

The Shunned and The Shunted

The Slum and Pavement Dwellers of Bombay

PREFACE

Since July 1981, the Bombay Unit of the People's Union for Civil Liberties (PUCL) has been actively associated in protecting the Civil Liberties and Democratic Rights of over half the City's population who have been driven through decades of State indifference to seek shelter in what the authorities describe as unauthorised housing. The purpose of this document is to explain the genesis of and the rationale behind PUCL's intervention and involvement.

The PUCL wishes to clarify that it does not advocate the individual's right to construct shelter in disregard of the city's planning regulations. It does, however, very strongly advocate the adoption and implementation of policies which would ensure an adequate supply of basic shelter in a planned manner which would then preclude the possibility of vast numbers of people having to devise solutions to their shelter problem which run counter to good city management. The PUCL also maintains that removal of existing unauthorised structures should, in a democratic and welfare state, be a phased one in a manner which behoves such a polity and without in any way infringing human rights and the dignity of human beings. It is precisely because the methods adopted by the State infringed basic values and constitutional safeguards that the PUCL deemed it a fit case to intervene on behalf of those who were otherwise defenceless.

This report is dedicated to the nearly 5 million people of Greater Bombay living in avoidable squalor.

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Genesis: Antulay Orders Deportation

1. On 13th July, 1981, several Bombay newspapers reported that the then Chief Minister, Shri Antulay, was about to launch a massive programme, "Pavement Clearance", to deport pavement dwellers, numbering about 100,000, outside the City limits. No one could ever have imagined that in Democratic India any State Government would dare to carry out a programme reminiscent of the deportation of Jews in Nazi Germany or of "blacks" in South Africa. To the utter consternation of thinking people in the City and the Government of Maharashtra's (GOM) own enlightened bureaucrats, Shri Antulay was in dead earnest.

2. Praful Bidwai and Ivan Ferra, two journalists who were in touch with the PUCL contacted Ashok Desai and Darshana Bhogilal, Advocates, late at night on 22nd July, 1981 and informed them that deportation was likely to commence that very night as there was massive police "bandobast". Various police stations were promptly contacted to ascertain what was happening, but the PUCL lawyers were informed that the reason for the police "bandobast" was so far not known. Between 6.00 am and 9.00 am, on 23rd July, 1981 on one of the worst days of the monsoon, in pouring rain, deportation commenced. Not only pavement dwellers of Tulsi Pipe Road (Matunga-Mahim), but also slum dwellers of Kamraj Nagar (Ville Parle, off the Western Express Highway) were forcibly herded into State Transport Buses which had been lined up 4 deep to prevent escape. Their huts were demolished and their belongings confiscated and dumped into rubbish vans of the Municipal Corporation of Greater Bombay (BMC). Families were separated, young children and old people died and a woman even delivered a child in one of the buses. On arrival at various distant places such as Bhusaval, Sholapur, etc., the bewildered people were again met with massive police "bandobast" as the GOM feared riots. Non-Maharashtrians were given tickets to railway junctions in Gujarat, Tamil Nadu, etc.

The PUCL Moves The Bombay High Court

3. The public outcry against the barbarism displayed by the GOM is now almost forgotten. It was against this massive assault on the civil liberties of a section of Bombay's citizens representing the majority of the city's population that the PUCL moved the Bombay High Court, on that very day, 23rd July, 1981, for an injunction to stop deportation. About 20 lawyers gave their support to PUCL, including senior advocates, such as Mr. Ashok Desai, Mr. K. S. Cooper, Mr. T. R. Andhyarujina and Mr. M. A. Rane. Mr. Justice Lentin promptly granted a stay against the mass deportations.

4. In the course of the hearing the GOM conceded that deportation was illegal and unconstitutional and gave an undertaking not to deport any pavement or slum dwellers (collectively referred to as "hutment dwellers").

Mr. Ashok Desai, Counsel for the PUCL on behalf of the slum and pavement dwellers, made a categorical statement that he was *not* claiming any fundamental right to live on the pavement. Justice Lentin granted an injunction against further demolition of hutments till the end of the monsoon i.e. upto 15th October, 1981. The GOM gave an undertaking not to evict those hutment dwellers who were covered by the 1976 "slum census" unless they were given alternate pitches. Justice Lentin also passed an order permitting residents in Kamraj Nagar to reconstruct their huts. The petition was disposed of on 14th August, 1981.

