$~43

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

\+ W.P.(C) 11945/2022, CM APPL. 35694/2022(Interim Relief)

KASTURBA NAGAR RESIDENTS
WELFARE ASSOCIATION ..... Petitioner

Through: Mr. Kawalpreet Kaur and Mr. Haider Ali, Advs

versus

GOVERNMENT OF NCT OF DELHI AND ORS .... Respondents

Through: Ms. Hrishita Jain proxy for Mr. Shadan Farasat, ASC for GNCTD
Mr. Rishi Kant Singh, Adv. for R-2
Ms. Prabhsahay Kaur and Ms. Kritika Gupta, Advs. for R-3/DDA
Mr. Om Prakash, Ms. Swati Mishra and Parnashree Rej, Advs. for R-5&6

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

O R D E R

% 13.10.2022

1. This writ petition has been preferred seeking the following reliefs: -

> "Therefore, that the Hon'ble Court may be pleased to:
>
> a. Direct the respondents to first rehabilitate the Petitioner union residents before carrying out their demolition.
>
> b. Direct the respondent no.2, DUSIB to notify the slum cluster in accordance with Section 2(g) of the DUSIB Act.
>
> c. Direct the respondent no. 3, DDA to send a proposal for removal of Petitioner union cluster to DUSIB for conduction of survey and appropriate rehabilitation before conducting any demolition at the site.

d. 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;

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

2. Pursuant to the earlier orders passed, the **Delhi Urban Shelter Improvement Board (DUSIB)** has filed an affidavit in these proceedings which categorically asserts that the petitioners do not constitute a cluster which forms part of the identified list of 675+82 J.J. Bastis which are held entitled to *in-situ* rehabilitation in terms of the **Delhi Slum and J.J. Rehabilitation and Relocation Policy 2015** ["2015 Policy'].

3. Although the petitioners have filed various documents in order to contend that they were in occupation of this land from prior to 01 January 2006, it becomes pertinent to observe that despite repeated queries learned counsel for the petitioner was unable to establish or place for the consideration of the Court any cogent material or evidence which may have evidenced an exercise of allocation of house numbers or the allotment of residential addresses to them and which appear to stand recorded in some of the documents which have been placed on the record in accordance with law.

4. Ms. Kaur, learned counsel appearing for the DDA, further apprises the Court that the households which are likely to be affected and are represented by the petitioners before this Court in the present writ petition, tentatively number a mere 20-25 and fall within the course of a work which is being undertaken by the PWD for the purposes of extending an existing

road and linking it to the main road. According to learned counsel these houses are situate in alignment with the road which is proposed to be constructed and extended.

5. The principles which would apply and warrant directions being framed for the rehabilitation of the petitioners was noticed in detail by the Court in **Dinesh Singh and Ors. versus Delhi Development Authority and Ors.,** W.P.(C) 12384/2022, where the following observations came to be made:

> "5. It becomes pertinent to note that a jhuggi jhopri basti has been defined in Section 2(g) to mean any group of jhuggis which DUSIB may have by notification declared to be as such. The said provision while enumerating the qualifying criteria for a jhuggi jhopri basti further stipulates that the cluster must comprise of at least fifty households and existing on 01 January 2006.
>
> 6. Undisputedly, the cluster in question comprises of only 35 jhuggis and is not included or identified in the list of 675 clusters which was notified by DUSIB. The Court further notes that the petitioners have woefully failed to place on the record any material which may have established that the cluster in question was a jhuggi jhopri basti which was in existence on the cut-off date of 01 January 2006.
>
> 7. Dealing with an identical situation, this Court in Vaishali had observed as follows: -
>
> > "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 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."

8. The Division Bench while affirming the aforesaid decision in **Vaishali (Minor) Through Next Friend And Ors. Versus Union of India and Ors.** in LPA No. 271/2022. made the following pertinent observations: -

"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."

9. More recently, a learned Judge of the Court in **Shakarpur Slum Union** explained the legal position which would prevail under the provisions of the Act and the Rehabilitation Policy as framed by DUSIB in the following terms:-

"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 thepeople 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."

33. The reliance of the Petitioner-Union on the judgment of this Court in Maken (supra) also does not hold anywater. 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 asillegal 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.

