

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd AUGUST, 2022

IN THE MATTER OF:

+ **W.P.(C) 6779/2021 & CM APPLs. 26557/2021, 1726/2022 & 6055/2022**

SHAKARPUR SLUM UNION

..... Petitioner

Through: Ms. Kawalpreet Kaur, Mr. Haider Ali,
Advocates.

versus

DDA AND ORS

..... Respondents

Through: Ms. Prabhsahay Kaur, Standing
Counsel for DDA with Ms. Laavanya
Kaushik, Advocate.

Mr. Parvinder Chauhan, Standing
Counsel for DUSIB with Mr. Sushil
Dixit, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant writ petition under Article 226 of the Constitution of India has been filed by an Organization styled as Shakarpur Slum Union (*hereinafter referred to as 'the Union'*) stating that the Union comprises of residents of Jhuggi Jhopri Bastis (*hereinafter referred to as 'JJ Bastis'*) and slums of the Shakarpur district of Delhi.

2. It is stated that on 25.06.2021, without any notice, the DDA officials arrived at the area and demolished about 300 jhuggis. The demolition is stated to have lasted for three days and many of the people, whose jhuggis

were demolished, could not even collect their belongings. It is stated that Police officials, along with the officials of DDA, removed the residents from the site. Aggrieved by the aforementioned actions, the instant petition has been filed by the Petitioner-Union with the following prayers:

“a. Direct the respondent no. 1, DDA to suspend further the demolition (if any) and maintain status quo at the demolished site until all residents are surveyed and rehabilitated as per the DUSIB Policy;

b. Direct the Respondents to not physically dispose/evict the residents from the demolition site;

c. Direct respondent no. 2, DUSIB to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ slum Rehabilitation and Relocation Policy, 2015;

d. Direct the respondents to put on record the survey of the residents in accordance with the DUSIB policy of 2015;

e. Direct respondents to immediately provide shelter to the Petitioner with proper sanitation, clean water and hygienic conditions;

f. Direct the Respondents to pay 1,00,000/- compensation to the each of the affected family for the loss and suffering due to demolition and inaction on the part of the respondents.

g. Any other order deemed fit and proper in the circumstances of the present case. And for this act of kindness petitioners shall every pray.”

3. It is stated in the writ petition that the JJ Basti in Shakarpur has been in existence since the 1980 and most of its residents are migrants from

Bihar, Uttar Pradesh and Bengal. The residents are mainly comprise of labourers, rag pickers, rickshaw pullers, auto drivers and domestic workers. It is further stated that the JJ Basti is listed at S.No. 553 and 569 in the list of JJ Clusters List published by Delhi Urban Shelter Improvement Board (*hereinafter referred to as 'the DUSIB'*) on its website for rehabilitation and, therefore, the DDA, before initiating any demolition drive, ought to have followed the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 (*hereinafter referred to as 'the DUSIB Policy'*) to rehabilitate and relocate the residents of the demolished jhuggis. It is further stated in the writ petition that most of the residents have the proof of residence prior to 01.01.2015 as required by the DUSIB Policy for initiating rehabilitation and relocation. It is stated that the members of the Petitioner-Union were first evicted from their houses at Thokar No. 8 of the Ramesh Park and Lalita Park area in Shakarpur in the year 2006 when the construction and expansion of Delhi Metro was ongoing and, as no rehabilitation had been provided to them at that time, they moved to Thokar No. 10 of the area.

4. Notice was issued in the writ petition on 20.07.2021 and interim stay was granted. DDA filed its counter contending that it had not carried out any demolition at the locations listed at S. No. 553 and 569 in the list of Additional JJ Clusters List published by the DUSIB. It is further submitted that the locations where the demolition was being carried out was at a distance from the Clusters as listed at S. No. 553 & 569, which are described as Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar, Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamsan Ghat Thokar No.16. It is stated that the demolition that has taken place is between Thokar No.10 to Thokar No.13 which is on the Yamuna Flood Plains. It is further

stated that the demolition has been carried out in compliance with the Orders of the National Green Tribunal (*hereinafter referred to as 'the NGT'*). It is stated that the members of the Petitioner-Union claim to be residents of jhuggis at Ramesh Park and Lalita Park which is located on the left side of the Eastern Marginal Bund, while the demolition was carried out on the right side of the Eastern Marginal Bund, in the area demarcated as the Yamuna flood plains.

5. DUSIB has also filed its counter stating that the writ petition is actually in the form of a Public Interest Litigation and is, therefore, not maintainable. It is further stated that the Petitioner-Union could does not have locus standi to maintain the petition and each and every member of the Petitioner-Union who claims to have received the benefit of the DUSIB Policy ought to have filed a separate petition. On merits, it is stated in the counter filed by the DUSIB, that the JJ Cluster at S. No.553 is located at Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar, and JJ Cluster at S. No.569 is located at Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16. It is stated that these two Clusters have been identified by the DUSIB for the purpose of rehabilitation under the DUSIB Policy. Along with the counter, certain maps have also been filed by the DUSIB indicating that the place where demolition has taken place is far away from the place where both the abovementioned Clusters are situated.

6. DDA filed an application for vacation of stay granted by this Court *vide* Order dated 17.08.2021 stating that demolition was carried out in the area which is located at a distance of approximately 200 meters onwards from the Yamuna River. The application states that there are a falls squarely

on the Yamuna flood plains and is not a part of the Clusters notified by the DUSIB. It is further stated in the application that the DDA intends to conduct a demolition drive in the Yamuna floodplains with the object of maintaining ecology of the same and that this drive is consonance with the DDA's 'restoration' project. It is stated that the members of the Petitioner-Union are carrying out the commercial activity of segregation of waste material in the Yamuna floodplains which is not only detrimental to the ecology and morphology of the Yamuna, but is also prohibited. Photographs have been filed along with the application to demonstrate that the Clusters are very close to the water body which can have a detrimental effect on the ecology of the River Yamuna. In the said application, the DDA has once again stated that the Clusters at S. No. 553 and 569 in the list of Additional JJ Clusters List published by the DUSIB have not been touched and the area where the demolition took place is outside these Clusters. It is further stated that the Stay Order dated 17.08.2021 is contrary to the various directions of the NGT whereby DDA has been directed to remove encroachments on the floodplains of River Yamuna and to ensure its ecological rejuvenation.

7. On 13.04.2022, when the matter came up for hearing, this Court, after considering the importance of the matter, decided to hear the writ petition finally.

8. Ms. Kawalpreet Kaur, learned Counsel appearing for the Petitioner, submitted that the the JJ Basti in Shakarpur has been in existence since the 1980 and most of the residents are migrants from Bihar, Uttar Pradesh and Bengal. She stated that all the residents are very poor and mostly comprise of wage laborers, rag pickers, rickshaw pullers, auto drivers and domestic workers. She contended that due to the inhuman act of demolition during the

expansion of the Delhi Metro in the year 2006, the residents were forced to relocate themselves from Thokar No.8 to Thokar No.10 and that it is at this place, the DDA has now conducted demolition. She stated that the persons who are facing demolition have been living in the same vicinity and have been forced to relocate multiple times because the DDA conducts demilition in bits and pieces. She stated that on 25.06.2021, the DDA demolished around 300 Jhuggis in the slums of Shakarpur. She stated that many of the residents possesses documents demonstrating that they are all residents of Thokar No.8, 10 & 12, and they have given their address as Ramesh Park and Lalita Park, and are therefore, part of the Clusters at S. No. 553 and 569 in the list of Additional JJ Clusters List published by the DUSIB. She states that multiple documents of over 74 families have been filed along with the additional documents to bring on record this fact.

