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To,

The Chief Justice of India & his companion Judges at the Supreme Court of India

We are the law students from Indian Civil Liberties Union from various and diverse Institutions across the country. ICLU is the voice of the marginalized section of the society and works for the cause of protection of the civil liberties of each individual. We have been working on various issues and have extended our support in the form of pro bono legal aid/ assistance. We have been working on various issues and have extended our support in the form of pro bono legal aid/ assistance. When the National Lock Down was announced, after which thousands of Migrants were walking back on foot, we successfully carried out the Migrant Project 2020, where over 40,000 Migrant labors headed back home. ICLU comprises experts in law, history, public administration communications, psychology, management, graphic designers, academicians, and activists. Together a dynamic team shapes the overall working, coordination, informatics, and ideology of the organization. We are collectively concerned about these poor slum dwellers residing in these Jhuggies. ICLU aims to serve society by providing presence wherever needed, by engaging in various legal aid/awareness activities. Here through this letter petition we plead before your Lordships that the order dated **31.08.2020 M.C. Mehta v. Union of India** (Writ Petition(s)(Civil) No(s). 13029/19) should be modified and reconsidered. (Para U, Pg 09)

I) **An overview of M.C. Mehta v. Union of India** (Order dated- 31-08-20, Writ Petition(s)(Civil) No(s). 13029/19)

A) This court has been the guardian of the Constitution and its interpretation of Part-III has been beneficial for every citizen. Recently, the Hon'ble Court in the matter of **M.C. Mehta v. Union of India** (Writ Petition(s)(Civil) No(s). 13029/19) has directed the eviction of 48,000 jhuggies near the New Delhi area. This order came in pursuance of the implementation of 'Smog Tower' plan. What horrifies us is the plight of these poor dwellers who have been denied the right to be heard before the court. An affidavit was filed before the court and it pointed out that there are some 'Jhuggies' in New Delhi along with 140 km route length of the tracks.

The court observed that - *"It is also pointed out in the affidavit filed on behalf of the Railways that there is predominant presence of jhuggies in Delhi along with 140 km route length of track in the region of NCT of Delhi where the railway tracks take off in different directions and also include a ring connecting the takeoff of all these routes.*

Out of this, about 70 km route length of track is affected by large jhuggie jhopri clusters existing in close vicinity of the tracks. These clusters sum up to a total of about 48000 nos of Jhuggies in the region adjacent to Railway tracks.”

B) This was not the first time that such circumstances were placed before the Hon’ble Court, because the ‘The right to shelter’ and ‘livelihood’ has been declared as a facet of Article 21 of the Indian Constitution. It is important to note that in Francis Coralie Mullin v. The Administrator, (AIR1981 SC 746) the court rightly opined that the right to life includes the right to live with human dignity and all that goes along with it, including **adequate nutrition, clothing and shelter**. The most problematic part is the conclusive remark of the order -- which states that there would be no ‘stay’ on the eviction proceedings by any court of law.

*“We also direct all the stakeholders that a comprehensive plan for removal of jhuggies be made and executed in a phased manner. The encroachments which are there in the safety zones should be removed within a period of three months and no interference, political or otherwise, **should be there and no Court shall grant any stay with respect to removal of the encroachments in the area in question.** In case any interim order is granted with respect to encroachments, which have been made along with railway tracks, that shall not be effective.”*

C) The court made it clear that there shall not be any operational stay during the eviction proceedings, either it is political hindrance or a court monitored order. But at the same time the other party has not been considered, heard or acknowledged. In Law school we have heard about the maxim - Audi Alteram Partem, which means “Listen to the other side” or “let the other side be heard as well”, but if this order is executed then it would be an unjust act against those Slum dwellers who have been living in those jhuggies since ages.

D) By ordering the evacuation of jhuggi jhopdis in the middle of the Covid-19 Pandemic, the Hon’ble Court has threatened the lives and refused to protect the intertwined rights of jhuggi jhopdi dwellers. As noted by the UN Special Rapporteur on Housing, **‘in the face of this pandemic, being evicted from your home is a potential death sentence.’** The Special Rapporteur has therefore called on states to ensure, amongst other things, an end to the forced eviction or displacement of informal settlements. Courts in other countries have passed orders to prevent any eviction of informal settlements during these times.

E) Keeping in view the observations made by court we have prepared a brief on why the judgement is not a good precedent and it blatantly violates the right of the slum dwellers who have been residing there since ages and the move could plunge nearly

230,000 poor residents into even deeper poverty. As the guardian of the Constitution, the Hon'ble Court should take into consideration the plight of these poor dwellers and grant some extension and relief accordingly.

II) Right to Shelter is a fundamental right - Ground I

F) It is important to note here that the right to shelter has been recognized as one of the facets of Article 21 under the Indian Constitution. In ***Oliga Tellis v. Bombay Municipal Corporation***, [1985] 2 Supp SCR 51 the court observed that --

” An equally 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. If the right to livelihood is not treated as a part of the constitutional right to life, 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 denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the village s that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat.”