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.

10. The decisions of the Court in **Sudama Singh** as well as **Ajay Maken** were again explained by a learned Judge in **Urmila** holding thus:-

"17. In *Tejpal Guatam and Others v. Central Public Works Department*, 2018 SCC OnLine Del 10484, it was held that in the absence of a notification by DUSIB, notifying any jhuggi cluster as a "jhuggi jhopri basti", it is not possible to extend the benefit of the 2015 Policy to such a jhuggi cluster. The relevant observations of the court in that case are as under:

"11. As far as the policy, to which attention is drawn, the same is of DUSIB of GNCTD and is titled "Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.

12. The said policy, in Part A thereof, in Clause 2(a)(i) titled "Who is eligible for Rehabilitation or Relocation" provides as under:

*"**JJ Bastis which have come up before 01.01.2006 shall not be removed** (as per NCT of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such JJ Bastis before 01-1-2015 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)"*

13. And in Part B thereof under Clause 1(ii) provides the eligibility criteria for allotment of alternative dwelling units to rehabilitate and relocate JJ dwellers inter alia as under:

"(ii) ***The Jhuggi Jhopri basti in which the JJ dwellers are residing must be in existence prior to 01-01-2006. However, the cut-off date of residing in the jhuggi for becoming eligible for rehabilitation shall be 01-01-2015*** *(this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013)"*

14. On enquiry, as to what is the definition/criteria of "JJ bastis" mentioned in Part A under Clause 2(a)(i), the counsel for the petitioners has drawn attention to the Delhi Urban Shelter Improvement Board Act, 2010 Section 2(g) wherein defines "Jhuggi Jhopri Basti" as meaning any group of jhuggis which the Board i.e. DUSIB may, by Notification declare as a jhuggi jhopri basti in accordance with the factors prescribed therein.

15. The counsel for the petitioners, on enquiry, admits that there is no Notification with respect to the jhuggis of the petitioners, if at all in a basti.

16. It has thus been enquired from the counsel for the petitioners, that once the jhuggis of the petitioners or the basti if any where the said jhuggis are situated, has not been notified, on what basis the petitioners can claim a right of rehabilitation.

17. The counsel for the petitioners, instead of replying to the aforesaid, states that the petitioners are being targeted, inasmuch as dwellers of some of the other jhuggis in the vicinity have not been issued notices and no orders have been passed against them.

18. However, the law does not recognise any concept of negative equality. Once, the petitioners are admittedly not having any right to challenge the action of the respondents of removal of jhuggis in occupation of the petitioners, thepetitioners cannot be permitted to perpetuate the illegality by contending that the respondents have not taken any action against others. It cannot be lost sight of that removal of such jhuggis/unauthorised occupants is not free from difficulties and if the respondents in their wisdom have decided to for the first time being proceed against the petitioners only and not against others, the action against the petitioners cannot be faulted with.

19. The counsel for the respondent No. 2 DUSIB has in addition, pointed out (i) that the land which the petitioners are occupying is of the Government of India and the policy relied upon does not apply to such land, per Section 10 of the DUSIB Act; (ii) that though the petitioners have filed photocopies of a number of documents to show their possession since prior to 1st January, 2015, being the cut-off date in terms of Clause 2(a)(i) of Part A supra of the policy but except for one or two documents, all the other documents are of after the said date; (iii) that for Clause 2(a)(i) of Part A to apply, what has to be proved is that the basti was in existence before 1st January, 2006 and the date of 1st January, 2015, is only with respect to occupation of such jhuggis which may have come up in such bastis; (iv) there is no averment in the petition, of the existence of any basti where the jhuggis of the petitioners are situated, prior to 1st January, 2006 and the petitioners thus, even if the policy were to apply, have no right under the policy.