9. Ms. Kawalpreet Kaur further stated that, according to DUSIB Policy, the dwellers of any JJ Basti, which came into existence after 01.01.2006 and have constructed jhuggis prior to 01.01.2015, are entitled to the benefits of the DUSIB Policy. She stated that in order to get the protection of the DUSIB Policy, the dwellers must have certain documents, as has been mentioned in the DUSIB Policy. It is further contended by Ms. Kawalpreet Kaur that the reason given by the DDA for carrying out the demolition was that the same as was done in compliance of the Orders dated 13.01.2015 passed by the NGT in **O.A. No.06/2012** titled as Manoj Mishra v. Union of India & Ors. wherein directions have been given to DDA to remove illegal encroachments from Yamuna floodplains. She stated that there is nothing on record that the NGT has directed for removal of the occupants from the Yamuna floodplains, as has been done by the DDA in violation of the

DUSIB Policy. She further states that an application for clarification regarding the demolition carried out by the DDA was moved before the NGT, and the NGT has clarified that it is only concerned with the pollution and is not the authority or forum to entertain pleas against demolition.

10. Ms. Kawalpreet Kaur further stated that the demolitions are completely contrary to the judgments passed by this Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612**, and Ajay Maken & Ors v. Union of India & Ors., **2019 SCC OnLine Del 7618**. It is further contended by Ms. Kawalpreet Kaur that the DDA and the DUSIB are obliged to follow the directions issued by this Court in Sudama Singh (supra) regardless of whether the clusters find a mention in the list of clusters notified by the DUSIB for applicability of the DUSIB Policy or not. Learned Counsel for the Petitioner drew attention of this Court to the judgment of this Court in Ajay Maken (supra) wherein it has been stated that it is not as if only the JJ clusters and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB that are required to be dealt with in terms of the decision in Sudama Singh (supra), but every jhuggi dweller, anywhere in the NCT of Delhi, has to be dealt with in terms of the said decision and, therefore, no slum dweller in the NCT of Delhi in one area can be treated differently from that in another area. She, therefore, stated that no jhuggi dweller in the city of Delhi can be thrown out overnight. She placed reliance on paragraph No.60 of the judgment of this Court in Sudama Singh (supra) wherein this Court has noted that it is not uncommon to find a Jhuggi dweller, with a bull-dozer at their doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. This

Court further observed that the documents in possession of the jhuggi dweller are a matter of life for a Jhuggi dweller on account of the fact that most relocation schemes require proof of residence before a “cut-off date”. If these documents are either forcefully snatched away or destroyed (and very often they are), then the Jhuggi dweller is unable to establish entitlement to resettlement. This Court observed that the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility, keeping in view the desperate need of the Jhuggi dweller for an alternative accommodation.

11. The Learned Counsel for the Petitioner further stated that many of the persons, whose jhuggis have been demolished in the drive that took place on 25.06.2021, were first evicted from their houses at Thokar No. 8 of the Ramesh and Lalita Park area in Shakarpur in the year 2006 when the construction and expansion of Delhi Metro was going on, and since no rehabilitation was provided to them at that time, they moved to Thokar No. 10 of the area. She stated that they have now again been evicted and their jhuggis have been demolished. She further stated that the DUSIB has never conducted any survey for the present cluster and, therefore, without a survey being conducted, the DDA ought not to have carried out the demolition. She stated that the action taken by the DDA is completely contrary to the decision rendered by this Court in Sudama Singh (supra) & Ajay Maken (supra).

12. *Per contra*, Ms. Prabhasahay Kaur, learned Standing Counsel appearing for the DDA, stated that the inhabitants of JJ Clusters which find mention at S. No.553, located at Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar, and JJ Cluster at S. No.569, located at Shakar Pur Chungi

Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16, are not being disturbed and the demolition has taken place on the Yamuna floodplains which is located far away from the abovementioned clusters. She further stated that under the DUSIB Policy, a JJ dweller would be entitled to the benefits of the DUSIB Policy only if the JJ Basti has come up on or before 01.01.2006. She stated that the place where the demolition drive has taken place is not even in the vicinity of the JJ Bastis mentioned at S. No.553, located at Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar and JJ Cluster or the S. No.569, located at Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16. She stated that other than vaguely mentioning that the members of the Petitioner-Union have been staying in the same vicinity and the Clusters have come up in the year 1980, there is nothing on record to show that the members of the Petitioner-Union were residing in the abovementioned JJ Clusters prior to 01.01.2006.

13. Learned Standing Counsel for the DDA has taken this Court through various maps filed by the DUSIB and the DDA to show that the place where the demolition has taken place and the cluster located in Ramesh Park are at a distance of 300 meters, and the location of the cluster at Lalita Park and the place where the demolition has taken place is about 2 Km. She has also taken this Court through a map to show the locations of Clusters at Ramesh Park and Lalita Park as well as the area where the demolition has taken place. She has also taken this Court through relevant paragraphs of the writ petition to state that the members of the Petitioner-Union have been living in the Clusters at Ramesh Park and Lalita Park since 2006, and no specific date has been given to show that the clusters came into existence before

01.01.2006. She stated that the cut-off date, as per the DUSIB Policy, is 01.01.2006 and, therefore, only those jhuggi jhopri Clusters which have come into existence before 01.01.2006 are entitled to the benefit of the DUSIB Policy. She further stated that the number of members of the Petitioner-Union who are claiming the benefit of the DUSIB Policy cannot be ascertained.

14. It is further stated by Ms. Kaur, learned Standing Counsel for the DDA, that the judgment of Sudama Singh (supra) cannot be applied to the instant case. She states that when the judgment of Sudama Singh (supra) was pronounced, an entirely different policy was in vogue and the DUSIB Policy had yet not been brought out. She has taken this Court through the directions issued by this Court in Sudama Singh (supra) which are as under:

“64. It is declared that:

(i) The decision of the respondents holding that the petitioners are on the “Right of Way” and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.

(ii) In terms of the extant policy for relocation of Jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the petitioners will be considered for relocation.

(iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021 subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a “meaningful” manner, as indicated in this judgment.

(iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the Jhuggis, are available at the site of relocation.”

15. Ms. Prabhasahay Kaur, learned Standing Counsel for the DDA, stated that pursuant to the said judgment, the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 i.e. the DUSIB policy, was prepared. She has further taken this Court through the judgment of this Court in Ajay Maken (supra). She contended that the said case primarily dealt with a JJ cluster which was on the Railways' land and which had been notified by the DUSIB as a Cluster entitled to the benefit of the DUSIB policy, unlike the present case which is not a notified Cluster. She further stated that in that case, Railways had given about Rs.11.25 crores to the DUSIB.

16. Ms. Prabhsahay Kaur, learned Standing Counsel for the DDA, submitted that a reading of the judgment of this Court in Ajay Maken (supra) would make it amply clear that this Court had never laid down that the JJ clusters which have not been identified by the DUSIB would also be entitled to the benefit of the DUSIB Policy or that any kind of notice has to be given to these persons before removing them. She stated that the benefit of the judgment of Ajay Maken (supra) could only be extended to Clusters which have been notified by the DUSIB.

17. Ms. Kaur, learned Standing Counsel for the DDA, further submitted that the judgment of Sudama Singh (supra) cannot have a universal application to all the clusters in the National Capital Territory of Delhi for the simple reason that:

- a) at the time when the judgment of Sudama Singh (supra) was pronounced, the DUSIB Policy was not in vogue.
- b) neither Sudama Singh (supra) nor Ajay Maken (supra) gives any right to any person to encroach on Government land.
- c) under the DUSIB Policy, only those jhuggi jhopri Clusters, which existed prior to 01.01.2006, can be extended the benefit of rehabilitation and relocation.