The PUCL Moves The Supreme Court

5. The PUCL decided to file a comprehensive petition in the Supreme Court (SC) as it was felt that the SC was the only forum which could decide the wide-ranging and important issues raised by the PUCL. However, in August, 1981, Ms. Olga Tellis, through her advocate, Ms. Indira Jaisingh, filed a petition in the SC. The PUCL suggested that a common strategy be worked out, in which case the PUCL would not independently move the SC. However, as Ms. Olga Tellis wished to argue for a fundamental right to live on the pavement and PUCL was of the view that no such right could be claimed, it was decided to file a separate petition as originally intended. Both petitions were admitted on 19th October, 1981. From time to time, various interim orders were passed to protect the hutments already in existence on the date the petitions were admitted and a procedure was laid down to determine which huts had come up after that date as these were not protected. The orders are effective till the disposal of the petition.

6. The effect of the various orders read together is given below:

The GOM itself undertook not to demolish huts covered by the 1976 "census" unless alternative sites were provided. Huts constructed in slums on or before 19th October, 1981, could not be demolished unless the land was required for a public purpose, in which case permission of the SC was required. Huts constructed on pavements on or before 19th October, 1981, could not be demolished unless they obstruct the free and safe flow of vehicular or pedestrian traffic on the road. Huts constructed after 19th October, 1981, whether in slums or pavements could however be demolished. However, before the BMC or GOM could demolish any huts they had to give 72 hours notice to an officer appointed by the court who would inspect the site and give his findings to the SC as to whether or not the proposed demolition was in accordance with the SC orders or not. The SC would then give directions after having satisfied itself, on the subject of dates, and obstruction to traffic.

Factors In The Growth Of Unauthorised Settlements

7. The PUCL has clearly pointed out to the SC that it is the GOM's and BMC's own failures, cumulated over decades, to lay down a long-term strategy for urban growth and systematically implement it, and, as part of such a programme, to manage its land and other resources in the public interest, that has led to the present urban chaos, including the proliferation of slums. Even at this late stage, rather than heed the advice of their own urban planning experts on the most appropriate manner of dealing with the problem of shelter, the authorities have embarked on a mindless demolition programme of temporary shelters constructed by the poor with a zeal that is truly disquieting.

8. The total population of Greater Bombay is now approximately 8.75 million. Over half this population lives in slums, about a quarter in dilapidated buildings. Less than one per cent of the people live on the less used pavements, the last recourse of the desperately poor.

9. Bombay's hutment dwellers make a very significant and massive contribution to the economic life of the City and thus enable the City to play its vital role in relation to the rest of the country. Without them, Bombay's economy would grind to a halt. Yet, many who benefit from them as a provider of cheap labour deny them their basic right as residents. Further, hutment dwellers are welcomed as workers but shunned and shunted about as citizens.

10. An enormous population lives in appalling conditions in Bombay's slums not out of choice but because of the miserably low wages which they are able to secure. The situation is further aggravated by the gross mismanagement by the BMC and the GOM of the land and other resources available in the city. We have before us the iniquitous situation where about 75% of the city's households have no way of acquiring legal accommodation either because supply falls far short of demand or because accommodation is available only at unaffordable prices.

11. The position with regard to the supply of land is particularly iniquitous. It places in stark reality the difference between the rich and the poor, the "haves" and the "have nots". The gross area of Greater Bombay is about 43,000 hectares and the estimates of vacant land vary between 3,000 hectares and 10,000 hectares. Significantly, reliable data regarding the quantity of vacant land in Greater Bombay is hard to get. Denial of information helps to create a shortage psychosis.

12. Taking as the GOM does, an average of 5 persons per dwelling unit, hutment dwellers numbering about 4.7 million occupy approximately 9 lakh huts. At the rate of 15 sq. metres per unit, the amount of land required to house the entire population is a mere 1,350 hectares (net of roads, open spaces, etc.) as against 3,000 to 10,000 hectares of land estimated to be vacant. With reference to the total area of Greater Bombay, the net area required for housing the entire hutment population of Greater Bombay is a relatively low three percent. Failure to deliver such a miniscule proportion of Bombay's land to the poor of Bombay is not a technical problem. It is predicted that the population of Greater Bombay will be in the region of 15 million in the year 2000. The number of dwelling units at that time would be around 3 million. Using a widely accepted planning standard of 40 sq. metres per unit, the total land requirement for residential purposes in the year 2000 would be 12,000 hectares or a little over one-quarter of the total area available, which is an easily achieved figure if the City were well planned and equally well managed. The only conclusion which can, therefore, be reached from a consideration of these figures is that there is more than sufficient land in Bombay. The problem is not one of finding land but of adopting policies and organising institutional devices for delivering residential land to those who are in need of it, and have a right to it, at prices and on terms which are fair, reasonable and just.

