

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 699-712/2006**

Reserved on : 30.04.2009

Pronounced on : 14.07.2009

IN THE MATTER OF :  
ASHARFI LAL & ORS.

..... Petitioners

Through: Dr. R.S. Saran with  
Mr. M.S. Sasan, Advs.

versus

UOI & ORS

..... Respondents

Through: Ms. Richa Kapoor with  
Ms. Tanuja Rawat, Adv. for UOI.  
Ms. Mini Pushkarna, Adv.  
for MCD.  
Mr. O.P. Saxena, Adv. for  
Slum & J.J. Deptt.

**CORAM**

**\* HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**HIMA KOHLI, J.**

1. The present writ petitions have been filed by the erstwhile dwellers of the jhuggi cluster situated at the Railway Crossing Chowki

No.3, Sawan Park, Ashok Vihar, Delhi praying inter alia for directions to the respondents to provide suitable/alternative shelter to the petitioners for rehabilitation on account of the demolition action undertaken by them on 8.9.2005.

2. The case as set up by the petitioners is that they were residing at the site of the jhuggi cluster in question since the year 1964 and that various documents including ration cards, Photo Identity Cards and proof of existence of electricity connections have been filed by them to establish that they were given permanent rehabilitation at the site since the year 1994. While the ground floor of the structures constructed by them was used for running shops from where they were carrying on the trade of vending vegetables, the petitioners were residing on the first floor. It is stated that on the assurances given by the then Minister of Industries, Govt. of India to the effect that the sites had been allotted to them on a permanent basis, the petitioners constructed the shops and houses and had been occupying the same ever since, till the demolition action was undertaken by the respondents. Counsel for the petitioners submitted that as their occupation at the site in question was not causing any hindrance to

free flow of traffic and not encroaching any public utility service, the petitioners were entitled to continue with their occupation. He contended that the petitioners are aggrieved by the demolition action undertaken by the respondents on 8.9.2005, on the basis of some orders passed in **WP(C)No.5279/1999** entitled Shri Atma Ram Dogra & Ors. vs. UOI & Ors., decided on 19.9.2004.

3. The respondent, Slum & JJ Wing of the MCD filed its counter affidavit and stated that the said department is only a service provider to the concerned land owning agency and only upon receiving a request for assistance, does it render assistance by undertaking action of removal of the slum and JJ cluster in question. It was stated that in the present case, the land owing agency is the Municipal Corporation of Delhi and that neither was any request for relocation nor any relocation charges were received from MCD either to carry out a joint survey for the purposes of determining the eligibility for relocation or for providing alternative plots to the petitioners. It was further submitted that as per the relocation policy in vogue, only such jhuggi dwellers, whose names are reflected in the joint survey list and have in their possession, documents of occupation prior to

31.12.1998, are entitled for relocation/alternative plots. The said policy further mandates that only residential/dwelling units can be considered for relocation.

4. The respondent MCD has taken a stand that the action of demolition was undertaken by it in view of the directions issued by the High Court in the case of Atma Ram Dogra (supra). Counsel for the respondent/MCD stated that the petitioners were encroachers on public land and as such were liable to be removed without any prior notice in terms of the provisions as contained in Sections 321 and 322 of the Delhi Municipal Corporation Act, 1957, (hereinafter referred to as '**the Act**') and that Section 42(p) of the Act makes it obligatory for the MCD to remove obstructions and projections in or upon streets, bridges and over public places. She stated that in the present case, the petitioners had encroached on the right of way as they had carried out construction of jhuggis and were running shops by encroaching on public land. An extract of the layout plan of the Sawan Park Colony was produced on behalf of the respondent/MCD to show the location of the jhuggis on a 40 ft. wide road at the site in question to fortify its contention that the petitioners are not entitled to any alternative

allotment, as prayed for in the writ petition.

5. I have heard counsels for the parties and carefully considered their respective submissions. I have also perused the relevant documents placed on the record and the judgments relied upon by both the parties. The claim of the petitioners for entitlement to an alternative allotment for rehabilitation has to be examined in the light of the policy of the respondent for relocation and the law as enunciated in various judgments from time to time. It is also relevant to take into consideration the orders passed in the case of Atma Ram Dogra (supra). Vide order dated 16.9.2004 passed in the above mentioned case, the learned Single Judge took notice of the stand of the counsel for the petitioners therein that the Jhuggi Jhopri Complex within the Sawan Park Colony had been partly removed but encroachments continued to exist on the roads and on the storm water drain, as shown in the plans enclosed with the said petition. The aforesaid petition was eventually disposed of with directions to the DDA/MCD to clear the encroachments on any road abutting the Sawan Park Colony and mettle the site so as to restore the strip of land to a road. It was further ordered that if the sanction layout plan of the

colony showed that a storm water drain had to be erected, the site of encroachment where the storm water drain had to be laid, would be made free from encroachment and a storm water drain would be laid.

6. Aggrieved by the non-compliance of the aforesaid order, the petitioners therein filed contempt petitions registered as CCP(C)No.710-11/2006, stating *inter alia* that the respondents therein were in contempt of the order dated 16.9.2004. The respondent/MCD filed a compliance report dated 19.01.2007 in the aforesaid contempt proceedings, a copy of which was handed over by the counsel for the respondent/MCD in the Court. In the said status report, the respondent/MCD stated that the encroachment existing by the side of the railway track at the 40 ft. wide road in Sawan Park Colony was removed in the month of September, 2005 and further encroachment/removal action on the right of way was undertaken from time to time, as also on 19.8.2006.