18. Ms. Prabhsahay Kaur concluded her submissions by taking this Court through various Orders passed by the NGT wherein directions have been given to the DDA to remove the encroachments in the Yamuna floodplains, and also to ensure that the ecology of river Yamuna is protected and commercial activities are not conducted on the water bodies.

19. Mr. Parvinder Chauhan, learned Standing Counsel appearing for the DUSIB, has reiterated the contentions of Ms. Prabhsahay Kaur. He states that pursuant to the judgment of Sudama Singh (supra), DUSIB brought out the DUSIB Policy, and under that Policy, DUSIB conducted a survey of clusters which were in existence prior to 01.01.2006. He has taken this Court through various provisions of the DUSIB Policy to indicate as to who could be the beneficiaries under the said Policy. He has also taken this Court through various portions of the judgment of this Court in Ajay Maken (supra) to show that once a JJ basti/cluster is eligible for rehabilitation, the dwellers of that JJ basti/cluster would cease to be illegal encroachers, and once they cease to be illegal encroachers, they cannot be evicted from their dwelling units without following the DUSIB Policy. He stated that the area, which is the subject matter of the writ petition and where the demolition

drive is being carried out by the DDA, has not been notified by the DUSIB to be a Cluster which was existing prior to 01.01.2006.

20. Heard Ms. Kawalpreet Kaur, learned Counsel appearing for the Petitioner, Ms. Prabhasahay Kaur, learned Standing Counsel appearing for the DDA, Mr. Parvinder Chauhan, learned Counsel appearing for the DUSIB, and perused the material on record.

21. Various parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities were under encroachment, and there was no proper policy in existence for the purpose of rehabilitation of the said encroachers. This Court in Sudama Singh (supra), while dealing with a batch of petitions seeking intervention of this Court to rehabilitate and relocate the persons residing in the various slums clusters in the Capital city to a suitable place and providing them alternative land with ownership rights pursuant to demolition of their jhuggis, observed as under:

“58. The respondents in these cases were unable to place records to show that any systematic survey had been undertaken of the Jhuggi clusters where the petitioners and others resided. There appears to be no protocol developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation, etc.”

“60. It is not uncommon to find a Jhuggi dweller, with the bull-dozer at the doorstep, desperately trying to save whatever precious little belongings and documents they

have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. These documents are literally a matter of life for a Jhuggi dweller, since most relocation schemes require proof of residence before a “cut-off date”. If these documents are either forcefully snatched away or destroyed (and very often they are) then the Jhuggi dweller is unable to establish entitlement to resettlement. Therefore, the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility keeping in view the desperate need of the Jhuggi dweller for an alternative accommodation. A separate folder must be preserved by the agency or the agencies that are involved in the survey for each Jhuggi dweller with all relevant documents of that Jhuggi dweller in one place. Ideally if these documents can be digitalized then there will be no need for repeated production of these documents time and again whenever the Jhuggi dweller has in fact to be assigned a place at the relocated site.”

“CONCLUSION

64. *It is declared that:*

(i) The decision of the respondents holding that the petitioners are on the “Right of Way” and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.

(ii) In terms of the extant policy for relocation of Jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the petitioners will be considered for relocation.

(iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative

site as per MPD-2021 subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a “meaningful” manner, as indicated in this judgment.

(iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the Jhuggis, are available at the site of relocation.” (emphasis supplied)

22. In compliance with the order of Sudama Singh (supra), the Legislative Assembly of National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'the Act'*) for the purpose of establishing DUSIB. Section 2(f) and Section 2(g) which defines the terms 'jhuggi' and 'jhuggi jhopri basti', have been reproduced as under:

“(f) “jhuggi” means a structure whether temporary or pucca, of whatever material made, with the following characteristics, namely:-

- (i) it is built for residential purpose;*
- (ii) its location is not in conformity with the land use of the Delhi Master Plan;*
- (iii) it is not duly authorized by the local authority having jurisdiction; and*
- (iv) it is included in a jhuggi jhopri basti declared as such by the Board, by notification;*

(g) “jhuggi jhopri basti” means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri basti in accordance with the following factors, namely:-

- (i) the group of jhuggis is unfit for human habitation;*
- (ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis,*

narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and
(iii) it is inhabited at least by fifty households as existing on 31st March, 2002.

Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;”

23. Chapter III of the said Act deals with the functions of the Board. Section 9 of the Act gives power to DUSIB to conduct a survey of any JJ basti, with a view to ascertaining the number of residents thereof, the existing standard of health, sanitation and civic amenities, the availability of medical and educational facilities for the residents thereof. Section 10 of the Act gives power to the DUSIB to prepare a scheme for the removal and resettlement of JJ bastis. Section 11 of the Act directs the Board to prepare a scheme for improvement of any JJ basti which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving, and provision of dustbins, or sites for garbage collection, street lighting, etc. Section 12 of the Act directs the Board to prepare schemes for redevelopment of JJ bastis with the consent of the owner of the land on which the JJ basti is situated.

24. First, in terms of the DUSIB Act, the Policy was framed. Under the said Policy, DUSIB was to be the nodal agency for rehabilitation and relocation of jhuggi jhopri basti dwellers in respect of the lands belonging to the MCD and the Delhi Government and its Departments/Agencies. In case

of JJ Colonies existing on lands belonging to the Central Government/Agencies, Railways, DDA, Land and Development (L&D) Office, the Delhi Cantonment Board, the New Delhi Municipal Council (NDMC) etc. the respective agency was to either carry out the relocation/rehabilitation themselves, as per the policy of the Delhi Government, or could entrust the job to the DUSIB. Under the DUSIB Policy, JJ colonies which came up before 01.01.2006 could not be removed without providing for an alternate housing as well as the jhuggis which came up in such JJ Clusters before 01.01.2015 could not be demolished without providing alternate housing. It was also laid down in the policy that the Government was to ensure that no new jhuggi came up after 01.01.2015, and if any jhuggi did come up after this date, the same would immediately be removed without providing any alternate housing. Relevant portion of the DUSIB Policy reads as under:

"2....

(a)...

(i) *Who is eligible for rehabilitation or relocation*

Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed (as per National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such Jhuggi Jhopri Bastis before 01.01.2015 shall not be demolished without providing alternate housing; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013).

(ii) *No new jhuggis to be allowed in Delhi*

Government of National Capital Territory of Delhi shall ensure that no new jhuggi comes up after 01.01.2015. If any jhuggi comes up after this date, the

same shall immediately be removed without providing them any alternate housing."

25. A perusal of the counter filed by the DUSIB indicates that a survey was conducted, and as many as 657 JJ Bastis were found to be situated on the lands belonging to different Government departments. The counter further indicates that the JJ Bastis located at Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar finds mention at S. No.553 and JJ Cluster located at Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16, finds mention at S. No.569.

26. The satellite map which has been filed by the DDA and the DUSIB shows that the area under demolition in Lalita Park is about 2 Kms. away from the place where demolition has taken place. Similarly, as far as Ramesh Park is concerned, the area which is under demolition is about 300 meters away from the JJ Cluster mentioned at S.No.553. The maps filed by the DUSIB also demonstrate that the clusters notified by the DUSIB at Lalita Park and Ramesh Park are far away from the Yamuna floodplains unlike the areas where the demolition is being undertaken. It is also shown in the maps that the JJ Clusters at Ramesh Park and Lalita Park are on the left side of the Eastern Marginal Bund, while the demolition was carried out on the right side of the Eastern Marginal Bund. It has further been shown that the place where demolition took place is on the western side of the Pushta Road whereas the JJ Clusters at Ramesh Park and Lalita Park are on the eastern side of the Pushta Road. It is shown in the maps filed by the DUSIB that the JJ Clusters in question are located on the Pushta Road and they do not extend across the Pushta Road. The relevant maps are reproduced as under:



Map showing the Areas of Ramesh Park and the Demolition Site
A → Demolition Site
B → Ramesh Park

(Mark 'A' & Mark 'B' emphasis supplied by the Court)



Map showing the Areas of Lalita Park and the Demolition Site

A → Demolition Site

C → Lalita Park

(Mark 'A' & Mark 'C' emphasis supplied by the Court)



DUSIB Map showing the Cluster at Lalita Park in the area marked in Red Colour.