13. It is clear that the GOM and the BMC have failed and have failed miserably in managing the City's affairs. This has happened despite the fact that the State Government is armed with more than adequate powers to acquire and allot land in the public interest. For years, these powers to acquire land under the Land Acquisition Act, 1894, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Maharashtra Housing & Area Development Act, 1976, and the Urban Land (Ceiling and Regulation) Act, 1976 (ULCRA) have languished in the statute books. In fact the GOM has to a large measure failed to acquire land and apply it for public purposes, including the provision of accommodation for the bulk of the City's population. The GOM has instead chosen to perpetuate the hutment dwellers' insecurity of tenure.

14. If the GOM and the BMC had acted upon the abundant powers given to them under various enactments, they would not be faced with the massive hutment problem with which they are today faced, nor would they have thought it necessary to resort to drastic and draconian methods in an attempt to solve the housing problem.

15. The preamble to the ULCRA states:

"An Act to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of building on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein *and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.*"

Under section 21 of the ULCRA a person holding land in excess of the ceiling limit may apply for exemption from acquisition on the ground that the land is to be used for accommodation for the weaker sections of society. According to the Report of the GOM's own High Power Steering Group for Slums and Dilapidated Houses, published in August, 1981, several years after the enactment of the ULCRA, 1,890 applications were pending for approval with the GOM under section 21 of the ULCRA, covering 2,952 hectares of land (equivalent to about 300 million square feet of built up space, given an FSI of one).

16. While the GOM has been grossly negligent in discharging its duty to remove the constraints on the supply of available land to the urban land market, with resultant spiralling land and accommodation prices, its performance in creating new housing stock has been equally deplorable. The annual demand for housing in the Bombay Metropolitan Region is estimated at 60,000 dwelling units, whilst the annual supply is of approximately 15,000 dwelling units. Every year therefore, the housing deficit increases by 45,000 dwelling units. Since its inception in 1949, the Maharashtra Housing Board (MHB) has constructed only 80,000 housing units. The performance of the Bombay Housing & Area Development Board (BHADB), the successor of MHB has been equally poor. During the last five years,

it has constructed less than 15,000 units. In 1978/79 the number of housing units constructed for the economically weaker sections of society by the BHADB was as low as 120 units.

17. Bombay's housing problems have been exacerbated by unrealistic and unpragmatic building regulations which preclude the construction of affordable housing. Advice from urban development experts to do away with impractical building regulations, which only favour builders and contractors, and to encourage low-cost, self-help, incremental and renewable housing (based on simple structures, one's own skills and readily available materials) in an organised manner through "sites and services" schemes have gone largely unheeded, despite their increasing acceptance in third world countries and the availability of World Bank Credit specifically for this purpose.

18. Interestingly, in January, 1983, certain departments of the GOM published a scheme for a "sites and services" programme in Bombay: "Affordable Low Income Shelter Programme in Bombay Metropolitan Region" prepared jointly by the Bombay Metropolitan Regional Development Authority (BMRDA), the Housing and Special Assistance Department, GOM, and the Maharashtra Housing and Area Development Authority (MH & ADA). The fate of this crucially important proposal is awaited.

The PUCL Seeks To Reach A Settlement in Court

19. On 10th January, 1983 the Writ Petition filed by the PUCL came up for final hearing before a Constitution Bench of the Hon'ble Chief Justice Y. V. Chandrachud and Justices Tulzapurkar, Murtaza Fazal Ali, Chinnappa Reddy, and Varadarajan.

20. The Bench hearing the case strongly felt that the authorities should try to find a solution to this tragic human problem. The GOM and BMC however, shied away from this approach and argued: (i) that there was not sufficient vacant land; (ii) that in any event the hutment dwellers were not prepared to move to alternative sites unless they were in close proximity to their place of work; (iii) that even if alternate pitches/huts were provided, the hutment dwellers would sell them and return to where they were shifted from; and (iv) that the authorities had done all they could in resolving the problem by agreeing to provide alternate sites to those hutment dwellers covered by the 1976 census. The GOM and BMC also took the obdurate stand that they were not prepared to find a solution until the hutment dwellers satisfied the Court about their legal rights.

