that a squalid residential environment is a constant threat to health and to life itself, thereby constituting a drain on human resources, a nation's most valuable asset.** The General Assembly expressed deep concern about the existing situation in which, in spite of efforts of Government at the national and local levels and of international organisations, **more than one billion people find themselves either completely without shelter or living in homes unfit for human habitation; and that owing to prevailing demographic trends, the already formidable problems will escalate in the coming years unless concerted and determined efforts are taken immediately.** As a consequence, Global Strategy for Shelter to the year 2000, including a plan of action for its implementation, monitoring and evaluation was chalked out and its objective would be to stimulate measures to facilitate adequate shelter for all by the year 2000. It requested the Executive Director of the Centre for Human Settlements to prepare a proposal for such a global strategy and called upon the Commission of Human Settlements to formulate the strategy for consideration by the assembly. **In furtherance thereof, guidelines have been laid** to take steps at the national level which was accepted by the Assembly. Guidelines which are relevant for the present purpose are as under:

"2.... The objectives should be based on a comprehensive view of the magnitude and nature of the problem and of the available resource base,

including the potential contribution of men and women. In addition to finance, land, manpower and institutions building materials and technology also have to be considered irrespective of whether they are held by the public or private, formal or informal sector.

3. The objectives of the shelter sector need to be linked to the goals of overall economic policy, social policy, settlement policy and environmental policy.

4. The strategy needs to outline the action through which the objectives can be met. In an enabling strategy actions such as the provision of infrastructure may mean the direct involvement of the public sector in shelter construction. **The objective of 'facilitating adequate shelter of all' also implies that direct Government support should mainly be allocated to the most needy population groups.**

6. Another important component is the development of administrative, institutional and legislative tasks that are direct responsibility of the Government, for example, land registration and regulation of construction.

8. The appropriate institutional framework for the implementation of a strategy must be identified which may require much institutional reorganisation. Each agency involved must have a clear understanding of its role within the overall organisation framework and of the tasks expected of it. Mechanism such as shelter coalitions are recommended and may be developed in partnership with coalitions are recommended and may be developed in partnership with the private and non-governmental sectors. Finally, arrangements for the continuous monitoring, review and monitoring, review and revision of the strategy must be developed.

14. Prepare a plan of action in consultation and partnership with non-governmental organisation, people and their representatives, which:

- (a) Lists the activities that are the direct responsibility of the public sector;
- (b) Lists the activities to be taken to facilitate and encourage the other actors to carry out their part of the task;
- (c) Outlines resource allocation to the aforementioned activities;
- (d) Outlines the institutional arrangements for the implementation, coordination, monitoring and review of the strategy;
- (e) Outlines a schedule for the activities of the various agencies."

11. Guidelines or steps to be taken at the international level were formulated. Guidelines Nos. 15 and 17 are relevant and are stated thus

"15. International action will be necessary to support the activities countries in their endeavour to improve the housing situation of their poor and disadvantaged inhabitants. Such assistance should support national programmes and use know-how available locally and with the international community.

17. Mutual cooperation and exchange of information and expertise between developing countries in human settlement work stimulate and enrich national human settlement work."

(Vide Encyclopedia of Human Rights by Edward Lawson.)

12. In Encyclopaedia of Social Work in India (Vol. 2) at p. 82 it is stated that supply of housing in India does not fully meet the present needs of the population whether in terms of location, size, tenure, type or facilitation. The share of housing sector in India's economy is fluctuating from year to year. Of the total housing stock of 7.44 crore dwelling units available in 1971 in rural areas, 0.80 crore were unserviceable kutcha, 2.44 crores were serviceable kutcha, 2.79 crores were semi-pucca and only 1.41 crore units were pucca. The housing accommodation as a whole in the rural areas as

*dwelling units is inadequate. With ever-growing population and migration of poor to urban areas for livelihood, slums are getting escalated and resultantly with the passage of time housing problem is becoming increasingly acute. Under Minimum Needs Programme provision of house sites and construction of houses for rural landless poor was envisaged in the Sixth Plan 1980-85 which continued in the Seventh Plan. Finances are provided for construction of the houses under the planned expenditure.”*

*(Emphasis supplied by me)*

21. In **Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and others, [(1997) 11 121 (paras-12 and 13)]**, Hon'ble Supreme Court held as under:

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

*"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 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 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 permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with right to dignity of person and equality of status is to enable him to develop himself into 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.

