1. **Olga Tellis and ors Vs. Bombay Municipal Corporation and ors MANU/SC/0039/1985**

Eq. cit : AIR1986SC180, 1985(2)SCALE5, (1985)3SCC545, [1985]Supp2SCR51

A landmark decision in Indian legal history, the petitioners here challenged certain provisions (Ss 312 to 314) of the Bombay Municipal Corporation Act, 1888 as being violative of Articles 14, 19 and 21 of the Constitution. The first two provisions insisted that the permission of the Municipal Commissioner had to be obtained before constructing permanent or temporary constructions on public streets/ways. The last provision, which was the most contentious one, gave the Commissioner the power to evict, without notice, such occupants of public ways who had violated the other two provisions.

The petitioners consisted mostly of slum dwellers, pavement dwellers and some socially conscientious journalists. The pavement dwellers had come to the city for purposes of employment in various industries and had settled down on roads and pavements which gave them proximity to their places of work. They contented that if they were evicted, it would amount to depriving them off their livelihood and deprivation of livelihood was akin to deprivation of life itself which was guaranteed by Art. 21. The court, in its oft quoted ruling affirmed that right to life included right to livelihood and eviction from their dwellings was indeed a deprivation of livelihood. Consequently, the decision to be made was whether the procedure involved in such deprivation was in fact just fair and reasonable, in order to bring it within the ambit of Art. 21.

The court at the very outset declared that the provisions were not arbitrary considering the fact that the occupants who would fall within the swathe of section 314 were illegal dwellers and they had created considerable public nuisance and obstruction. The court then proceeded to understand the tenor of the impugned provision. The provision merely says that the commissioner ‘may’ without notice evict illegal occupants. It was only an enabling provision. By necessary implication it meant that in ordinary course notice was to be given and it was only in special and extraordinary circumstances that he could dispense with the need for a notice. The onus of proof would then fall on the state to prove such exceptional circumstances.

Taking into consideration the special nature of the case, the court went on to undertake the role of the commissioner. It ordered that the dwellers would be evicted only one month after the end of the rainy season (date specified). The state was also directed to give alternate accommodation to certain dwellers. This was not a condition precedent for eviction and was merely to give effect to certain earlier assurances by the government.

2. **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and ors MANU/SC/0051/1997,**

1996VIIIAD(SC)183, AIR1997SC152, (1997)3GLR1998, JT1996(10)SC485, 1996(7)SCALE770, (1997)11SCC121, [1996]Supp7SCR548

The respondents in this case were pavement dwellers on a busy road in Ahmedabad. It is to be remembered that, here, most of them had permanent dwelling places on the road and some were running full fledged business units. Some of these dwellings had been sold/transferred and subsequent transferees were dwelling in them. The respondents approached the court when the Municipal Corporation threatened to evict them. The High Court stayed the eviction process, asking the Municipal Corporation to follow fair procedure for eviction and also to provide alternate accommodation to the dwellers.

When the matter came in appeal before the apex court, the issues framed were: 1. whether the principles of natural justice had to be followed for eviction of pavement dwellers? and 2. Whether they were to be provided with alternate accommodation? In this case the court was firm on the eviction issue since the dwellers had made permanent structures on the road and were obstructing public life. But the court observed that principles of natural justice, more specifically that of *audi alteram partem* had to be followed. This implied that they had to be served adequate notice-the adequacy of the notice being a subjective concern. If the encroachments are immediate and have been in existence only for a short period the no notice is required. But as the duration of existence increases, the requirement of notice becomes increasingly mandatory. In the instant case the Municipal Corporation was giving a notice of 21 days, which was considered to be adequate.

Answering the second question, the court observed that a right to alternate accommodation was well within the ambit of Art. 21 of the Constitution which was expanded in the *Olga Tellis* case to include right to livelihood. Since the dwellers were being deprived of their livelihood, the state was under an obligation to provide adequate alternate accommodation. On the other hand this cannot be concluded to be a universal rule and the satisfaction of this requirement has to be measured subjectively. Otherwise it would lead to an abuse of judicial process. In this case the Municipal Corporation had devised a scheme for rehabilitation by which only some of the writ petitioners, classified on the basis of the duration of their dwelling and income limits, were entitled to alternate accommodation. The court accepted this contention of the Municipal Council.