21. The PUCL on the other hand welcomed the initiative taken by the Court in trying to find a solution to the problem. It was pointed out that the problem was entirely manageable if the GOM's own policies and their own "sites and services" programme were undertaken on a massive scale.

22. It was convincingly demonstrated by the PUCL that there was little merit in the GOM's and BMC's arguments. The PUCL, making use of official government figures, pointed out that there was sufficient vacant land in Greater Bombay to meet the housing needs of the hutment

dweller population. According to the Report of the GOM's own High Power Steering Group for Slum and Dilapidated Houses, published in August, 1981, the GOM has 8,088 acres (approximately 3,200 hectares) of vacant land in Greater Bombay; a further 7,000 acres (approximately 2,800 hectares) of vacant land under industrial zoning mainly in the suburbs of which a substantial part is designated as "No Development Zone" in the Revised Development Plan, and vast unquantified stretches of salt pan lands on the Eastern Coast which would require filling before development. As pointed out earlier, the entire hutment population of 4.7 million only require a net 1,350 hectares of land.

23. The PUCL also produced a list of vacant lands signed by the Additional Collector (ENC) and Controller of Slums and prepared by him specially to ascertain how many hutment dwellers could be housed on the vacant lands in three talukas alone, i.e. Andheri, Borivali and Kurla. According to this list, there is a total of 6,105 acres (approx. 2,470 hectares) of vacant lands in these 3 talukas, of which 566 acres belong to the Maharashtra Housing Board, 1,957 acres belong to the GOM and 3,582 acres belong to private owners. The Additional Collector & Controller himself has calculated that 12,17,532 huts can be accommodated on this land. On the basis of the GOM's standard of 5 persons per hut, over 6 million people could be housed in the vacant lands of these three talukas alone, whereas the hutment dwellers population is 4.7 million. The PUCL further demonstrated from a study *A Profile of Pavement Dwellers* carried out by the College of Social Work, Nirmala Niketan, dated November, 1982, that the GOM and BMC were quite mistaken in their belief that hutment dwellers were not prepared to move to alternative locations. The study showed that 64% of the pavement dwellers were prepared to live along the Western Railway route and 44% were prepared to live along the Central Railway route. 91% of those prepared to live along the Western Railway route were prepared to go as far as 30 kms from Churchgate, whereas 93% of those prepared to live along the Central Railway route were prepared to go as far as 34 kms from Victoria Terminus (V.T.).

24. As regards the GOM's and BMC's fears that hutment dwellers who were provided with alternation sites/huts would sell the same and return to where they came from, the PUCL argued that in any resettlement scheme, once an area was cleared of hutments the same should be kept clear and that hutments should only be permitted on clearly designated sites. The resettlement scheme proposed by the PUCL sets this out very clearly. In any case this can happen only in a situation of continuing shortage which the authorities should be committed to end. There is also the argument that the prohibition of a free market in houses for the poor, unlike in the case of houses for the rich, is unpragmatic.

25. It was also pointed out to the SC that the GOM and BMC had not only not done all it could to solve the housing problem, but had, in fact, done very little. Furthermore, that the GOM's scheme to provide alternative sites to those hutment dwellers covered by the 1976 slum "census" and who were on land required for a public purpose, would fall woefully short of what really needed to be done. The GOM in its own publication on the 1976 "census", *Tackling the Slum Problem*, admitted that the 1976 "census" specifically excluded huts on Central Government lands, private lands and

pavements. The PUCL urged the SC not to place any reliance on the 1976 "census", as it only covered State Government Lands. Apart from that, the slum population of Bombay had increased by 1.7 million since the "census" of 1976, leaving a large body of people, completely unprotected and at the mercy of a Government capable of acting with inhumanity. It was also pointed out that the 1976 census was the result of one single day's foray, (4th January, 1976) carried out by 7,000 untrained and inexperienced enumerators. While the term "census" was used, the operation in fact violated all canons of justice and well-established criteria of a proper census. Adequate notice was not given to the slum population of Bombay so that they could stand up and be counted. The methodology used was nowhere stated. No safeguards were built into the methodology, if any, to ensure that genuine residents and dwelling units were not excluded and that fraudulent entries were not made. No procedure was evolved or instituted for redressal of grievances.

26. For two days the SC tried to prevail upon the GOM and BMC to look for a solution to the problem. However, the GOM and BMC were obdurate in their stand that no solution was possible. On 12th January, 1983, before adjourning the case, the SC directed the GOM and BMC to submit within a period of four weeks a list of vacant sites under their control, which could be conveniently used to house the hutment dwellers and also to produce the survey of pavement dwellers conducted by the GOM.