DUSIB Map showing the Cluster at Ramesh Park in the area marked in Red Colour where demolition is not being undertaken by the DDA.

27. The case of the Petitioner-Union is that many of the members of the Union are residing in Ramesh Park and Lalita Park, and they had been dislocated from their earlier places because of a demolition drive which was conducted for the expansion of the Delhi Metro. It is the case of the Petitioner-Union that a survey must be conducted at these places to ascertain as to whether these Clusters were in existence prior to 01.01.2006 or not. The survey conducted by the DDA and the maps filed before this Court show that Ramesh Park and Lalita Park are on one side of the Pushta Road and the places where demolition took place is across the Pushta Road, away from the Clusters identified by the DUSIB.

28. On the basis of the material on record, this Court is unable to accept the stand of the Petitioner-Union that they were in existence prior to 01.01.2006. The prayer of the Petitioner-Union to conduct a second survey also cannot be accepted for the reason that DUSIB already conducted a survey in the year 2012-13 and the areas on one side of the Pushta Road have been identified by the DUSIB which does not extend to the area on the other side of the Pushta Road where demolition has been carried out by the DDA. The location of demolition sites and Cluster at S. No. 553 & 569 which are described as Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar, Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16 have been clearly marked by the maps.

29. The duty of the writ court is to ensure that as an established constitutional right vested in the Petitioner is not violated by way of State's action. Thus a writ only lies where there is a right. The claim of the Petitioner-Union that they were initially residing in the Clusters as notified by the DUSIB and they were moved out because of construction of the Delhi

Metro and, therefore, they are entitled to the rehabilitation under the DUSIB policy are pure questions of facts which have to be proved by the Petitioner-Union by leading evidence in their individual capacity. It is well settled that while adjudicating a writ, a writ court cannot go into excruciating details of facts.

30. A perusal of the DUSIB Policy shows that only those clusters which existed prior to 01.01.2006 are entitled to the benefit of the DUSIB Policy. The Petitioner-Union has been exceedingly vague in describing as to when the Clusters in question came into existence. Paragraphs No. 4 to 9 of the writ petition read as under:

"4. The JJ bastis at Shakarpur has been in existence since 1980's and most of the residents are migrants from Bihar, Uttar Pradesh and Bengal. The residents are mostly daily wage laborers, rag pickers, rickshaw pullers, auto drivers and domestic workers. Due to the demolition, the residents have lost their livelihood. They had already exhausted their savings during the lockdown and are struggling to survive amid Covid- 19 pandemic.

5. The above-mentioned Basti is listed at serial number 553 and 569 in the list of Additional JJ Clusters List published by DUSIB on its website for rehabilitation. Therefore, Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 ought to be followed for rehabilitation by the respondents. True Copy of the relevant parts of JJ clusters List issued by the DUSIB is at Annexure P-1 at page no. 48 to 93.

6. Resultantly, any resident who can establish his residence prior to 01.01.2015 is eligible for rehabilitation under the 2015 9 policy. True copy of the Delhi Slum & JJ Rehabilitation and Relocation Policy,

2015 approved on dated 2017 is at Annexure P-2 at page no. 94 to 101.

7. Most people have the proof of residence prior to 01.01.2015 as required by the DUSIB Policy, 2015. The documents of the some of the residents of the area who were forcefully and illegally removed by the DDA are marked and annexed herewith as Annexure P-3 (colly) at page no. 102 to 182.

8. DDA ought to be held guilty for conducting the demolition without providing any advance notice to the residents, conducting any survey and providing any rehabilitation. No rehabilitation has been provided to the people at the site even though they ought to be given the same as per the laid down policies, statues and judgments. No reason has been given by the DDA for the demolition of the houses at the Shakarpur Basti.

9. The Petitioners were first evicted from their houses in the year 2006 when the construction and expansion of Delhi Metro was going on and no rehabilitation was provided to them at that time. The people were earlier residing at the Thokar no. 8 of the Ramesh and Lalita Park area in Shakarpur but because of the demolition, they moved to Thokar no. 10 of the area."

31. A perusal of the abovementioned paragraphs does not pin-point as to whether the members of the Petitioner-Union are part of the clusters mentioned as S.Nos. 553 & 569 in the list of identified Clusters published by the DUSIB. Rather, paragraph No.9 states that the members of the Petitioner-Union were evicted from their jhuggis in 2006 and they moved from Thokar No.8 to Thokar No.10. Therefore, it cannot be said that on the date when the demolition took place, the members of the Petitioner/Union were a part of the clusters mentioned as S.Nos. 553 & 569 in the list of

identified Clusters published by the DUSIB. In order to get the protection of the DUSIB Policy, a JJ Basti ought to have been in existence prior to 01.01.2006 and a person should have constructed his jhuggi prior to 01.01.2015. This Court has also looked into the photographs filed by the DDA to show that the structures have been recently constructed and do not come under the definition of 'Jhuggi' under the DUSIB Act. The photographs also reveal that the structures are very close to the water bodies. The facts stated in the writ petition do not make out a case in favour of the Petitioner-Union.

32. The Petitioner has placed heavy reliance on the judgment of this Court in Ajay Maken (supra). The relevant portions of the said judgment read as under:

“141. Sections 10 and 11 of the DUSIB Act, which are relevant for the case at hand, read as under:

“10. Removal and resettlement of jhuggi jhopri bastis

(1) The Board shall have the power to prepare a scheme for the removal of any jhuggi jhopri basti and for resettlement of the residents thereof, and the consent of the residents of the jhuggi jhopri basti shall not be required for the preparation or implementation of such a scheme.

Explanation. - Nothing in sub-section (1) shall derogate the power of the Central Government to remove jhuggis, if required. Every such scheme shall specify the amount to be paid by the land owner and by the persons to be resettled towards the cost of new houses to be allotted to them and also the criteria for eligibility for resettlement.

Explanation. - For the removal of doubts it is hereby clarified that owner of the land from where the basti is removed and the subsequent beneficiary-residents to be resettled shall contribute towards the cost of new houses to be allotted to them and the said amount of the contribution shall be specified in the scheme.

The Board may, after prior consultation with the Government, cause any jhuggi jhopri basti to be removed and may resettle such residents thereof as may be eligible in accordance with the scheme prepared under sub-section (1), and it shall be the duty of the local authority having jurisdiction and of the police and of any other agency or department whose assistance the Board may require to cooperate with and render all reasonable assistance to the Board:

Provided that where jhuggi jhopri basti is on the land belonging to the Central Government or any of its organizations, the process of removal and resettlement shall be undertaken with the prior consent of the Central Government or its organization concerned:

Provided further that such resettlement shall not be done in contravention of the provisions of the Delhi Development Act, 1957 (61 of 1957) and those of the Master Plan for Delhi or the zonal development plans prepared thereunder

Scheme of improvement of jhuggi bastis

11. (1) The Board may prepare a scheme for the improvement of any jhuggi jhopri basti which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving, and provision of dustbins, or sites for

garbage collection, street lighting, or any of them, or provision of any like facilities:

Provided that no such scheme shall be prepared if the owner of the land on which the jhuggi jhopri basti is situated has already consented to the preparation of a scheme for the removal of the jhuggi jhopri basti under section 10 and has paid his share of the cost thereof.