13. **Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its Preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Article 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavor to eliminate inequalities in status. In that case, it was held that to bring the Dalits and Tribes into the mainstream of national life, the State was to provide facilities and opportunities as it is the duty of the State to fulfil the basic human and constitutional rights to residents so as to make the right to life meaningful. In *Shantistar Builders v. Narayan Khimalal Toame* [(1990) 1 SSC 520], another Bench of three judges had held that basic needs of man have traditionally been accepted to be three food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within it 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, 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 surplus urban-vacant land was directed to be used to provide shelter to the poor. In *Olga Tellis case (supra)*, the Constitution Bench had considered the right to dwell on pavements or in slums by the indigent and the same was accepted as a part of right to life enshrined under Article 21; their ejection from the place nearer to their work would be deprivation of their right to livelihood. They will be deprived of their livelihood if they are evicted from their slum and pavement dwellings. Their eviction tantamount to deprivation of their life. The right to livelihood is a traditional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denudes the life of its effective content and meaningfulness but it would make life impossible to live. The deprivation of right to life, therefore, must be consistent with the procedure established by law. In *P.G. Gupta v. state of Gujarat* [(1995)] Supp. 2 SCC 182], another Bench of three Judges had considered the mandate of human right to shelter and read it into Article 19(1) (e) and Article 21 of the Constitution and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and had held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The aforesaid principles have been expressly embodied and in built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person. Article 22 of the Declaration of Human Rights envisages that everyone has a right to social security and is**

*entitled to its realisation as the economic, social and cultural rights and indispensable for his dignity and free development of his personality. It would, therefore, be clear that **though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to live livelihood is meaningful because no one can live without means of his living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude right of the effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the Constitutional objectives.***

*(Emphasis supplied by me)*

22. In **Olga Tellis and others vs. Bombay Municipal Corporation and others, [(1997) 11 121 (paras-32, 33, 37, 39, 40 and 57)]**, Constitution Bench of Hon'ble Supreme Court while considering the case of eviction of pavements and slums dwellers in the Bombay city observed that the sweep of the right to life conferred by Article 21 is wide and far reaching and important facet of that right is the right to livelihood, because no person can live without the means of living, that is, the means of livelihood. The Principles contained in Articles 39 (a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21 such deprivation has to be according to the procedure established by law which must be fair, just and reasonable. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. **Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards, firstly, action must be within**



**the scope of the authority conferred by law and *secondly*, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable.** In the aforesaid case of Olga Tellis (supra), Hon'ble Supreme Court concluded in paragraph-57 (SCC), as under:

*“57. To summarise, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground; that the provision contained in section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that, the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the State Government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censused or who happened to be censused in 1976 should be given, though not as a condition precedent to their removal, alternate pitches at Malavani or at such other convenient place as the Government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their resettlement; **slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purposes, in which case, alternate sites or accommodation will be provided to them**, the 'Low Income Scheme Shelter Programme' which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the Slum Upgradation Programme (SUP)' under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31,1985 and, thereafter, only in accordance with this judgment. If any slum is required to be removed before that date, parties may apply to this Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date viz. October 31, 1985.”*

*(Emphasis supplied by me)*

23. Thus, shelter for a human being, 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 includes adequate living space, safe and decent structure, clean

and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities. Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. Right to shelter is a fundamental right guaranteed under Article 19(1)(e) read with Article 21 of the Constitution of India. To make the right meaningful to the poor and landless agricultural labourers, particularly of the weaker section of the society, the State has to provide the facilities to build houses. It is the duty of the State to fulfill the basic human and constitutional rights to residence so as to make the right meaningful. Basic needs of man have traditionally been accepted to be three - namely food, clothing, and shelter. 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. But no person has a right to encroach and erect structures or otherwise on footpaths, pavement or public space or at any place reserved or earmarked for a public utility. The State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their land to make the right to life meaningful, effective and fruitful.

24. In the present set of facts, the relief sought by the petitioner in this PIL is an attempt to infringe fundamental rights of the respondent Nos.6 to 10 guaranteed under Article 19(1)(e) read with Article 21 of the Constitution of India inasmuch as the residential lease of very small plots were granted to the respondents No.6 to 10 (poor and landless agricultural labourers of backward classes) by the competent authority in the year 1995 and they raised their houses over it and are still residing therein since the year 1995 and thus, they have the protection of Section

67A of the Code, 2006. Therefore, no direction can be issued to the respondent authorities to remove the shelter (houses) of the respondent Nos.6 to 10. In any case, if the State authorities still want to remove the respondent Nos.6 to 10 from their residential houses over the plots in question, on the ground of abadi being earlier a public utility land before exchange, then the State-authorities shall first provide suitable accommodation to the respondent Nos.6 to 10 before removal of their houses in question.