27. The matter came up for hearing on 22nd February, 1983. Neither the BMC nor GOM had complied with the orders of the Court. The GOM produced a list of only some of the vacant sites, and that too in only three talukas, viz. Andheri, Kurla and Borivali. The list neither gave the area of the sites nor their location. The GOM maintained its position that they could accept no responsibility for the housing problem of the hutment dwellers except for those 85,000 families who were enumerated in the 1976 Census and who were on lands required for a public purpose. The GOM also produced a list of the number of huts on pavements in Greater Bombay. The BMC produced a list of pitches which also did not give the area of pitches nor their location and all the pitches were stated to be reserved for public purposes. However, once this was pointed out to the Court, a more comprehensive list was produced by the BMC giving the areas and their location. The GOM, however, did not produce any further lists.

28. It was pointed out to the SC by the PUCL that the lands claimed to be reserved by the BMC for public projects were reserved in the Development Plan of 1967 and that to date these public projects had not been carried out. In fact, the BMC was not in a position to point out how many public projects had actually been completed. It was further pointed out that the budget provision in the Development Plan of 1967 was Rs. 700 crores, at 1964 prices. The investment by April 1982 was only Rs. 150 crores, at prices actually prevailing when the works were undertaken. The Development Plan of 1967 had therefore been implemented partially and on an ad-hoc basis. In actual fact, adequate funds had not been made available for public purposes, whereas there was a gross over-estimation of reservations for public purposes. It was, therefore, hardly surprising that public projects on lands reserved for those purposes were not being carried out.

29. Counsel for the PUCL pointed out that there was no scarcity of vacant land as alleged by the GOM and BMC. What was lacking however, was a will to find a solution to the problem. All that the authorities seemed capable of doing was to throw up their hands. In the words of the Under Secretary, GOM Department of Housing and Special Assistance, "This Respondent is unable to accept any further responsibility to house or provide amenities to those who are squatting on sites which have been always in public use or are required for public utilities or in the public interest". The PUCL argued that the problem was manageable and a beginning could be made by clearing some pavements and relocating their occupants. According to the list of pavement dwellers provided by the GOM, there were only 15,915 huts situated on pavements in Greater Bombay. Based on this list, the PUCL argued that the land required to resettle the total number of pavement dwellers residing on pavements was approximately 240,000 sq. meters (24 hectares) at 15 sq. meters per hut. Assuming that in a resettlement project, half the area would be used for roads and open spaces, the total land required for rehousing all Bombay's pavement dwellers was 480,000 sq. meters (48 hectares) or one-tenth of one per cent of the area of Greater Bombay. It could not, therefore, be argued, that land was a constraint. Even financially, the problem was manageable. At Rs. 5,000 per serviced site, the total outlay on 16,000 huts would be Rs. 8 crores of which one-third only need initially come out of the BMC's or GOM's budget, the rest would be obtained as loans from the Banks, Housing and Urban Development Corporation (HUDCO) or Housing Development Finance Corporation (HDFC) and recovered through payments made by the relocated pavement dwellers. In fact, the complete resettlement of pavement dwellers was possible without providing any subsidy. The SC asked counsel for the GOM and the BMC to make a start with even 15 hectares of land and clear some of the pavements. Counsel for the PUCL argued that at least some pavements ought to be cleared urgently, and that over a period of time the entire housing problem of both pavement and slum dwellers could be tackled. Counsel for the GOM and the BMC expressed their inability to make a start.

30. The PUCL placed on record a scheme prepared with the help of expert urban planners to tackle the entire problem.

The Scheme

31. The solution to the problem of squatter colonies in unwanted places is a "Serviced Sites" programme such as the Affordable Low Income Shelter Programme in the Bombay Metropolitan Region (ALISP) prepared by BMRDA, the MH & ADA and the Housing & Special Assistance Department of the GOM.