(2) The Board may take all measures which may be necessary for the implementation of any scheme for improvement of a jhuggi jhopri basti prepared under subsection (1) and it shall be the duty of the local authority, power generation and distribution companies or any licensee under the Electricity Act, 2003 (36 of 2003) having operations in the area, and any department or undertaking of the Government to render all reasonable assistance for the implementation thereof.

(3) A scheme prepared under sub-section (1) may include provision for payment or for contribution of labour by the residents of the jhuggi jhopri basti individually or collectively, and may also include provision for recovery of charges for the use of toilets and bathing facilities:

Provided that no such payment or contribution of labour, other than charges for use of toilet and bathing facilities, shall be levied unless the scheme has been published and the residents given an opportunity to make representations and suggestions regarding it in such manner as may be prescribed by regulations, and such representations or suggestions, if any, have been duly considered by the Board.”

171. While the 2015 Policy lays down a framework in terms of the decisions in Sudama Singh for the authorities to follow if they propose to undertake eviction of slum dwellers for any reason, even for those JJ clusters and jhuggis which are situated on the land of the Central Government, including those entrusted to the Railways, where the Central Government or the Railways seeks to take action independent of the DUSIB, the basic elements of that framework would certainly apply. The decision in Sudama Singh is binding on all agencies including the Central Government and the Railways. In sum, it is not as if only the JJ clusters and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB that are required to be dealt with in terms of the decision in Sudama Singh but every jhuggi dweller, anywhere in the NCT of Delhi, has to be dealt with in terms of the said decision. In effect, therefore, no slum dweller in the NCT of Delhi in one area can be treated differently from that in another.

X

The 2015 Policy

172. It is necessary at this stage to discuss the provisions of the 2015 Policy. As already noticed, the Policy itself delineates principles on which it is based. In this context paras 1 (i, ii and iii) are relevant and they read as under:

“(i) The people living in jhuggis perform critical economic activities in Delhi like drivers, vegetable vendors, maid servants, auto and taxi drivers, etc.

(ii) In the past, adequate housing was not planned for these people in middle or upper class areas, to which they provide services. As a result, a number of jhuggi bastis mushroomed all over Delhi close to the areas where they provide services.

(iii) They have encroached upon the lands on which they live.”

173. *After setting out the decisions of the Supreme Court and of this Court in Sudama Singh and the decision of the Supreme Court in Gainda Ram v. Municipal Corporation of Delhi (supra) which reiterated that “hawkers have a fundamental right to hawk”, the Policy notes in paras 1(vi) and (vii) as under:*

“(vi) Government of National Capital Territory of Delhi recognizes that the habitat and environment in which Jhuggi Jhopri Bastis exist is often dirty, unfit for human habitation and unhygienic both for the inhabitants living in that area as well as for the people living in surrounding areas.

(vii) Government of National Capital Territory of Delhi, therefore, wishes to put in place and implement this policy to house the poor in a permanent and humane manner; at the same time, clear lands for specific public projects and roads etc.”

174. *The 2015 Policy states that DUSIB is to be the Nodal Agency for relocation/rehabilitation of jhuggi jhopri bastis “in respect of the lands belonging to MCD and Delhi Government and its department/agencies. In case of JJ Colonies existing on lands belonging to the Central Government/Agencies, Railways, DDA, Land and Development (L&D) Office, the Delhi Cantonment Board, the New Delhi Municipal Council (NDMC) etc. it stipulated that “the respective agency may either carry out the relocation/rehabilitation themselves as per the policy of the Delhi Government or may entrust the job to the DUSIB.”*

175. *The proviso to para 2(a) of the Policy states:*

“Provided that, the Agencies while doing relocation rehabilitation/in-situ redevelopment of the dwellers of Jhuggi Jhopri Bastis must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of Pradhan Mantri Awas Yojna and provisions which have been notified by the Central Government from time to time”⁵⁹

176. As already noticed, as regards who is eligible for rehabilitation or relocation, the 2015 Policy states that JJ bastis that had come up before 1st January 2006 shall not be removed in terms of the National Capital Territory of Delhi Laws (Special Provisions) Act 2011.

177. In the brief note submitted by Mr. Kirtiman Singh, counsel for the MoUD, a reference has been made to the affidavit filed by the Central Government (MoUD) on 6th December 2018 and the Office Memorandum dated 20th March 2017 whereby the MoUD conveyed to the DoUD its response to the 2015 Policy inter alia in respect of paras 2(a) and 2(b) as under:

“(i) Para 2(a) (Part-A) Nodal Agency:

This Ministry broadly concurs with provision but the agencies while doing relocation/rehabilitation/in-situ redevelopment of the dwellers of JJ Clusters must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of the Pradhan Mantri Awas Yojna.

(i) Para 2(a)(v) (Part-A) Relocation in rare cases:

This Ministry has no objection to the revised proposal. This provision will come into effect only when the Central Government Land Owning Agency approaches DUSIB for rehabilitation, removal and relocation of Jhuggi Jhopri Basti. However in this

case also the provisions which have been notified by Central Government will prevail. This issues with the approval of Hon'ble Union Urban Development Minister.”

XI

The Draft Protocol

178. The Draft Protocol framed by the DUSIB in consultation with all stake-holders,60 and pursuant to the orders of this Court in the present writ petition, sets out the steps to be taken for removal of jhuggis and JJ bastis. It states that “the process of removal/re-settlement/rehabilitation/in-situ improvement/re-development of jhuggis and JJ Bastis in Delhi will be governed by the 2015 Policy. The Land Owning Agency (LOA) is to send a proposal for removal of the jhuggis and JJ bastis to DUSIB sufficiently in advance “with proper justification satisfying the conditions mentioned in the Policy, along with commitment to make payment of the cost of rehabilitation”. DUSIB then examines the proposal with reference to the cutoff date and after an in-principle approval undertakes a joint survey along with the representative(s) of LOA to determine the eligibility of JJ dwellers for rehabilitation as per the 2015 Policy.

179. A detailed procedure has been set out for conducting the joint survey receiving claims and objections which would be disposed of by a Claim and Objection Redressal Committee. The procedure for determination of the eligibility of the JJ dweller to rehabilitation has also been set out. There is to be an Eligibility Determination Committee (EDC) constituted by the CEO of DUSIB which will comprise the officers of DUSIB and representatives of the concerned ERO and AERO (Electoral Registration Officer and Assistant Electoral Registration Officer) as nominated by the District Election Officer (DEO).

180. A detailed programme is to be drawn up by the DUSIB including holding of a pre-camp at the site to facilitate filling up the requisite application form. A schedule is to be permanently displayed in the JJ basti mentioning the place and time to appear before the EDC along with the requisite documents. A finalised list of eligible and ineligible JJ dwellers is then to be submitted by the EDC to the CEO DUSIB for approval. If a genuine case is left out, an Appellate Authority is to be provided for to whom such left out person may appeal.

181. Post survey, and after receiving the cost of rehabilitation from the Land Owning Agency (LOA), DUSIB, in the presence of representatives of eligible JJ dwellers, is to conduct a draw of flats to be allotted to the eligible JJ dwellers. After receipt of the beneficiary contribution and verification of possession, letters are to be issued and the JJ dwellers are to be given two months' time for shifting. Thereafter, steps are to be taken for removal with the assistance of the police. Para 7 of the Protocol sets out the steps for actual removal of the jhuggis after the above steps are complete. Inter alia, it talks of DUSIB facilitating "transportation of household articles/belongings of eligible JJ dwellers to the place of alternative accommodation, if necessary."