25. From the pleadings in this PIL as briefly noted above, it is evident that the petitioner has not denied the facts stated in paragraph-10 of the counter affidavit that the representation has been moved by the petitioner's son namely Pankaj Yadav in his personal interest and not by the villagers. It has also not been denied by the petitioner that the respondent Nos.6 to 10 leaseholders are very poor and needy labourers and they are residing in the houses over the land in question, which were constructed about 24 years ago on the leased land granted by the competent authority. The order of cancellation of lease was passed ex parte by ADM (F/R) after more than 12 years of the grant of lease. Even in the ex parte order of cancellation, there is no allegation of any fraud or manipulation against the respondent Nos.6 to 10 in grant of lease to them. The petitioner has merely stated that he is bona fide citizen. He has not disclosed his credential. Thus, non-denial by the petitioner the averments of paragraph-10 of the counter affidavit to the effect of personal interest of the petitioner/ petitioner's son, clearly indicates abuse of process of court by the petitioner in filing the present PIL and suppression of material facts particularly those mentioned in paragraphs 4 and 5 of the counter affidavit of the State-

respondents. Therefore, exemplary cost is necessary to be imposed upon the petitioner for filing this frivolous petition as PIL and abusing the process of court, in view of the law laid down by Hon'ble Supreme Court in the case of **Punjab State Power Corporation Ltd. Vs. Atma Singh Grewal (2014) 13 SCC 666 (para 14)** and **Dnyandeo Sabaji Naik Vs. Pradnya Prakash Khadekar (2017) 5 SCC 496 (paras 9 to 14)**.

26. In *Dnyandeo Sabaji Naik (supra)*, Hon'ble Supreme Court has observed that it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forum of the law to defeat or delay justice. Hon'ble Supreme Court commended all courts to deal with frivolous filings, firmly and impose exemplary costs.

27. The principles laid down in the case of *Dnyandeo Sabaji Naik (supra)*, have been reiterated by Hon'ble Supreme Court in the case of *Haryana State Co-op. L&C Federation Ltd. vs. Unique Co-op. L&C Co-op. Society Ltd., (2018) 14 SCC 248 (Paras 16 & 17)* while dismissing the appeal of the *Haryana State Coop. L&C Federation Ltd. (supra)* with exemplary cost of Rs.5 lacs.

28. In the case of *Punjab State Power Corporation Ltd. (supra)*, Hon'ble Supreme Court emphasised that imposition of exemplary costs should be in real terms and not merely symbolic.

#### **CONCLUSIONS:-**

29. The conclusions reached by me and the principles of law laid down by Hon'ble Supreme Court discussed above are briefly summarised as under:

(i) Right to shelter is a fundamental right, which springs from the right to residence assured in Art.19(1)(e) and right to life under

Art.21 of the Constitution. It is a constitutional duty of the State to provide house sites to the poor.

(ii) 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. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights. There could be not individual liberty without a minimum of property. The objective of 'facilitating adequate shelter of all' also implies that direct Government support should mainly be allocated to the most needy population groups.

(iii) Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its Preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Article 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavor to eliminate inequalities in status. Basic needs of man

have traditionally been accepted to be three namely- food, clothing and shelter. The right to life is guaranteed in any civilised society. It is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor.

(iv) No person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose. The State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter to make the right to life meaningful, effective and fruitful.

(v) In the present set of facts, the relief sought by the petitioner in this PIL is an attempt to infringe fundamental rights of the respondent Nos.6 to 10 guaranteed under Article 19(1)(e) read with Article 21 of the Constitution of India inasmuch as the residential lease of very small plots were granted to the respondents No.6 to 10 (poor and landless agricultural labourers of backward classes) by the competent authority in the year 1995 and they raised their houses over it and are still residing therein since the year 1995 and thus, they have the protection of Section 67A of the Code, 2006. Therefore, no direction can be issued to the respondent authorities to remove the shelter (houses) of the respondent Nos.6 to 10.

(vi) In any case, if the State authorities still want to remove the respondent Nos.6 to 10 from their residential houses over the plots in question, on the ground of abadi being earlier a public utility land before exchange, then the State-authorities shall first provide suitable accommodation to the respondent Nos.6 to 10 before removal of their houses in question.

(vii) Exemplary cost is necessary to be imposed upon the

petitioner for filing this frivolous petition as PIL and abusing the process of court.

30. For all the reasons afore-stated, this petition is **dismissed** with cost of Rs.10,000/- which the petitioner shall deposit with the High Court Legal Services Committee within six weeks from today.

31. It is expected that the Government shall take appropriate steps in the light of the observations made in para-29 {(i), (ii), (iii) and (iv)} above.

**Order Date :- 01.07.2019**

NLY