32. According to this report, "Serviced Sites" schemes are affordable by every segment of the city's population. Given the size of housing demand, the GOM's policy should be that of using the available funds for housing to generate the largest number of dwelling units possible at the lowest unit cost. Thus, for example, five serviced sites are equivalent to the cost of each flat that MHADA presently builds. The public authorities would make suitable arrangements for water supply, waste disposal, drainage, refuse collection, access ways and street lighting. This would leave the people

to construct their own houses, which they have traditionally done throughout India. Over half the City's households with monthly incomes of upto Rs. 600/- whose ability to pay for housing lies between Rs. 15/- and Rs. 20/- per month and who would otherwise be doomed to the slums, would, under these circumstances be able to afford basic shelter. Credit facilities are available from the World Bank and such other institutions as the HDFC and the HUDCO. ALISP shows that, given credit facilities, there can be full recovery of expenditure incurred on providing such "Serviced Sites".

33. The PUCL suggested that "Serviced Sites" programmes such as ALISP should form the dominant part of a planned programme to cover both the present slum and pavement dwellers and the projected increase in the City's population.

34. In any such programme the first step would be to ascertain the exact extent of slum and pavement colonies as also the names and other identification data pertaining to the existing occupants of these settlements. Suitable notice would have to be given to occupants of all such colonies that a survey was to be carried out. The slum dwellers would have to be fully educated about the purpose of such a survey since erroneous omissions would have the very serious consequence of depriving them of alternative accommodation. At the same time, suitable safeguards would be required to ensure that false claimants are not censused and that genuine inhabitants are not excluded.

35. Simultaneously, the BMC & GOM should undertake a review of lands genuinely required for public purposes. In the case of slums which are on lands *not* required for public purposes the State Government should acquire the lands under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and provide security of tenure. This would go a long way in obviating the problem of the slum dwellers. The concerned authorities should then start implementing slum improvement schemes.

36. In the case of slums located on lands required for public purposes or on pavements, the residents should be offered serviced sites. This could be done in a phased manner. The location of the serviced sites should be within reasonable proximity and accessibility from their place of work. This could be worked out on the basis of the Nirmala Niketan Report referred to earlier.

37. The slum and pavement dwellers should be given individual notices of not less than 6 months prior to effecting the transfer. If the structures are not moved within that time, the huts may then be demolished after giving two weeks' notice.

38. From the date on which the scheme as described above come to be finally notified, no new structure would be permitted to be constructed on land which was not specially designated for the purpose. To provide for the growth of population and continuing demand, the BMC would have to make appropriate provisions in its Development Plan and all future growth would have to take place in a planned manner on previously designated sites. Once such provisions were made, unauthorised structures could justifiably be removed after giving 72 hours' notice.

39. In the implementation of such a scheme, the GOM and BMC should take immediate steps to modify the Development Control Rules and the building bye-laws revising the minimum dimensions of a room/structure, open space, set back, etc., modifying the specifications pertaining to building materials and designs, and simplifying procedures for obtaining sanctions.

40. As mentioned earlier, the BMC and the GOM were totally averse to putting an end to litigation through a settlement arrived at in the SC. That being the case, the PUCL proceeded with its legal arguments.

The Legal Arguments Of The BMC And GOM

41. It is not possible in a booklet of this nature to give the detailed arguments presented by both sides, or the replies given by each side. However, a brief summary of the arguments follows.

42. The main arguments advanced by Counsel for the BMC and the Advocate General were: (i) that no deportation had taken place and that people had left Bombay voluntarily; (ii) that the action of demolition and deportation was taken in the public interest; (iii) that the hutment dwellers were anti-social elements and criminals; (iv) that the hutment dwellers created a health hazard for other citizens as well as for themselves; (v) that there was a statutory duty on the BMC to remove obstructions on pavements and unauthorised structures in the city; (vi) that the police had powers under the Bombay Police Act to remove obstructions; (vii) that there was no vacant land on which to rehouse/or resettle the hutment dwellers and that in any event the state had done all it could for these unfortunate people and they could only provide alternative sites to all those hutment dwellers censused in 1976 whose lands were required for public purposes; (viii) that the hutment dwellers had no rights which were enforceable in a court of law; (ix) that "the right to commit trespass" was inconsistent with the Rule of Law; (x) that no right could emanate from a wrong; (xi) that no fundamental right to life could be claimed by the hutment dwellers when they themselves had committed a wrong i.e. encroached on open lands.

The PUCL's Legal Arguments

43. The PUCL advanced its arguments to the Supreme Court in the light of the original deportation action which gave rise to the petitions in the Bombay High Court and the SC. It was a deplorable travesty on the part of the GOM and BMC to argue that people left Bombay voluntarily. As explained earlier, people died, families were separated and their belongings were wantonly destroyed. However, this issue was not argued as the GOM had earlier given an undertaking in the Bombay High Court not to further deport these people since this was clearly unconstitutional under Articles 19(1)(d) and (e) of the Constitution which give a fundamental right to each citizen to move freely throughout India and reside and settle anywhere in India.