3. **Bombay Hawkers' Union and ors Vs. Bombay Municipal Corporation and Ors MANU/SC/0027/1985**. Eq cit: AIR1985SC1206, 1985(2)SCALE59, (1985)3SCC528, [1985]Supp1SCR849, 1986(1)UJ427(SC)

In this case the petitioners through a series of Writ Petitions challenged the constitutional validity of certain provisions of the Bombay Municipal Corporation Act on the grounds

that those provisions gave 'arbitrary and unguided power' to the authorities to grant or refuse hawking licenses and also to remove goods and stalls from places without giving due hearing to the hawkers. Later, in a separate application, the petitioners had asked for direction from the court to the Mumbai Commissioner to make a scheme for granting hawking licenses and for declaring 'hawking zones'.

The first contention of unconstitutionality of the provisions of the BMC Act was based n the premise that the hawkers had a fundamental right [under Art. 19 (1) (g) of the Constitution] to carry on any trade or profession of their choice. The court accepted this view but also held that the provisions of the impugned Act were mere restrictions put on the rights of the hawkers, keeping in mind the interest of the general public to uninhibited use of public ways and roads. Such restrictions were authorized by Art. 19 (6) of the Constitution.

The ultimate analysis concentrated on a scheme which was formulated by the BMC for creation and regulation of hawking zones as well as for granting hawking licenses. The court made a few cursory alterations. For instance, the ban on selling of cooked food items and fruits was removed and the maximum time to continue selling on the streets was extended from 9 PM to 10 PM. In addition to this a few other modalities were also suggested by the court. The main modality was a direction to the BMC to create atleast one hawking zone per ward. This modality has been interpreted in subsequent decisions of the courts as a directive from the apex court for the state agencies to create hawking and non-hawking zones. The BMC was to prepare a final scheme taking into consideration the court order.

4. **Sodan Singh Vs. NDMC and ors MANU/SC/0521/1989** [**Sodan Singh 1**].

Eq. cit: JT1989(3)SC553, 1989(2)SCALE430, (1989)4SCC155, [1989]3SCR1038, 1990(1)UJ187(SC)

Another landmark case, the Supreme Court was to expand further on the principles laid down in the *Bombay Hawkers Union* case. The following additional views may be culled out.

1. Though streets are primarily meant for passing and re-passing of the public it cannot be contented that they cannot be used for other ancillary purposes.
2. Hawkers can only demand their fundamental right under Art.19 (1) (g) which would be subject to reasonable restrictions imposed by the State. They could not claim that if they are prevented from hawking, it would be a deprivation of their right to livelihood under Art. 21.
3. There is no law regulating street trading in Delhi.
4. Since the citizens do not have the right to choose a particular place for trading, it is for the state, through suitable enactment, to designate streets and earmark places from where street trading can be done.
5. Inaction on the part of the state would result in deprivation of fundamental rights of citizens.

6. The NDMC was to come up with a scheme for relating hawking in Delhi. Pursuant to the framing of a scheme, a committee was to be constituted in order to address grievances of hawkers with respect to implementation of the scheme

5. **Saudan Singh Vs. NDMC and ors MANU/SC/0489/1992 [Sodan Singh 2]**

Eq cit: AIR1992SC1153, JT1992(2)SC190, 1992(1)SCALE679, (1992)2SCC458, [1992]2SCR243, 1992(2)UJ283(SC)

This case is more of a corollary to the earlier decision. The court reiterated the stand taken in the first case; that is, Art 21 could not be made applicable in the case of street vendors. It also said that vendors moving from place to place could take the benefit of Art 19 (1) (g) but they could not ask as a matter of right to sell their commodities at a particular place. This could be regulated by the state. Further, the writ petitioners challenged the strict standard of proof adopted by the Thareja Committee constituted as per the earlier decision. Subsequently, the court laid down certain guidelines for regularizing and regulating hawking on Delhi roads with directions to the committee.