182. Suitable facilities are to be provided at the site where rehabilitation is to take place, for (i) for admission of the wards of the jhuggi dwellers in the nearby schools (ii) for setting up a dispensary/Mohalla Clinic in the vicinity of the flats (iii) opening a fair price shop/Co-operative store to cater to the basic daily needs of the jhuggi dwellers, if not available in the vicinity. For this purpose, DUSIB is expected to make requests to the Directorates of Education and Health Services of the GNCTD and the MCDs to make arrangements. DUSIB is also to request the Delhi Transport Corporation (DTC) to make arrangements for DTC buses. DUSIB is to facilitate the "availability of drinking water and

sewerage facilities in the flats to be allotted.” It further states that “the demolition/shifting shall not be carried out during night, Annual Board Examinations or during extreme weather conditions.” Further, “as far as practicable, DUSIB will provide potable water, sanitation and basic health facilities at the site of demolition of the jhuggis.” The steps to be followed post removal of jhuggis are set out in para 8 of the Protocol.

183. The Protocol thus seeks to put into effect the core elements of the 2015 Policy which acknowledge that the right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the other rights to life viz., the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage facilities and transport facilities. The constituent features of the RTTC thus find place in the 2015 Policy.

184. The MoUD has also pointed out that the PMAY which has been referred to in the 2015 Policy also talks of some of the aspects of “in-situ slum redevelopment using land as a resource.” In view of the integration of the PMAY aspects into the 2015 Policy and the Draft Protocol, the Central Government has categorically informed the Court that it has no objection to the rehabilitation Policy notified by the LG by order dated 11th December 2017, “as well as the draft protocol for removal.” With the above stand of the Central Government being made categorical, the questions that arose earlier for determination in the order dated 12th October 2018 of this Court have been rendered academic.

185. At this juncture, it requires to be noted that there has been a distinct shift in the approach of the State to the issue of rehabilitation of slum dwellers. The MPD 2021 makes a shift from resettlement to rehabilitation in-situ i.e. at the place where the dwelling is found. The shift

is from allotting plots of unreasonably small sizes (12.5 sq.m) to building multi-storey building blocks to house the dwellers in the JJ clusters, based on their eligibility in terms of the policy from time to time.

186. In the present case, since that stage is yet to be reached, the Court is not called upon to comment on the adequacy of such policy in the matter of dealing with the needs of the dwellers in the JJ clusters. As and when such an issue arises it would have to be addressed by the Court. For that reason, the Court is also not commenting on the individual elements of the 2015 Policy or the Draft Protocol which have been responded to by the Petitioners as well as the Respondents.

187. It must be noted that the Petitioners have some reservations to the specific aspects of the Draft Protocol. However, as of now there is no threat of forced eviction of the dwellers of Shakur Basti as all the Respondents, including the Railways, have taken a stand recognising that in terms of the DUSIB Act, the 2015 Policy and the decision in Sudama Singh it is essential to first complete the survey and consult the JJ dwellers. Further, under Section 10(1) of the DUSIB Act, read with the 2015 Policy, and even otherwise, unless it is possible for the JJ dwellers to be rehabilitated upon eviction, the eviction itself cannot commence.

188. 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 Court would not like to second guess the time estimate for such an exercise and, therefore, keeps open the right of the JJ dwellers to seek legal redress at the appropriate stage if the occasion so arises. At that stage, the Court would possibly examine the objections that the

JJ dwellers may have to the Protocol. Subject to this, the Court permits DUSIB to operationalise the Protocol.

189. The key elements of the 2015 Policy, which are in conformity with the decisions of the Supreme Court of India discussed in Part VII of this judgment as well as in Sudama Singh, would apply across the board to all bastis and jhuggis across the NCT of Delhi. In other words, conducting a detailed survey prior to the eviction; drawing up a rehabilitation plan in consultation with the dwellers in the JJ bastis and jhuggis; ensuring that upon eviction the dwellers are immediately rehabilitated - will all have to be adhered to prior to an eviction drive. Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in all of the above decisions.

XII

Stand of the Railways

190. That leaves for consideration the stand taken by the Railways, which are a part of the Union of India. To summarise the Railways' contentions:

(i) Lands "belonging to the Railways" fall exclusively within the purview of the Railways Act, 1989. Reference is made to the definition of 'Railway' contained in Section 2(31) of the Railways Act, 1989. It is stated that Railways, as a part of their statutory duty, are obliged to remove encroachments upon their land. Reference is made to Section 147 of the Railways Act which deals with "trespass and refusal to desist from trespass." It states that any person entering on Railway land without authority shall be punished with imprisonment for a term which may extend up to 6 months or a fine which may extend to Rs. 1,000/- or both.

(ii) *The proximity of jhuggi dwellers near railway lines, resulting in a number of accidents causing loss of life and limb.*

(iii) *The DUSIB Act has no applicability “in so far as the activities of the Railways are concerned.” A State legislation will not have an overriding effect over a Central legislation. The Explanation to Section 10(1) and the proviso to Section 10(3) of the DUSIB Act “makes it abundantly clear that the DUSIB Act would not ipso facto apply to the lands belonging to the Railways.” It is also contended that those provisions of the DUSIB Act therefore “do not apply to any land belonging to the Central Government, including that of the Railways.”*

(iv) *Section 20(o) of the Railway Act specifically provides for rehabilitation and resettlement only in the context of acquisition of land and that if the legislature had deemed it appropriate it would have a similar provision in Section 147 for ‘trespasses/encroachments’ but it did not.*

(v) *DUSIB “will have no jurisdiction to notify any illegal encroachment as JJ Cluster under provisions for the DUSIB Act on the land belonging to the Railways.”*

(vi) *Due to the special needs of the Railways, “the slums on Railway land are ‘untenable settlement’” hence, “in-situ settlement of slum dweller on Railway land would not be feasible.”*

(vii) *As regards MPD-2021, a reference is made to table 12.7 which permits all facilities related to Railway passenger operations, goods handling, passenger change over facilities, including watch and ward, Hotel, Night Shelter, all facilities related to Railway Tracks, operational areas including*

watch and ward.” Therefore, in-situ rehabilitation is not permitted.

(viii) Reference is then made to the Public Premises (Eviction of Unauthorized Occupations) Act (PP Act) and the procedure prescribed thereunder for removal of unauthorised occupants. A reference is made to the order of 1st October 2018 of the National Green Tribunal (NGT) which has directed the constitution of Special Task Force to remove JJ Clusters from Railway land.

191. *The above submissions proceed on the basis that Railways is an entity separate from that of the Central Government, whereas it is not. The Railways is another Ministry of the Central Government. Two Ministries of the Central Government cannot talk in two different voices. The MoUD has categorically informed this Court that it has no objection to the 2015 Policy notified by the LG (who incidentally also functions under the administrative control of the Central Government) or the Draft Protocol.*

192. *The DUSIB Act and the 2015 Policy are by and large in conformity with the Constitution and India's obligations under the ICESCR. Therefore, the Railways Act when it comes to the question of removal of 'encroachments of slum dwellers' will have to be understood as having to also be interpreted in a manner consistent with the above legal regime. The Explanation to Section 10(1) and the proviso to Section 10(3) of the DUSIB Act make it clear that JJ bastis and jhuggis on Central Government land, which includes Railway land, can be made the subject matter of the DUSIB Act with the consent of the central Government. In fact, as already noted, land in the NCT of Delhi is under the control of the Central Government. The decision of the NGT will also have to be read consistent with the above legal regime.*

193. *The Railways by themselves are not a 'land owning agency'. The word 'owning' is used only in the sense of Railways holding the land of Union of India for activities concerning the Railways. In that sense, when it is said that land belongs to the Railways it is not in the sense of land being 'owned by the Railways', but land of the Union of India being held by the Railways. If on account of close proximity to Railway tracks, in-situ rehabilitation is not possible, then alternative land, not close to the tracks, will have to be found in consultation with the DUSIB. It is clarified that this direction is specific to the facts of the present case.*

XIII

Concluding observations

194. *The right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport facilities.*

195. *The law explained by the Supreme Court in several of its decisions discussed hereinbefore and the decision in Sudama Singh discourage a narrow view of the dweller in a JJ basti or jhuggi as an illegal occupant without rights. They acknowledge that the right to adequate housing is a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city. They recognise such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement. That is the running theme of the DUSIB Act and the 2015 Policy.*

196. *Once a JJ basti/cluster is eligible for rehabilitation, the agencies should cease viewing the JJ dwellers therein as 'illegal encroachers'. The decisions of the Supreme Court of India on the right to shelter and the decision of*

this Court in Sudama Singh require a Court approached by persons complaining against forced eviction not to view them as 'encroachers' and illegal occupants of land, whether public or private, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. Forced eviction of jhuggi dwellers, unannounced, in coordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in the above decisions."