44. It was nevertheless argued that demolition/eviction/confiscation of goods was part and parcel of the same action of deportation and was not separable. Having failed in their original intention to deport the slum and pavement dwellers, the BMC and GOM with their continuing demolition

programme, were making life so miserable and unbearable, that it would compel these persons to leave the city "voluntarily", i.e. indirectly deport them. It was pointed out that it is a cardinal principle of law that what cannot be done directly cannot be done indirectly. The whole exercise of demolition was totally futile, absurd and meaningless as these hutment dwellers would be compelled by force of circumstances to put up huts in other parts of the City, and would be hounded from place to place by the demolition squad of the BMC in the absence of clearly designed sites where they could stay. It was submitted that in these circumstances the Government's action of deportation/demolition was in fact vindictive, arbitrary, unjust, oppressive and harsh. The action was also clearly violative of the principles of natural justice in as much as no notice was given to the hutment dwellers before demolishing the huts.

45. Yet another argument urged by the PUCL was to show the unfair and discriminatory nature of the BMC's action of demolition. Whereas a study showed that 47% of the city's population occupied houses made of prohibited materials and had been constructed in breach of specifications relating to dimensions, set-back, etc. the BMC discriminated between influential building contractors and hutment dwellers. While both influential contractors and hutment dwellers were similarly situated, so far as compliance with the provisions of the BMC Act was concerned, the discrimination arose in turning a blind eye at the illegal construction of buildings for the wealthy and influential, while demolishing unauthorised huts. This was clearly violative of Article 14 of the Constitution which states that the state shall not deny to any person equality before the law or the equal protection of the laws.

46. The PUCL pointed out to the Court that it was not hutment dwellers who created health hazards, but the BMC which had failed in its statutory duty under the BMC Act to construct adequate sewers or latrines or provide water to the hutment dwellers.

47. The PUCL also challenged the BMC's and GOM's contention that their action was taken in the "public interest". At the best of times the phrase "public interest" is a nebulous phrase and it was urged that if we went merely by the test of majority, then the action of demolishing huts had been taken against the public interest, since over 50% of the city's population was affected by the deportation/demolition action.

48. The PUCL categorically stated that the hutment dwellers had no fundamental right to live on the pavements or for that matter on open lands. The PUCL's arguments were founded on Article 21 of the Constitution of India which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court had itself in the case of *F. C. Mullin vs. Administrator, Union Territory of Delhi* (AIR 1981 SC 746, at page 747) enunciated the following principle:

"The right to life enshrined in Art. 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and

facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings".

Based on this principle, it was argued that every act which offended against or impaired human dignity constituted deprivation *pro tanto* of life and for any such action to be valid it would have to be in accordance with procedure established by law which procedure itself had to be reasonable, fair and just. The hutment dwellers were in Bombay for their livelihood and to evict/oust/drive them away by demolishing their huts would not only deprive them of their right to a livelihood but of their right to life as these persons would ultimately be driven to starvation and death.

49. It was urged before the courts that no one wanted to stay on pavements and that it certainly was not in the interest of the pavement dwellers themselves or other citizens of Bombay that they should. In fact, the PUCL's case was that there was at the disposal of the GOM and BMC sufficient land to provide alternate sites. The PUCL argued that in the absence of an alternative, the eviction of hutment dwellers and the demolition of their huts deprived them of their right to life and violated Article 21 of the Constitution.

50. Whereas there were powers under the BMC Act and Bombay Police Act to remove obstructions on the pavements and roads, and powers under the BMC Act to remove trespassers on BMC lands, these powers were not absolute. These discretionary powers could not be used to oust the hutment dwellers if this violated their right to life under Article 21. The balance of convenience was clearly in favour of the hutment dwellers, and the rest of the population had to tolerate the inconvenience of having hutment dwellers squatting on pavements and open spaces, as in the absence of alternatives, this was the only way in which a majority of the city's population could exist. In the PUCL's submission, the powers which vested in the authorities under the BMC Act or the Bombay Police Act could not be used in such a manner as to deprive the hutment dwellers of their right to life.

