

6.

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

+ W.P.(C) 2562/2010

MD. ZIAUL HAQUE & ANR.

..... Petitioners

Through: Ms. Jasmine Ahmed, Advocate

Versus

GNCT OF DELHI & ORS

..... Respondents

Through: Mohd. Sajid, Advocate for R-1.
Mr. Himanshu Upadhyaya, Advocate
for R-2.

Ms. Usha Saxena, Advocate for R-3.

Mr. Arun Birbal, Advocate for R-4.

7.

AND

+ W.P.(C) 413/2007

RAM SEWAK & ORS.

..... Petitioners

Through: Ms. Jasmine Ahmed, Advocate

Versus

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondents

Through: Mr. Himanshu Upadhyaya, Advocate
for R-2.

Ms. Usha Saxena, Advocate for R-3.

Mr. Rajiv Bansal, Advocate for R-4.

CORAM:**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER**

%

15.11.2010

1. The seventy one petitioners in W.P.(C) No.413/2007 and the two

1/-

Signature Not Verified

Digitally Signed By: AMULYA
 Certify that the digital file and
 physical file have been compared and
 the digital data is as per the physical
 file and no page is missing.

18

petitioners in W.P.(C) No.2562/2010 claim to be old dwellers of D.B.S. Camp, Jangpura-B, near Balmiki Mandir, New Delhi; they claim that they were in occupation of their *Jhuggies* at the aforesaid site for twenty years prior to the filing of the petition in the year 2007; it is further claimed that their *Jhuggies* were provided house numbers, number plates and ration cards by the Delhi Government and they were also issued identity cards at the said address issued by the Election Commission of India; they further claim that their names figured in the survey list made by the respondent DDA in the year 1990 and the birth and death certificates of their family members are also from the said address. The petitions have been filed averring that their *Jhuggies* were suddenly demolished on 8th November, 2006 without any notice. The petitioners, claiming that the Government had provided alternative place to the residents of several other *Juggies* which were so demolished have filed this petition seeking direction for allocation of alternative place and for rehabilitation.

2. Notices of the petitions were issued and the matter adjourned from time to time for completion of pleadings. Costs were also imposed on the respondents in this regard. On the last date of hearing, the counsel for the

2/-

19

respondent Govt. of NCT of Delhi stated that it is not concerned with the matter and has only framed the policy for re-location. Similarly the counsel for erstwhile Slum & JJ Deptt. now substituted by the Delhi Urban Shelter Improvement Board had stated that it was only concerned with determination of eligibility for re-location and was to act on receiving instructions from the agency from whose land *jhuggies* were demolished or removed. The counsels for the respondents MCD & DDA were unable to state to whom the land aforesaid at Jangpura belonged and directed to find out as to which of them is the land owning agency and had taken the action of demolition of the *Jhuggies* aforesaid of the petitioners.

3. The counsels for the respondent DDA in both the petitions today state that the land belonged to the respondent DDA and the action for removal of the *Jhuggies* from the site aforesaid was also taken by the respondent DDA but inform the same to be in pursuance to the order dated 31st July, 2006 in W.P.(C) No.9358/2006 filed by the Jangpura-B Residents Welfare Association. The counsel for the respondent DDA in W.P.(C) No.413/2007 states that the counter affidavit was filed as far back as in January, 2008. However not finding a copy of the same on record, a copy thereof has been

taken from the counsel for the respondent DDA and perused (subsequently also found on file). The counsel for the respondent DDA in W.P.(C) No.2562/2010 has also handed over in Court the copy of the counter affidavit. In both the counter affidavits the stand taken is that none of the petitioners or for that matter any other occupant of the *Jhuggi Jhopris* were residing therein; they were using it for carrying on the hazardous business of plastic waste and polythene bags. Attention is also invited to the order in the earlier writ petition where the said contention of the counsel for the writ petitioner Jangpura-B Residents Welfare Association was recorded. Mr. Rajiv Bansal, Counsel for the respondent DDA in W.P. (C) No.413/2007 further contends that the respondent DDA has in the counter affidavit put the petitioners to notice also on the policy or the basis on which re-location is claimed. It is contended that since it is the stand of the respondent DDA in the counter affidavit that the petitioners were not residing in the *Jhuggi Jhopris* at the site and disputed questions of fact having arisen, the remedy of the petitioners is to first establish in a proceeding where such evidence can be given that they were residing in the said JJ Clusters and to also establish the policy or right under which they are claiming re-location and to

thereafter only make a claim for re-location. It is further suggested that the removal of the petitioners being in pursuance to the directions in the earlier writ petition, the question of any re-location does not arise. Mr. Arun Birbal, Counsel for the respondent DDA in the W.P.(C) No.2562/2010 has also adopted the same contentions.

4. It is unfortunate that the respondent DDA is feigning ignorance of the policy of the Govt. NCT of Delhi for re-location and which was also noticed in the earlier order. As per the policy prevalent prior to February, 2010 cut-off date was 31st December, 1998 and settlers of prior thereto were entitled to re-location. With effect from the change in policy in February, 2010, for displacement thereafter, the cut-off date is 31st March, 2002.

5. The other question which arises is whether the petitioners in such cases should be directed to first file a suit as has been contended by the counsel for the respondent DDA. I do not find any merit in the said contention either. The policy framed by the respondent Govt. of NCT of Delhi provides for a survey to be conducted, earlier by the Slum & JJ Deptt. and now substituted by the Delhi Urban Shelter Improvement Board of such claims for re-location. In fact the counsel for the Board had on the last date

22

stated that it can conduct the survey upon instructions from the land owning agency. The policy having provided for such survey to determine the eligibility for re-location, it is not warranted that petitioners should file a long drawn suit in this regard. It will have to be determined in the survey whether the petitioners are able to establish their claim for re-location or not.

6. The counsels for the respondent DDA have also argued that after the petitioners have already been removed, no such survey can be conducted. The counsels having shut their eyes to the policy, of course the question of showing any clause of the policy not entitling the persons already displaced to re-location does not arise. However the policy which has been perused by this Court in other cases and which is not immediately available does not carve out any distinction between those who have already been displaced or who are displaced after having made claim for re-location. It will be for the petitioners to satisfy the Board and for the Board to determine notwithstanding the removal of the petitioners from the site as to whether they are entitled to re-location or not.

7. The counsel for the petitioners states that petitioners are in possession of the report of the survey already conducted and as per which they are

entitled to re-location. It shall be open to the petitioners to produce the same during the survey by the Board.

8. Considering the stand of the respondent DDA, this Court on behalf of DDA instructs the Board to carry out the survey of the petitioners to determine whether the petitioners are eligible for re-location or not. The said survey to obviously to deal with the pleas aforesaid of the respondent DDA that the petitioners were not residents of the said *Jhuggi Jhopris* but were only carrying on hazardous commercial activity therein.

9. The petitions are therefore disposed of with the direction to the Delhi Urban Shelter Improvement Board to carry out the survey of the petitioners. The petitioners to appear before the Board first on 6th December, 2010 at 1100 hours and on such other dates as may be directed. The survey be completed preferably within six months thereafter. Needless to state that if the petitioners or any of them are found eligible for re-location, they be re-located in terms of the policy.

The petitions are disposed of. No order as to costs.

Dasti.

NOVEMBER 15, 2010

pp..

RAJIV SAHAI ENDLAW, J

7/-