33. The reliance of the Petitioner-Union on the judgment of this Court in Ajay Maken (supra) also does not hold any water. The judgment of Ajay Maken (supra) holds to the extent that once a cluster has been identified under the DUSIB Policy, then the persons living in that JJ cluster cannot be treated as illegal encroachers and they cannot be removed from that location without being rehabilitated in accordance with the DUSIB Policy. As stated earlier, when the judgment of Sudama Singh (supra) was pronounced, there was no policy in place and this Court in Ajay Maken's case was dealing with the cluster which had been identified by the DUSIB and, therefore, the members of that cluster were entitled to the benefit of the DUSIB Policy. The learned counsel for the Petitioner has contended that a reading of paragraph 171 of the judgment of this Court in Ajay Maken (supra) indicates that the Division Bench of this Court has held that the DUSIB Policy, 2015, will apply to all the jhuggi Clusters alike and that, therefore, regardless of the fact that the present Cluster is included in the notified Cluster or not, the protection given by this Court in the judgment of Sudama Singh (supra) should be extended to the Petitioners as well. This argument does not hold water. If this submission is accepted, the entire DUSIB Policy, 2015, would

be rendered infructuous, and there would have been no necessity for the DUSIB to bring out the policy restricting the right of rehabilitation only to those Clusters which were existing on 01.01.2006 and those jhuggis which were inside those Clusters as on 01.01.2015. It is the opinion of this Court that the judgment of Ajay Maken (supra) has to be read in that light. The said judgment has not rendered the DUSIB Policy, 2015, as violative of Article 14 of the Constitution of India. The purpose of the judgments passed by this Court in Sudama Singh (supra) and Ajay Maken (supra) was not to provide rehabilitation of the dwellers in the JJ Cluster even if they have encroached on government land. Encroachment on government land cannot be said to be a fundamental right of any person and a person encroaching upon government land cannot claim that he is entitled to rehabilitation as a matter of right even in the absence of any policy bestowing the benefit of rehabilitation and relocation on the said person.

34. A co-ordinate Bench of this Court *vide* Order dated 11.04.2022, in **W.P.(C) 5941/2022** titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., while dealing with the case of certain jhuggi dwellers of Sarojini Nagar seeking quashing of demolition notice issued to them, has held that the JJ cluster in question therein did not find mention in the list of clusters which are entitled to the benefit of the DUSIB Policy and, therefore, they are not entitled for rehabilitation measures under the said Policy. Relevant portions of the said judgment read as under:

"This Court notes that the obligation to formulate a scheme for rehabilitation and relocation stands extended to clusters which stand duly notified in Section 3. In fact the Act itself while defining the

expression jhuggis, jhopris and bastis provides that it would cover clusters of jhuggis which the Board may by notification declare as such. Undisputedly, no such notification has been issued insofar as this cluster is concerned."

"It becomes pertinent to note that the petitioners had also placed reliance on clause 2.6 of a Memorandum of Understanding stated to have been executed between the Ministry of Urban Development and NBCC. Clause 2.6 stipulates that the Land and Development Office of the Union respondents would take steps and action for relocation and rehabilitation of jhuggi clusters if any existing in these colonies. Mr. Dhanda on instructions apprises the Court that there appears to be an evident and inadvertent mistake in the drawing up of clause 2.6 since it was never the intent of the Union to frame a scheme for rehabilitation or relocation in respect of jhuggis which are not notified under the provisions of the Act.

It becomes relevant to note that despite repeated queries, learned counsel for the petitioner was unable to draw the attention of the Court to any observation made or appearing in either Sudama Singh or Ajay Maken, which may be read as placing the respondents under a statutory duty to frame a scheme for rehabilitation and relocation in respect of a cluster which is not notified for the aforesaid purposes under the Act. The Court has not been shown any statutory provision which may be read or construed as placing an obligation upon either respondent No.1 or respondent no.2 to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act. The petitioners do not appear to have taken any steps for requiring DUSIB or the first respondent to extend coverage of the Act to this cluster."

35. The said Judgment has been upheld by a Division Bench of this Court *vide* Order dated in **LPA 271/2022**, titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., . Relevant portions of the said Order read as under:

"5. As noted hereinabove, the learned Single Judge dismissed the petition, observing that the petitioners/appellants have been unable to show that their jhuggi cluster was notified under the Act, nor were they able to show any statutory provision which may be read or construed as placing an obligation upon-either respondent no.1, or respondent no.2, to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act.

6. The learned senior counsel for the appellants has placed reliance on the judgment of this Court in Ajay Maken (supra). He submits that this Court had observed that one reason for the failure to notify slums was that a notified slum would have to be dealt with only in accordance with the Slum Areas (Improvement and Clearance) Act, 1956 in terms of in-situ rehabilitation, which clearly was not the priority of the State. The Court further held that not only the jhuggi jhopri (hereinafter referred to as „JJ“) cluster and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB are required to be dealt with in terms of the decision in Sudama Singh (supra), but every jhuggi dweller, anywhere in the National Capital Territory of Delhi (hereinafter referred to as „NCTD“), has to be dealt with in terms of the said decision. No slum dweller in the NCTD-in one area, can be treated differently from that in another.

7. Further referring to the order dated 11.12.2017 issued with the approval of the Lieutenant Governor of the NCTD, notifying the Delhi Slum and Jhuggi Jhopri

Rehabilitation and Relocation Policy, 2015 (hereinafter referred to as the „Policy“), he submits that DUSIB is only to act as a nodal agency for relocation/rehabilitation of the JJ bastis. Any of the JJ bastis which have come up before 01.01.2006, cannot be removed without providing them alternative housing.

8. The learned senior counsel for the petitioner has further drawn our attention to the „Draft Protocol for Removal of Jhuggis and JJ Bastis in Delhi“ (hereinafter referred to as the „Draft Protocol“), to submit that, in compliance with the judgment of this Court in Ajay Maken (supra), the Draft Protocol was framed, clearly providing for a survey to be conducted to determine the existence of JJ basti prior to 01.01.2006 and to determine the eligibility of JJ dwellers for rehabilitation as per the Policy. He submits that in the present case, no such survey has been conducted by the respondent no.1 and/or the respondent no.2 and, therefore, the action of removal of the jhuggis of the appellants is illegal and cannot be allowed.

9. On the other hand, the learned counsels for the respondent nos. 1 and 2 submit that the jhuggi cluster, where the jhuggis of the appellants are situated, was not in existence as on 01.01.2006. They submit that pursuant to a survey carried out in 2016, a list of 675 JJ cluster that were in existence as on 01.01.2006, was notified under the provisions of the Act. They submit that, therefore, the appellants are not entitled to rehabilitation and/or any protection from this Court.