G) That in the same judgement it was also observed that -- Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it.

H) The Supreme Court observed, in ***PG Gupta v. State of Gujarat and Ors***, (1995 Supp. (2) SCC 182) , that the Right to shelter in Article 19(1) (g) read with Articles 19(1) (e) and 21 included the right to residence and settlement. Also it was observed that it is, therefore, imperative of the State to provide permanent housing accommodation to the poor in the housing schemes undertaken by it or its instrumentalities within their economic means so that they could make the payment of the price in easy installments and have permanent settlement and residence assured under Article 19(1)(e) and 21 of the Constitution.

I) It is noteworthy to refer what the Court observed in *Oliga Tellis case* (Supra) in reference to the intention of these poor dwellers -- *“There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to “commit an offence or intimidate, insult or annoy any person”, which is the gist of the offence of ‘Criminal trespass’ under section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice.”*

J) Hence, it is a settled principle that right to shelter has been recognized as a fundamental right and the observations made in *M.C. Mehta case* (Supra) are very in contravention of the principle laid down in the case of **Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr**, (1973) 4 SCC 225) where it was observed that the court order cannot deprive someone of their basic Fundamental Rights guaranteed under Part -III. It is noteworthy to refer the famous speech of **Nelson Mandela** in 1991, which was also referred by the Delhi High Court in the *Ajay Maken* case --

“A simple vote, without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanize people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.”

III) Alternative settlement and fair compensation - Ground II

K) The court has directed the concerned authorities to evict these poor dwellers within three months. But the most important question is whether such authorities have determined their share of fair compensation/ resettlement or not. Under the **Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015** there are certain conditions which have been prescribed for those who are residing in these Jhuggies. The relocation policy states that if -

- **JJ clusters which have come up before 01 January 2006 shall not be removed without rehabilitation;** the cut-off date for eligibility for alternative accommodation for JJ dwellers living in these clusters would be 14 February 2015.
- No new jhuggi will be allowed to come up.

- *DUSIB will plan and implement In-situ rehabilitation/re-development of JJ clusters wherever technically feasible; in other cases, DUSIB will resort to nearest possible relocation.*
- *Once JJ clusters are taken over by DUSIB/GNCTD, in-situ rehabilitation of all the clusters will be planned and implemented by DUSIB wherever feasible; in other cases, DUSIB /GNCTD will resort to relocation of eligible JJ dwellers.*

L) In the case of **Ajay Maken v. Union of India** (W.P.(C) No.6681 of 2015- (2015) 7 SCC 1) the Delhi court rightly observed that there should be efficient arrangements made by the authorities before such eviction proceedings takes place. In Para 144, the Delhi High Court had observed:

“It is essential to first complete a survey and consult the JJ dwellers, there is, as of now, no imminent possibility of eviction of the JJ dwellers of the Shakur Basti. If no in situ rehabilitation is feasible, then as and when the Respondents are in a position to rehabilitate the eligible dwellers of the JJ basti and jhuggis in Shakur Basti elsewhere, adequate time will be given to such dwellers to make arrangements to move to the relocation site. The right of the JJ dwellers to raise objections to the 2015 Policy and the Protocol and to seek legal redress at the appropriate stage, if the occasion so arises, is reserved.”

M) In 2010, in **Sudama Singh**, the Delhi High Court held that prior to carrying out any eviction, it was the duty of the state to (i) conduct a survey of all persons facing evictions to check their eligibility under existing schemes for rehabilitation, and (ii) to carry out a rehabilitation exercise **‘in consultation with each one of them [persons at risk of an eviction] in a meaningful manner.’** But here, in this case the Hon’ble Court has failed to acknowledge the plight of these poor dwellers who have been residing in those Jhuggies since generations. And there might be a possibility that majority of the population is living there prior to 2006, which places a duty on the authorities to determine the status of those jhuggies. The ruling of **Sudama Singh** was upheld twice by the Supreme Court. First, though rejecting as withdrawn the special leave petition submitted by the Delhi Government against the judgement of **Sudama Singh**, the Supreme Court noted that the judgement had 'attained finality' (*SLP (Civil) No. 445-446/2012*). Second, when hearing an appeal against the order of the Delhi High Court, the Supreme Court upheld the judgement of **Sudama Singh** and ordered the Government of Delhi to enforce it 'in full measure' (*Civil Appeal No. 21806-807/2017*).

N) Keeping in mind the situation and the condition of these dwellers in this global pandemic, the Hon’ble Court ought to consider the economic conditions also. This Hon’ble Court once granted an extension of time in eviction proceedings against poor

dwellers, due to the rainy season in Madras and the court had rightly observed in **K. Chandru Etc.Etc vs State of Tamil Nadu & Ors** (1986 AIR 204):

“Since Madras has a late monsoon, we direct that the pavement dwellers in the city will not be evicted before December 31, 1985. The State Government will do its best to provide alternative accommodation to those amongst them who are able to show that they were living on pavements before June 30, 1977. Insofar as the slum dwellers are concerned, the counter-affidavits filed on behalf of the respondents contain an assurance that it is the policy of the State Government not to evict such of them as were living in the slums prior to June 30, 1977, without providing alternate accommodation to them. That assurance will bind the Government. Insofar as the other slum dwellers are concerned, they too will not be evicted before December 31, 1985 unless the land on which any slum stands are required by the State Government for an urgent public purpose.”