6. **Sodan Singh Vs. NDMC and Ors [Sodan Singh 3] MANU/SC/0098/1998**

Eq cit: AIR1998SC1174, JT1998(1)SC532, 1998(1)SCALE449, (1998)2SCC743, [1998]1SCR629, 1998(1)UJ424(SC)

This case finally laid to rest the series of litigations in the same matter interspersed with IAs and other applications. The court approved the report of the Thareja Committee and added a few clarifications. It then appointed the Registrar of the High Court of Delhi to enforce the committee directives along with its own suggestions.

7. **Maharashtra Ekta Hawkers Union Vs. Municipal Corporation, Greater Mumbai MANU/SC/1008/2003**

Eq cit: AIR2004SC416, JT2003(10)SC1, 2004(3)MhLj437, 2003(10)SCALE56, (2004)1SCC625, 2004(1)UJ676(SC)

This case was a continuation of the *Bombay Hawkers* Case. As noted earlier, the Supreme Court had concluded the said decision with directive to the BMC to finalize a scheme for regulating hawking in Bombay. A scheme was prepared laboriously by the BMC over a long period of years. The scheme was accepted by the Bombay High Court. Various

aspects of this scheme were challenged before the Bombay High Court through a series of writ petitions.

The new scheme reduced the number of allowed hawking zones in Bombay drastically, from the number initially proposed in the draft scheme put before the apex court in the earlier case. The petitioners also contended that the BMC had grossly under estimated and applied wrong criteria in identifying beneficiaries of the scheme. Besides, there was a proposal to set up Hawking Plazas in Mumbai, which was disallowed by the Hon'ble High Court. All these issues *inter alia* came up in appeal before the Hon'ble Supreme Court.

The crux of the decision may be identified thus:

1. The Municipal Corporation should identify No-Hawking Zones. By implication hawking could be done in all other areas. This would be subject to the scheme framed as well as reasonable restrictions imposed by the Corporation from time to time in the interest of the general public.
2. The court was not competent to go through the nitty-gritty of the scheme. A committee on the lines of the one constituted in *Sodan Singh's* case was ordered to be created. This committee would hear all grievances regarding implementation of the scheme.
3. Hawking in costly electronic items is not to be permitted. By its very nature hawking was to make items of day to day use available to consumers at a cheaper price. It should not evolve into a trade in costly items.
4. Hawking Plazas may be created.

8. Maharashtra Ekta Hawkers Union Vs. Municipal Coroporation, Greater Mumbai MANU/SC/0901/2007

Eq cit : JT2007(8)SC373, 2007(3)SCALE24

In this case the petitioners tried to almost reargue the first case. This move was nipped in the bud by the court. Apart from suggesting a few modalities, the major contribution of this decision was that it directed the state legislature to formulate a scheme independent of the court verdict in consonance with the National Policy for Street Vendors, 2004. The scheme upheld in the instant case would only be valid till the latter scheme was made.

9. Sanjay Aggarwal and anr vs. Allahabad Nagar Palika and anr MANU/UP/0527/1999

Eq cit: 1999(3)AWC2319, (1999)2UPLBEC1442

In this case the petitioner filed a writ for removal of a vegetable market on the public road in front of his property. The court held that such street vending or Tehbazari was absolutely prohibited on public roads after the rulings of the Supreme Court discussed earlier. The court seems to have forgotten the decision in *Sodan Singh-I* wherein the Supreme Court ruled that the right to trade on street pavements could not be denied solely on the grounds that the streets are exclusively meant for pedestrian use and cannot be put to any other use. But it goes to the credit of the court that it identified the soul of the said decisions and directed the authorities to shift the Tehbazari market to a suitable location.

10. Jubilee Hills Labour Welfare Corporation and ors Vs. Municipal Corporation of Hyderabad and Ors MANU/AP/0762/2003

Eq cit: 2003(6)ALD790, 2004(1)ALT321

The petitioners here were street vendors who had set up stalls on Road No. 1 of Jubilee Hills, one of Hyderabad's richest colonies for over 15 years. The corporation sought to evict them without notice since the road had become very congested. The court had to decide four issues.

1 Whether petitioners had fundamental right to carry on business on road pavements? In answer to this the court gave a brief summary of the Supreme Court decisions discussed earlier and said that Art. 21 would be applicable only to slum dwellers/pavement dwellers and not for vendors who conducted business on road side. They could only seek protection of Art. 19 (1) (g) which could be reasonably regulated under Art. 19 (6).