10. We have considered the submissions made by the learned counsels for the parties. Section 2(g) of the Act defines „Jhuggi Jhopri basti“ as under:

“(g) “jhuggi jhopri basti” means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri basti in accordance with the following factors, namely:-

(i) the group of jhuggis is unfit for human habitation;

(ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and

(iii) it is inhabited at least by fifty households as existing on 1st January, 2006: Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;” (Emphasis supplied)

11. A reading of the above provision would clearly show that DUSIB has to declare a group of jhuggis as “Jhuggi jhopri basti” by way of notification. One of the conditions to be fulfilled by such a group of jhuggis is that it must be inhabited, at least by fifty households, as existing on 01.01.2006. Section 9 of the Act empowers the DUSIB to make a survey of any jhuggi basti. Section 10 of the Act provides for preparation of a scheme for removal of any JJ basti and for resettlement of the residents thereof. Section 12 of the Act provides for the re-development of the JJ basti. The above provisions are applicable only with respect to “Jhuggi Jhopri basti”, that is, inter-alia a group of fifty households as existing 01.01.2006 and duly declared by DUSIB as such by way of a Notification.

12. As noted by the learned Single Judge, the appellants have been unable to produce any such notification under Section 2(g) of the Act. Even in appeal, no such Notification has been produced by the appellants. The appellants are, therefore, not entitled to any protection under the Act.

13. As far as the Policy is concerned, the Policy stipulates “eligibility for rehabilitation or relocation” only for those JJ basti, which have come up before 01.01.2006. Therefore, for seeking benefit of the said Policy, it was incumbent on the appellants to show that their JJ basti was in existence since before 01.01.2006. Though the learned senior counsel for the appellants sought to place reliance on a list of families allegedly residing in the said cluster of jhuggis, and submits that many therein have been residing much prior to the cut-off date of 01.01.2006, we find that the addresses mentioned in the said list vary between different blocks of Sarojini Nagar. They, therefore, cannot, at least prima facie, be stated to be forming part of one JJ basti, entitling them to the benefit of the Policy.

14. The learned senior counsel for the appellant, placing reliance on the proviso of Section 2(g) of the Act, contends that the Board, that is, the DUSIB, may attach any jhuggi or jhuggis scattered in the nearby areas to any JJ basti, and such jhuggi or jhuggis shall be deemed to be part of such JJ basti. He contends that, therefore, even if these jhuggis were scattered in different areas of Sarojini Nagar, they would form part of one cluster. We are unable to agree with the said submission. The proviso itself states that it is for the Board to take such decision. It is not the case of the appellants that any such decision has been taken by the Board in the present case for the jhuggis at Sarojini Nagar. The appellants cannot, therefore, take the benefit of the Proviso to Section 2(g) of the Act to stake a claim of rehabilitation.

15. *As far as the reliance of the appellants on the Draft Protocol is concerned, the same again applies only to a JJ basti in existence prior to 01.01.2006, and the manner in which such determination is to be made. In the present case, the categorical stand of the respondent nos. 1 and 2 is that such a determination was made in the case of the appellants, and the cluster of jhuggis at Sarojini Nagar was not found in existence as on 01.01.2006, and therefore, not notified under the Act. In case the appellants are to dispute the above, it would be a disputed question of fact, which in any case, cannot be determined in a writ jurisdiction. Therefore, the Draft Protocol also cannot come to the aid of the appellants.*

16. *As far as the reliance of the appellants on the judgments of this Court in Sudama Singh (supra) and Ajay Maken (supra) is concerned, we are again unable to accept the same. In the referred judgments, this Court was not dealing with the position where the respondents were disputing the existence of the JJ cluster as on 01.01.2006. Therefore, the said judgments would have no application to the facts of the present case."*

36. The said judgment has been challenged in the Supreme Court by filing a Special Leave Petition, however, the Apex Court has not stayed the judgment. The Apex Court has entertained the petition only to find a solution as to how the human problem can be resolved.

37. This Court while dealing with Ajay Maken (supra) and Sudama Singh (supra) never gave any licence to any person to encroach upon Government property. However, this Court is dealing with a human problem and right to shelter has been described as right which has to be protected by Courts,

especially for those who will have no place to go with their family and belongings if they are faced with mid-night demolitions. In order to ameliorate the human problem, this Court in Sudama Singh (supra) had directed that the State Government must formulate a comprehensive protocol to ensure that persons who have encroached upon Government lands are not rendered shelter-less and, therefore, a rehabilitation policy has to be brought out to rehabilitate those persons. It was in pursuance of that judgment that DUSIB was made the nodal agency for rehabilitation of the persons living in JJ clusters. Parameters were laid down as to who would be entitled to the benefit of the DUSIB Policy. The judgment of this Court in Ajay Maken (supra) cannot be interpreted to mean clusters not identified by the DUSIB would be entitled to rehabilitation.

38. However, at the same time, this Court cannot be ignorant of the observations made in paragraph No.60 of Sudama Singh (supra) that it is not uncommon to find a Jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. The action of DDA in removing a person, whom they claim to be an encroacher, overnight from his residence, also cannot be accepted. The DDA has to act in consultation with the DUSIB before embarking upon any such venture and persons cannot be evicted with a bulldozer at their door step early in the morning or late in the evening, without any notice, rendering them completely shelter-less. A reasonable period has to be given to such persons and temporary location has to be provided to them before embarking on any demolition activities.

39. When this Court pointedly asked Mr. Chauhan, learned counsel for DUSIB, as to whether they have any provision for accommodating such persons, who are to be evicted, this Court was informed that normally when DUSIB conducts any demolition drive, it ensures that no demolition takes place when academic year is about to end or during monsoons. He stated that normally demolition takes place between March to June and August to October. This Court expects from the DDA to follow similar norms for demolition as well.

40. With regard to the prayer of the Petitioner seeking a survey of the Petitioner-Union so as to discern as to whether they can be deemed to a part of a notified JJ Cluster, this Court does not, at this juncture, wish to delve into the same. Material has been produced, along with photographs, to demonstrate that the Petitioner-Union lies on the Yamuna floodplains, and Orders have been rendered by the NGT to maintain the ecological balance of the said floodplains. The Google Maps produced by the Respondents show that the place, where the demolition drive has taken place, is at a distance from the JJ Clusters at S.Nos. 553 and 569. Furthermore, it is pertinent to note that a survey concerning the JJ Clusters at S.Nos. 553 and 569 has already been conducted by the DUSIB in the year 2012 wherein the present area, where demolition drive has taken place, is not included. As the NGT has assumed jurisdiction of the sensitive issue pertaining to the resuscitation and rejuvenation of the Yamuna floodplains, this Court does not deem it appropriate to disturb the same by way of a mandamus to the DDA to allow DUSIB to conduct a survey.

41. Needless to state that it is always open for the Petitioner-Union to take appropriate steps in accordance with law, lead evidence and establish that

they are entitled to the benefits of DUSIB policy by way of being residents of Clusters at S. No. 553 & 569 which are described as Sayeed Peerwala Ki Mazar, Ramesh Park, Laxmi Nagar, Shakar Pur Chungi Thokar 16, Lalita Park, Laxmi Nagar & Shamshan Ghat Thokar No.16.

42. Resultantly, the instant writ petition is disposed of with a direction to the DDA to carry out further demolition only in consultation with the DUSIB. The DDA is further directed to give sufficient time to the dwellers to make alternate arrangements or, alternatively, steps should be taken to accommodate the dwellers in the shelters provided by the DUSIB for three months so that the persons, whose jhuggis are being demolished, are able to find some alternate accommodation. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J.

AUGUST 02, 2022

Rahul

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