20. Though the counsel for the petitioners has also raised sympathy grounds and the sympathy in favour of the homeless is indeed justified, but such sympathy cannot be permitted to allow the colonies which have been developed by Government of India or by the GNCTD or by private developers, to be turned into slums, by allowing the jhuggis jhopris to come up in the open spaces in the said colony. Rather, from the photographs, it appears that the subject jhuggis are touching the wall of the government accommodation which may have been allotted to government officials and whose residence along with their family members in the said accommodation may not be possible as long as the jhuggis exists. This Court, when approached cannot consider the plight of the petitioners alone and has to necessarily consider the overall situation and considering which it is felt that showing any sympathy to the petitioners will be to the prejudice of other citizens of the country including government employees who for years wait for their turn for allotment of government accommodation. Such government employees cannot be deprived of such benefit of their employment, by making the accommodation allotted to them unusable for the reason of allowing petitioners and others to surround the said accommodation with their unauthorised jhuggis." [emphasis supplied]

18. In ***Shakarpur Slum Union vs. DDA &Ors.,*** W.P.(C) 6779/2021 decided on 2nd August, 2022, this Court reiterated that any jhuggi cluster which was not a part of any notified jhuggi jhopri basti, and which was not in existence prior to 2006 was not entitled to the benefits of the 2015 policy. The scope of the judgments in **Ajay Maken (supra)** and **Sudama Singh (supra)** has also been considered in the said case and it has been held as under:

> *"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."*
>
> The aforesaid judgment also takes note of and relies upon the judgment of the Division Bench in **Vaishali (supra)."**
>
> 11. From the decisions aforenoted, it is manifest that a cluster in order to be eligible for extension of benefits under the Rehabilitation Policy must necessarily meet the qualifying criteria as specified in Section 2(g) of the Act. Consequently, it must be a notified cluster comprising of not less than 50 jhuggis. The aforesaid cluster must additionally form part of the 675 clusters which had been identified by the DUSIB. The recitals and recordal of facts of the present case leads the Court to the inescapable conclusion that the cluster in question would not meet those requirements. In view of the aforesaid, the reliefs as claimed cannot possibly be granted.
>
> 12. The Court deems it apposite to observe further that neither **Sudama Singh** nor **Ajay Maken** mandate a rehabilitation measure being adopted and coverage under the Rehabilitation Policy being extended without the cluster otherwise conforming to the requirements as placed under the Act. The Court also bears in mind that the undisputed fact that the Rehabilitation Policy which was placed in the shape of a protocol in **Ajay Maken** was neither interfered with nor any adverse observation in respect thereof entered."

6. Ultimately it was incumbent upon the petitioners to have established that they were part of an identified cluster and formed part of the list of 675+82 bastis which had been duly identified by DUSIB for the purposes of extension of benefits under the 2015 Policy. The Court further notes that the decisions noticed in **Dinesh Singh** have consistently held that the question whether the cluster forms part of those which were identified by DUSIB is determinative of whether the residents thereof are entitled to extension of benefits under the 2015 Policy. That was a detailed and comprehensive exercise which was undertaken by DUSIB for the purposes of identifying

those clusters to which the relocation and rehabilitation policy would apply.

7. The Court also notes that the 2015 Policy incorporated an injunct against recognition and extension of the benefits envisaged therein to clusters which may spring into existence thereafter. Viewed in that light, there appears to be no scope in law to undertake a fresh exercise to determine whether a cluster was in existence prior to the cut-off date prescribed under the 2015 Policy. That issue clearly attained finality once the list of eligible clusters had been duly identified by DUSIB. The prayers for the Court to embark down that path would not only lead to it being compelled to delve into disputed questions of fact and a de novo assessment of evidence, it would also unsettle a position which was statutorily conferred finality.

8. The Court also bears in mind that the petitioners are not shown to have assailed their exclusion from the list of identified clusters at any point of time prior to the filing of the instant writ petition. The record would indicate and establish that the identity of clusters which came to be included for the purposes of extension of benefits under the 2015 Policy, was a matter of common public knowledge. It is not the case of the petitioners that they were oblivious to their exclusion from the list of identified JJ bastis. If the Court were to countenance or entertain a challenge as suggested in the present petition, it would become an unending exercise and scuttle the very objective of the Act and the 2015 Policy.

9. The writ petition consequently fails and shall stand dismissed along with the pending application.

10. However, bearing in mind the human problems which would arise if the petitioners were to be suddenly uprooted and evicted, the Court grants them one month's time to relocate. The respondents shall proceed accordingly.

YASHWANT VARMA, J.

OCTOBER 13, 2022
rsk