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

Date of decision: 6th JULY, 2022

IN THE MATTER OF:

\+ **CONT.CAS(C) 404/2022 & CM APPLs. 18046-47/2022**

JHUGGI JHOPRI VIKAS SAMITI, NETAJI NAGAR ..... Petitioner

Through: Mr. Kamlesh Kumar Mishra, Ms. Pragya Dubey, Advocates

versus

SURESH KUMAR AND ORS ..... Respondents

Through: Mr. Jawahar Raja, ASC(C), GNCTD for R-2, R-4 and R-10 to R-12.
Mr. Ravinder Chauhan, Adv for DUSIB/R-3.
Mr. Sri Harsha Peechara and Ms. Kritika Narayan, Advs for R-7.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The instant contempt petition has been filed to initiate contempt proceedings and punish the Contemnors for violating the Order dated 18.03.2019, passed by this Court in W.P.(C) 11616/2015 titled as Ajay Maken & Ors v. Union of India & Ors., stating that the purported action of the Contemnors in demolishing the jhuggis of the slum dwellers of Netaji Nagar is contrary to the mandate of the aforementioned judgment.

2. The facts, as stated in the instant contempt petition, are that the Petitioner organization, i.e. Jhuggi Jhopri Vikas Samiti, Netaji Nagar is an unregistered organisation of the resident slum dwellers of Netaji Nagar. It is



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stated that the inhabitants of the Jhuggis are men, women and children who have been residing in the Jhuggis in and around Netaji Nagar Government Housing Complex for decades and are working as domestic help, washermen, ironer(s), drivers, etc. and provide such other services to the residents of Netaji Nagar which houses Government Officers.

3. Material on record discloses that the Ministry of Housing & Urban Affairs, Land & Development Office, Nirman Bhawan, New Delhi, has given notices to the occupants of the Petitioner Organization. One such notice dated 04.04.2022 reads as under:

> *"Sub: Vacation of Jhuggi bearing No. 39 at Sarojini Nagar.*
>
> *Sir/Madam,*
>
> *With reference to the survey conducted in year 2018-19, it has been noticed that you have erected the said Jhuggi thereupon. It is an established fact that this is a Govt. of India/ L&DO land and you have unauthorizedly occupied/ encroached upon this Government Land. Further, your jhuggi is not covered under the list of JJ basti/ clusters being notified by DUSIB from time to time and hence you are not entitled for any rehabilitation.*
>
> *2. Being the land owning agency of Government of India, it is hereby informed to vacate the said Govt. land and shift elsewhere within 7 days from the date of issue of this notice, failing which the same will be got evicted forcefully with the help of local police.*
>
> *3. The notice may be treated as most urgent."*



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4. It is stated by the Petitioner Organization that this Court *vide* Order dated 18.03.2019, in Ajay Maken (supra), has laid down various directions and the Contemnors, in gross violation of the said directions, have decided to proceed ahead with the demolition of the Jhuggis. The Petitioner Organization, therefore, submits that action of the Contemnors amounts to willful non-compliance of the directions passed by this Court in Ajay Maken (supra).

5. In the year 2010, a Division Bench of this Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612,** had laid down the following directions regarding resettlement of jhuggi jhopri dwellers:

> *"**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*



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> *dignity of each of the citizens in the Jhuggis, are available at the site of relocation."*

6. In pursuance of the said directions, a policy called the Delhi Slum Rehabilitation & Relocation Policy, 2015 (*hereinafter referred to as 'the DUSIB Policy*') was framed. Under the said Policy, the Delhi Urban Shelter Improvement Board (*hereinafter referred to as 'DUSIB'*) designated as the nodal agency for rehabilitation, 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 had to either carry out the relocation/rehabilitation themselves as per the policy of the Delhi Government, or could entrust the job to the DUSIB.

7. Under the DUSIB Policy, JJ clusters which came up before 01.01.2006 would not be removed without providing for alternate housing and the jhuggis which came up in such JJ Clusters before 01.01.2015 would not be demolished without providing alternate housing. It was also laid down in the DUSIB Policy that the Delhi Government shall ensure that no new jhuggi comes up after 01.01.2015 and that if any jhuggi comes up after this date, the same shall immediately be removed without providing any alternate housing. It is also pertinent to mention here that a survey was conducted and the DUSIB prepared a list of notified JJ Clusters. The said list is available on the website of DUSIB.

8. In Ajay Maken (supra), a petition was filed by a two-time Member of Parliament from New Delhi, also a three-time member of the Delhi



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Legislative Assembly, against the forced eviction of around 5000 dwellers of a JJ Basti at Shakur Basti (West) near the Madipur Metro Station in Delhi. Relevant portion of the Order dated 18.03.2019, passed by this Court in Ajay Maken (supra), non-compliance of which is the subject matter of the instant contempt petition, reads as under:

> *"**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.*
>
> *****
>
> ***180**. A detailed programme is to be drawn up by the DUSIB including holding of a pre-camp at the side 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.*



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***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.*

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***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.*

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***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*



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> *rehabilitation in terms of the extant law and policy. 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 the above decisions."*

9. It is the case of the Petitioner Organization that this Court in Ajay Maken (supra) has interpreted the judgment of Sudama Singh (supra) that the authorities should not view '*jhuggi jhopri'* dwellers as 'encroachers' and illegal occupants of land, whether public or private, and the agencies have 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 co-ordination with the other agencies, and without compliance with the above steps, has been held to be contrary to the law.