51. Many of the hutment dwellers did not have any proprietary or other interest in land in India. An unfettered and absolute right to demolish hutments merely because the hutment dwellers had no proprietary interest in land or because they were considered trespassers or because they obstructed pavements or streets would effectively mean that wherever they went they could be ousted under various local and/or municipal laws. This would mean that they could not sit or sleep on any vacant land anywhere in India as they would become either trespassers or create obstructions on the highways. This would render nugatory their fundamental right to reside and settle anywhere in India or move freely throughout India, or to carry on any trade or profession guaranteed under Articles 19(1)(d) and (e) of the Constitution.

52. The deportation/demolition action violated the Directive Principles of State Policy contained in Chapter IV of our Constitution. The PUCL developed an argument to the effect that it had so far been believed that Directive Principles were not enforceable by the courts. Article 37 of the Constitution states:

"The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

It was argued that Article 37 consists of three parts: (i) Directive Principles are not enforceable in any Court; (ii) they are nevertheless fundamental in the governance of the country; (iii) and it is the duty of the State to apply these principles in making laws. The Judiciary being part of the apparatus of governance of the country under Article 37 as one of the three great organs of the State, the effect of Article 37 was that although the courts could not mandate and/or direct the performance of the positive content of the Directive Principles, it was the obligation of the courts to restrain administrative action which was clearly contrary to and destructive of the categorical mandate contained in any of the Directive Principles. Presuming that some difficulty might arise in cases where Fundamental Rights & Directive Principles conflicted or in cases where the Directive Principles conflicted inter-se, no difficulty could arise in applying this principle where the Directive Principles did not so conflict.

53. Under Article 41 the State, within the limits of its economic capacity and development, must make effective provision for public assistance in cases of undeserved want. The hutment dwellers were a pathetic case of such undeserved want. Under Article 41 they had a constitutional right to public assistance albeit a right which could not positively be enforced in Court. But, while the Court could not draw up a positive scheme of public assistance and issue a mandatory injunction, the Court most certainly could restrain governmental action that deprived them of that which they already possessed.

54. Under Article 46 the State must promote with special care the economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation. The hutment dwellers were indisputably part of the weaker sections of the people under Article 46. The Court ought therefore to interpret every law so as not to accentuate social injustice or conditions of squalor, hunger or lack of shelter.

55. The PUCL argued that this present state of undeserved want had arisen because over the years, either through callous neglect or criminal ineptitude or downright corruption or factors within human control, the State had failed to discharge its obligations under part IV of the Constitution and in particular under Articles 38(i)(ii) and 39(a) and (b) of the Constitution which states that 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 institutions of national life; that 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; that the State is to direct its policy towards securing to all its citizens the right to an adequate means of livelihood; and that the ownership and control of the material resources of the community are so distributed so as to subserve the common good. Counsel for the PUCL argued before the Court that the founding fathers, by enshrining the Directive

Principles in the Constitution, declared a war on poverty. In a grotesque perversion of this Constitutional mandate the GOM and the BMC had declared a war on the poor instead of a war on poverty.

56. The combined effect of the various propositions advanced by the PUCL is that pavement dwellers and slum dwellers have a right to shelter. The Court may not draw up a scheme which makes it compulsory for the government to provide housing for such people and mandamus the State into enforcing it by reason of the inhibition of Article 37, but the Court should not allow the Bombay Municipal Act or the Bombay Police Act to be so enforced as to deprive these persons, driven by want and necessity, to the use of public property, whether it is land or a pavement.

57. The PUCL also countered the various arguments of the GOM and BMC which are not dealt with here.

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58. Living on some of the less used pavements of Bombay has been its poorest citizenry's way of coping with survival and shelter problems for decades. Bombay's 80,000 pavement dwellers are the most abject manifestation of the City's severe housing problem which has driven over half its population to live in slums: the direct outcome of an increasingly inegalitarian society whose manipulators, among other things, thrive on hoarding of land and short supply of housing, and who act in callous disregard of both Fundamental Rights and the Directive Principles of State Policy. The PUCL and others have been arguing the case for urgent State action to release hoarded vacant land (estimated at between three to ten thousand of Bombay's 43,000 hectares), the adoption of pragmatic building regulations which permit the construction of small and cheap self-help housing, the commencement of "sites and services" programmes and security of tenure. The petitioners ask not for a perpetual right to live on pavements, in which they have less than no interest, but seek to restrain the State's heavy hand till such time that conditions are created when they can vacate their present homes without jeopardising their struggle for survival which lies at the root of their being where they are. They seek justice not mercy. They seek action not frothy speeches. And what they ask for is well within the realm of possibility.