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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7400/2016

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Date of Decision: 5th February, 2018

RAHEES AHMAD

..... Petitioner

Through : Mr. Arvind Kumar Shukla,
Mr. Nihal Ahmad and
Mr. Alok Shukla, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION OF
DELHI & ORS

..... Respondents

Through : Mr. Ajjay Aroraa and
Mr. Kapil Dutta, Advs. for
R-1/EDMC.

Ms. Mini Pushkarna,
Standing Counsel for R-
2/DUSIB.

Mr. Dhanesh Relan,
Standing Counsel for R-
3/DDA.

Mr. Satyakam, ASC for R-
4/Delhi Police along with
Insp. Vijay Kumar, PS Nand
Nagri.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. Ms. Mini Pushkarna, Id. Standing Counsel for the DUSIB
has prayed for leave to handover an additional affidavit dated 3rd

February, 2018. Copy thereof has been furnished to ld. counsel for the petitioner. Let the additional affidavit be taken on record.

2. The instant writ petition was filed by the petitioner, who is a resident of G-4 Block, House No.35, Sunder Nagri, Delhi – 110 093 since 1999. It is complained that the land which was earmarked for G-4 Block, Sunder Nagri was illegally encroached, to which the authorities, including the police and the municipal authority, have completely turned a blind eye. The petitioner has made several representations in this regard including those dated 4th July, 2012; 11th July, 2012; 15th December, 2014; 22nd March, 2016 and thereafter filed the present writ petition making the following prayers: -

“a) Issue an appropriate writ/direction/order including a writ in nature of mandamus thereby directing the Respondent No.1 & 2 to demarcate and remove entire illegal encroachments, illegal constructions on the park, roadsides of park, & the cost of removal/demolition be recovered from the defiant land grabbers only and/or

b) Issue an appropriate writ/direction/order including a writ in nature of mandamus thereby directing the Respondent No.3 to demolition of building and to stop further illegal encroachments, illegal as per the provisions of The Delhi Development Act, 1957 and / or

c) Issue an appropriate writ/direction/order including a writ in nature of mandamus thereby directing the Respondent No.4 to take prompt action on the complaints made by the Petitioner regarding encroachments and illegal construction on the common land of park and to provide necessary help to Respondent no.1 in removal of entire illegal encroachments, illegal constructions on the

park and / or

d) Pass any other order(s) as this Hon'ble Court may deem fit, in the facts and circumstances of the case, in the interest of justice."

3. The counter affidavit stands filed by the DDA – respondent no.3 (*at page 152*) disputing any responsibility in the matter. Respondent no.4 has also filed the counter affidavit (*at page 159*) contending that the subject matter of the writ petition was beyond its jurisdiction. Respondent no.2 – DUSIB has also filed the affidavit (*at page 132*) pointing out that the maintenance of the Sunder Nagri colony including the park and building activity etc are done by the erstwhile MCD and now EDMC. Accordingly, it was the EDMC which had to take the responsibility for removal of the encroachment in the park in question.

4. During the course of hearing on 17th October, 2017, given the disputes between the EDMC and the DUSIB regarding the ownership of the land and the responsibility for removal of the encroachment, we had directed that a meeting be held between the senior officers of the EDMC and the DUSIB, under the chairmanship of the Chief Engineer of the DUSIB, to resolve the issue regarding the ownership of the land.

5. The additional affidavit dated 3rd February, 2018 shows that the DUSIB has placed on record the minutes of the meeting held on 23rd January, 2018, along with approval of the proposal from the Minister of Urban Development, Government of NCT of Delhi as

well as by the Chief Minister of Delhi, who is the Chairperson of DUSIB. This decision has been extracted in the additional affidavit filed by Shri P.K. Bhagwani, Executive Engineer by the respondent no.2 – DUSIB which reads as follows :

- “7. *That however, upon survey of the area in question by the field functionaries of DUSIB, the same was found to be occupied by some jhuggies, which have been inhabited for over a period of past 30 years.*
8. *That with respect to the aforesaid occupation of the land in question by the jhuggi dwellers, it is submitted that the same falls very close to the already existing JJ Basti on DUSIB land with the name, JJ Basti, Block G-3, G-5, Sunder Nagri, (Cluster Code-639) in Assembly Constituency (AC)-63, Seemapuri, in-situ upgradation of which is under consideration by DUSIB.*
9. *That as per the policy of DUSIB, any jhuggi or jhuggies scattered in area nearby any existing JJ Cluster, shall be deemed to a part of the latter. In view of the said policy, DUSIB can consider the Jhuggies under question to be part of JJ Basti, Block G-3, G-5, Sunder Nagri, (Cluster Code-639), for purposes of removal of the said jhuggies from the land in question along with the removal of jhuggi cluster of approximately 3500 jhuggies. Instead, flats would be constructed and provided to the jhuggi dwellers after removal of the jhuggies in question. Copy of the Minutes of Meeting held on 23.01.2018 alongwith approval from the Minister of Urban Development, Govt. of NCT of Delhi and thereafter by Chief Minister of Delhi, who is chairperson of DUSIB, is annexed herewith as **ANNEXURE DU-3.**”*

6. In view of the above, DUSIB has taken a decision to shift the occupants of the Jhuggi in the park to the already existing JJ basti on DUSIB land with the name, J.J. Basti, Block G-3, G-5, Sunder

Nagri, (Cluster Code- 639) in Assembly Constituency (AC – 63) Seemapuri.

The statement to this effect made by DUSIB is taken on record. It shall remain bound by the same.

7. The noting placed on record would show that Shri Ravi Dadhich, Member (Administration) of the DUSIB, as on 29th January, 2018, has noted that there are only about 20 jhuggis on the subject land. We accept the statement made by DUSIB.

8. The respondents, including the SHO, P.S. Nand Nagri are directed to ensure that there is no further encroachment in the park in question.

9. Ms. Mini Pushkarna, Id. Standing Counsel shall forthwith complete the survey of the Jhuggis and ascertain the entitlements of the occupants in the proposed development. Such survey shall be complete within four weeks from today.

Particulars of the persons identified in 20 jhuggis shall be informed to the EDMC as well as the SHO, PS Nand Nagri so that no further encroachment takes place.

10. We are informed by Ms. Pushkarna, Id. Standing counsel that it is expected that the entire process of shifting the jhuggis to the proposed development would be completed in one year. DUSIB shall ensure that steps are taken at the earliest in this regard.

11. It is directed that the EDMC shall maintain the piece of land in question as a park. Steps for placing a permanent boundary shall commence forthwith. The parties are expected to cooperate and

work in conjunction.

12. This writ petition is allowed in the above terms.

Dasti to the parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 05, 2018

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