O) The author Chandana Das in his article- ‘*Slum Settlements on Railway Land: A State of Denial and Deprivation*’ has rightly pointed out the plight of these people who are residing in the concerned jhuggies. And a reference to Delhi has been made in this write up which observes that:

“ **Pul Mithai** is located in the old Delhi area. It has the biggest wholesale grain market, and the main occupation of the residents is to sell segregated grain chaff in the market set up in the region on Sundays. The Railways’ department demolished their settlement once in the 90s, when they stayed over a bridge; and subsequently in **2006, 2008, 2009, and 2010**. In the last demolition, the authorities were supposed to only demolish vacant quarters. However, they eventually ended up demolishing up to 500 homes. The people vehemently resisted the move, but they were faced with police violence and lathi charges (batons). Many dwellers were injured, especially women. Sahar Adhikar Manch, a Delhi based forum filed a petition in the Delhi High Court to stop the demolition. In Delhi, the demolitions follow a pattern. Usually, no prior notice is given to the people. Armed with bulldozers and a large contingent of police forces, the demolition squad suddenly arrives on a fine morning and begins demolishing the slums.”¹

P) The sum of rehabilitation which has been granted by the authorities to the Delhi Urban Shelter Improvement Board has been utilized disproportionately. V. Venkatesan, has covered this issue, in his write up for The Wire -

” The National Green Tribunal’s order in **Saloni Singh** noted that a sum of Rs.11.25 crores was given in 2003-04 for rehabilitation of slum dwellers to the Delhi Urban

¹ Chandana Das, “Slum Settlements on Railway Land: A State of Denial and Deprivation”, Ritimo (December 18, 2014) Avail at - <https://www.ritimo.org/Slum-Settlements-on-Railway-Land-A-State-of-Denial-and-Deprivation>

Shelter Improvement Board. Out of 4410 jhuggies, only 257 had been rehabilitated, it noted. With such a poor record in rehabilitation, imposing a three-month deadline for eviction seems not only unjust but an invitation to a humanitarian disaster, with the COVID-19 unrelenting on its impact on the urban poor and the marginalized.”²

IV) Pandemic and the Plight of the slum dwellers - Ground III

R) The world is suffering because of this pandemic, there is an economic crisis everywhere around the corner and poor migrants have been facing it since the Lock Down was announced in March this year. Considering the critical situation, the court should give some amount of relief to these slum dwellers. Railway Stations, pavements, foot-paths have been one of the most common places where we find the poor ones, but labeling them as ‘encroachers’ is equally wrong.

S) The court in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and ors.* has rightly observed that -- It would, therefore, be of necessity that the policy of the Government in executing the policies of providing housing accommodation either to the rural poor or the urban poor, should be such that the lands allotted or houses constructed/plots allotted be in such a manner that all the sections of the society, Schedules Castes, Scheduled Tribes, Backward Classes and other poor are integrated as cohesive social structure. The expenditure should be met from the respective budgetary provisions allotted to their housing schemes in the respective proportion be utilized. All of them would, therefore, live in one locality in an integrated social group so that social harmony, integrity, fraternity and amity would be fostered, religious and caste distinction would no longer remain a barrier for harmonised social intercourse and integration.

T) Hence, the order made in this case should be altered and reconsidered in the view of the pandemic coupled with the plight of these dwellers. There might be a possibility that some of these jhuggies belong to those migrants who have been working as migrant workers in Delhi, but now when they have marched back to their native states ‘on foot’, they might be in a state of helplessness when they found out that their shelter has been evicted and demolished without even giving them a fair hearing.

V) Relief Sought

U) With the issues, contentions and objections discussed above, we sought some basic relief from this Hon’ble Court-

1. That the order dated - 31-08-20 should be modified and reconsidered
2. That the Jhuggies/ Slum Dwellers should be given a chance of fair hearing.
3. That the provisions of the Resettlement Policy, 2015 should be taken into consideration the authorities should determine time period of these Jhuggies.

² V. Venkatesan, “Justice Mishra's Last Order: Eviction of Slum Dwellers Along Railway Tracks in 3 Months”, *The Wire* (September 6, 2020)

4. That if there are Dwellers, who are living there since 2006, then a fair compensation and resettlement should be awarded.
5. That the time period of three months should be extended, keeping in view the global pandemic.
6. And any other just and equitable modification as it deems fit in the interest of equity, justice and good conscience.

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(On Behalf of the Law students, Indian Civil Liberties Union)