2 Was issuance of notice mandatory for the said eviction? Interpreting a provision very similar to the one discussed in *Olga Tellis* the court came to the conclusion that illegal occupants could not claim the requirement of notice as a matter of right. The court here seems to have ignored the *Olga* ratio. If at all any right is involved-in the instant case it is the one under Art 19 (1) (g) of the Constitution-*Olga* would remind us that notice though not mandatory, is extremely warranted unless the authorities could show special circumstances for doing away with it.

3 Thirdly, whether the corporation had to provide them with alternative sites? It was answered in the negative; the distinction between slum dwellers in *Olga* and street vendors in *Sodan Singh-I* again being the pivot.

Here it is pertinent to note that the court, though it did not see any reason for giving notices to the vendors, asked the authorities to give reasonable time to remove their structures. In cases like this, the provision of 'reasonable time' is all that even a notice would have done.

11. **Self Employed Workers Organisation Vs. Municipal Corporation, City of Bhavnagar MANU/GJ/0086/2003**

Eq cit: AIR2003Guj317, (2003)3GLR2276

The members of the petitioner organization were all street vendors and hawkers. The court upheld their eviction under a plethora of grounds and considering the facts of the case it is difficult to find fault with the final decision. But one dangerous observation made by the court was that an analysis of the famous Supreme Court decisions illustrated that "squatters/hawkers had no right either fundamental or statutory to carry on their business on public roads/pavements/streets"(see para 10). This cannot be said to be the correct conclusion.

12. **Dharam Singh and Ors Vs. MCD and Ors MANU/DE/2720/2005**

Eq cit: 124(2005)DLT466

In this case, the Municipal Corporation of Delhi had entered into an agreement with an NGO, MANUSHI in order to initiate a pilot project for the rehabilitation of street vendors in Sewa Nagar Colony, New Delhi. This project was envisaged on the lines of the directives of the National Policy for Street Vendors and was also approved by the Supreme Court formally. The street vendors/hawkers were assisted in putting up temporary structures on pavements and a 'sanyam rekha' as drawn, beyond which such structures could not transgress. They were also provided with water and electricity and had to pay a monthly amount to the MCD. The residents of the colony objected to this project on the grounds firstly, that the MCD could not enter into such an agreement with an NGO and secondly, that under the garb of the project the street vendors were raising permanent constructions on pavements and causing public nuisance of various kinds. The Delhi High Court, after consulting the relevant provisions of the MCD Act and the Master Plan for Delhi, came to the conclusion that it was well within the powers of the MCD to permit hawking staying inside statutory confines. As far as the second issue was concerned the court understood that prior to the project the street vendors were facing threat of exploitation and the streets had also gotten overcrowded. The project had institutionalized street vending in the colony and the vendors had stayed within limits made mandatory by MCD. The petition was, therefore, dismissed.

13. **South Calcutta Hawkers Association Vs. Government of West Bengal and Ors MANU/WB/0031/1997**

Eq cit: AIR1997Cal234, (1997)1CALLT453(HC)

The petitioners in the instant case contented that the Government had not given effect to to the recommendations of the committee constituted for regulating hawking in Calcutta as per the mandate of the High Court in *Gopal Basak Vs. State of West Bengal*

MANU/WB/0033/1986. Without doing so the authorities tried to evict hawkers from the Howrah area. The contention of the petitioners was that this move was extremely arbitrary and since they were not served any notice, contrary to the principles of natural justice.

Firstly, the court expressed its inability to issue a writ directive to the State to accept the policy recommendations of the committee. This was a policy question not inviting judicial intervention. But the court said that the very fact that they have been hawking there for several years clubbed with the fact that a committee was constituted to look into the issue of the hawkers germinated in their minds a legitimate expectation that they would be evicted only after being afforded a reasonable opportunity. In the instant case the court agreed that a notice of 24 hrs along with public announcement would suffice.

Interestingly, taking support from the *Sodan Singh-I* decision, the High Court told the Government that the state had a duty to formalize and regulate hawking. Inaction on the part of the state would lead to violation of fundamental rights of the vendors. It added that if the government refused to act, then the court would have to take up the duty. Therefore the government was duty bound to frame a policy delineating hawking and non-hawking zones as well as laying down guidelines for the user of these zones.