7. Counsel for the respondent stated that ultimately, around 500 to 600 jhuggies were removed in the Sawan Park Colony and the jhuggi cluster, subject matter of the present writ petitions, where the

petitioners resided, constituted only a small percentage of the total demolition action undertaken by the respondents at the site in question, to remove encroachment that existed on public land and on the right of way.

8. As the petitioners disputed the fact that the jhuggies in question existed on the right of way/public land and that the real location of the jhuggies was adjoining to the railway line and not on the 40 ft. wide road, the counsel for the respondent/MCD was directed to produce the layout plan of the area. The same was filed by the respondent and duly examined. As per the aforesaid layout plan, the location of the jhuggi cluster is shown to have existed on the 40 ft. wide road in the Sawan Park Colony.

9. Counsel for the petitioners contended that the respondent has adopted a pick and choose policy for the reason that while the jhuggi cluster of the petitioners has been demolished, constructions made down the road in the Harijan Colony, have not been removed by the respondent.

10. The said argument does not advance the case of the petitioners for the reason that even if it is assumed that there was in existence, unauthorized and illegal construction in the Harijan Colony, fact remains that the jhuggies of the petitioners existed on the 40 ft. wide road as earmarked on the layout plan of Sawan Park Colony. As against a rough sketch plan of the site filed by the petitioners with the writ petitions, this Court has to place reliance on the extract of the authentic layout plan of the area placed on the record by the respondent/MCD. Furthermore, it is relevant to note that not only is the Harijan Colony not a part of the layout plan of Sawan Park Colony, which is stated to be an authorized colony, Harijan Colony is an unauthorized colony, for which there exists no layout plan. Hence, the plea of the petitioners that the respondent adopted a pick and choose policy in respect of the petitioners, cannot be accepted. In light of the layout plan of the area filed by the respondent/MCD, the claim of the petitioners for alternative allotment for relocation is not sustainable as they have been unable to establish that their jhuggies did not exist on the right of way.

11. It has also emerged from the records that the demolition

action undertaken by the respondents against the petitioners on 8.9.2005, was only a part of the entire demolition action undertaken at a large scale by the respondents, to clear the encroachment on public land, storm water drain and the roads in Sawan Park Colony, in terms of the order dated 16.9.2004 passed in the case of Atma Ram Dogra (supra).

12. Even otherwise, as per the policy of relocation formulated by the respondent, only applicants of residential/dwelling units could claim entitlement to an alternative allotment. In the present case, the structures in question were admittedly being used for commercial purposes, i.e., for running shops and the area was virtually converted into a mini Subzi Mandi.

13. It is unquestionable that the respondent/MCD is under a statutory obligation to keep the public streets, drains and other public places free from any encroachment and to remove obstructions and projections upon streets and other public places. Hence, not only the mandate of the statute, but the orders passed in Atma Ram Dogra (supra) on the same lines, required the respondent to take action in

consonance with the law. Rather, records reveal that only when the respondents were prodded by the Court in the contempt proceedings initiated against them by the petitioners in CCP(C) No. 710-711/2006 Atma Ram Dogra (supra), did it undertake the demolition action and removed encroachment and projections on public land and right of way in Sawan Park Colony.

14. The action of the respondents while discharging their public duties including those of removal of jhuggi clusters on public land and right of way has to be examined from the angle of reasonableness of the said action, where larger public interest always overrides the interests of individuals. As any relocation entails an economic burden on the State, the executive is entitled to formulate the policy for relocation keeping in mind the finances/resources available to it. Reliance placed by the counsel for the respondent MCD on the following judgments only fortifies its stand that encroachers on public land are not entitled to any statutory notice, nor is any legal right conferred upon them to claim rehabilitation :

1. Okhla Factory Owners' Association (Regd.) & Anr. vs. The Govt. of NCT of Delhi & Ors., **108 (2003) DLT 517 (DB)**,

2. Wazirpur Bartan Nirmata Sangh vs. UOI & Ors., **103 (2003) DLT 654 (DB)**,
3. Friends Colony Residents Association vs. Lt. Governor of Delhi & Ors., **2004 VII AD (DELHI) 617**,
4. Milk Producers Association, Orissa & Ors. vs. State of Orissa & Ors., **(2006) 3 SCC 229**,
5. Gaya Parshad & Ors. vs. NDMC & Anr., **127 (2006) DLT 123**

15. The stand of the respondents in the present case that the jhuggies under occupation of the petitioners were not purely residential in nature but were being used for commercial purposes is not denied by the petitioners. Hence, they cannot be given the benefit of the relocation policy of the respondent. Furthermore, the petitioners were found to be encroaching on the right of way. In such circumstances, the respondent is entitled to protect its own land and keep the right of way free from encroachment in terms of its obligations under the various provisions of the Act. This Court, therefore, cannot find any fault with the action of the respondents of undertaking the demolition action on 8.9.2005 and removal of encroachment on the right of way/public land. The said action was undertaken by the respondent MCD not only to give effect to the

statutory obligations cast upon it, but to give effect to the specific orders passed in the case of Atma Ram Dogra (supra).

16. In these circumstances, it has to be held that the petitioners have not been able to establish that they are entitled to alternative allotment under the existing policy of the respondent in that regard. The rule issued in the present writ petition is, therefore, discharged and the writ petition is dismissed by holding that the removal action of the MCD was in conformity with the directions issued in the case of Atma Ram Dogra (supra) and the statutory mandate cast on the respondent MCD. There shall, however, be no orders as to costs.

JULY 14, 2009  
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HIMA KOHLI,J