10. The case of Ajay Maken (supra) dealt with a JJ cluster that was a part of the list of JJ clusters that had been notified by DUSIB and were, therefore, entitled to the benefits of the DUSIB. This is not the case in the instant matter. It is further pertinent to mention that **W.P.(C) 5941/2022**, titled as Vaishali (minor) (through next friend Mrs. Sita Devi) & Ors v. Union of India & Ors., was filed by certain jhuggi dwellers of Sarojini Nagar seeking quashing of demolition notice issued to them. The case of the Petitioner herein is similar to that case. It was contended by the jhuggi owners in the said writ petition that the demolition notice was contrary to the findings of this Court in Sudama Singh (supra) and Ajay Maken (supra). The said writ petition was dismissed by this Court *vide* Order dated 11.04.2022, on the ground that the JJ cluster in question therein did not find mention in the list of clusters that had been notified by DUSIB and, therefore, they were not entitled to rehabilitation measures under the said DUSIB Policy. Order



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dated 11.04.2022 has been upheld by the Division Bench of this Court *vide* Order dated 19.04.2022 in LPA 271/2022, titled as Vaishali (minor) through next friend & Ors v. Union of India & Ors. An SLP against the Order dated 19.04.2022 is still pending before the Apex Court.

11. The short question which, therefore, arises is as to whether the proposed action of demolition by the Respondents herein would invite contempt action from this Court for wilful violation of the Order dated 18.03.2019, passed by this Court in Ajay Maken (supra) or not.

12. This Court finds it necessary to refer to various judgments of the Supreme Court wherein the concept of civil contempt has been deliberated. In Ashok Paper Kamgar Union v. Dharam Godha, **(2003) 11 SCC 1,** the Supreme Court has observed as under:

> ***"17.*** *Section 2(b) of the Contempt of Courts Act defines "civil contempt" and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. ....."*



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13. In Anil Ratan Sarkar v. Hirak Ghosh, **AIR 2002 SC 1405,** the Supreme Court noted that the element of willingness was an indispensable requirement to bring home the charge of civil contempt. The Supreme Court has observed as follows:

> ***"15.*** *It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 — the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation — the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise."*

14. The Supreme Court had also analyzed what the term 'wilful disobedience' meant in Dinesh Kumar Gupta v. United India Insurance Co. Ltd**., (2010) 12 SCC 770**

> *"**17.** This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that* ***contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful***



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> ***disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.***" (emphasis supplied)

15. The Supreme Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly**, (2002) 5 SCC 352,** has observed as under:

> ***"11.*** *The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used*



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*sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party*



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> *which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."*

16. Flowing from the above judgments, it appears to this Court that scant regard must be shown towards the Order of the Court to establish wilful disobedience so as to make out civil contempt under Section 2(b) of the 1971 Act. If such wilful disobedience is observed, then the Court must take cognizance of it as such contempt undermines the dignity of the Court and outrages the majesty of law. The contempt jurisdiction is exercised to prevent the administration of justice from being maligned and there should be no unjustifiable interference in the said administration of justice.

17. This Court in W.P.(C) 5941/2022, Vaishali (supra) has held that the protection/directions in Ajay Maken (supra) are confined only to all those JJ Clusters which find mention in the list issued by the DUSIB and since the cluster therein does not find mention in the list issued by DUSIB, its inhabitants are not entitled to the benefit of the DUSIB Policy. The said judgment has been upheld by the Division Bench in LPA 271/2022, Vaishali (supra) and the Order of the Division Bench interpreting the case of Ajay Maken (supra) has not been stayed by the Apex Court. The Apex Court has only stayed the demolition notice. In such an event, contempt proceedings cannot lie against the Respondents herein and it cannot be said that the Respondents herein have wilfully violated the directions of this Court in Ajay Maken (supra). In a contempt petition, this Court need not go further



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into the question as to whether the members of the Petitioner-Organization are entitled to the benefits of the DUSIB Policy or not.

18. It is a well settled principle of law that if two interpretations are possible, a contempt proceeding will not be maintainable. As stated above, this Court in W.P.(C) 5941/2022, Vaishali (supra), as upheld by this Court in LPA 271/2022, Vaishali (supra), has held that the judgment of Ajay Maken (supra) would be applicable only to those clusters which have been notified by the DUSIB in its Policy. Admittedly, the cluster in question is not a notified cluster.

19. In view of the above, it cannot be said that the action of the Respondents in demolishing the Clusters is violative of the Orders of this Court in Ajay Maken (supra).

20. Accordingly, the petition is dismissed along with the pending application(s), if any.

21. Needless to state that it is always open to the Petitioners to file a writ petition before this Court, if not already filed, to establish their case that they are entitled to the benefits of the judgment of this Court in Ajay Maken (supra).

**SUBRAMONIUM PRASAD, J.**

**JULY 06, 2022**
*Rahul*



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