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

% **Date of order : 7th October, 2022**

\+ W.P.(C) 2822/2019 & CM APPL. 13138/2019

JANKI ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS
..... Respondents

Through: Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. Shaan Mohan and Mr. Gagan Sharma, Advocates for R-3
Mr. Dev P. Bhardwaj, Standing Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates
Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

\+ W.P.(C) 2858/2019 & CM APPL. 13296/2019

SHANTI THAPA ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS
..... Respondents

This is a digitally signed Judgement.

Through: Mr. Abhishek Aggarwal, Advocate for GNCTD
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

\+ W.P.(C) 3442/2019, CM APPL. 15800/2019 & CM APPL. 40576/2021

SMT. ROSHNI DEVI ..... Petitioner

Through: Ms. Charu Ambwani, Advocate

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS ..... Respondents

Through: Mr. Vivekanand Mishra, Sr. Panel Counsel for UOI/R-1 and 4
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Ms. Prabhsahay Kaur, Standing Counsel for DDA/R-5

\+ W.P.(C) 2860/2019 & CM APPL. 13299/2019

LOKESH ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS ..... Respondents

Through: Mr. Dev P. Bhardwaj, Standing

This is a digitally signed Judgement.

Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

\+ W.P.(C) 2873/2019 & CM APPL. 13359/2019

BEJANTI VERMA ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

versus

CENTRAL PUBLIC WELFARE DEPARTMENT AND ORS ..... Respondents

Through: Mr. Dev P. Bhardwaj, Standing Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

\+ W.P.(C) 2883/2019 & CM APPL. 13386/2019

SHYAMA ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

This is a digitally signed Judgement.

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS
..... Respondents

Through: Mr. Dev P. Bhardwaj, Standing Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. Mohit Bhardwaj, Advocate for R-3/GNCTD
Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

\+ W.P.(C) 3775/2019 & CM APPL. 17299/2019

POONAM ..... Petitioner

Through: Mr. Naushad Alam, Advocate alongwith petitioner

versus

CENTRAL PUBLIC WORKS DEPARTMENT AND ORS
..... Respondents

Through: Mr. Dev P. Bhardwaj, Standing Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates
Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for DUSIB
Mr. Divyam Nandrajog, Panel Counsel for GNCTD with Mr. Jasneet Jolly and Mr. Mohd. Shahid Khan, Advocates for R-3

This is a digitally signed Judgement.

Mr. R.K. Dhawan, Standing Counsel for DDA with Ms. Vanshika Agarwal, Advocate for R-5/DDA

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The instant set of writ petitions have been filed on behalf of the petitioners under Article 226 of the Constitution of India praying *inter alia* for issuance of appropriate writs for quashing the respective notices issued under Rules 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter "PP Act") and served upon the petitioners by Respondent No.1 as well as for issuance of appropriate directions to the Respondents to rehabilitate the petitioners and their family members in terms of Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (hereinafter "the Policy").

2. The details of the notices impugned herein are mentioned hereunder:

Particulars	***Date of Notice***
W.P. (C) 2822/2019	16.02.2019
W.P. (C) 2858/2019	12.02.2019
W.P. (C) 3442/2019	16.02.2019
W.P. (C) 2860/2019	19.02.2019

This is a digitally signed Judgement.

W.P. (C) 2873/2019	16.02.2019
W.P. (C) 2883/2019	19.02.2019
W.P. (C) 3775/2019	16.02.2019

3. The petitioners are dwellers of various shelters/jhuggis situated near Hanuman Mandir, Mohammadpur, R. K. Puram, New Delhi - 110066. Vide the aforesaid Notices the petitioners have been asked by Respondent No.1 to vacate their respective jhuggis, situated near the said area.

4. Respondent No. 1 is the Central Pubic Welfare Department (hereinafter "CPWD"), Respondent No. 2 is the Delhi Urban Shelter Improvement Board (hereinafter "DUSIB"), Respondent No. 3 is the Government of NCT of Delhi and the Respondent No. 4 is the Ministry of Urban Development.

5. Learned counsels appearing on behalf of the petitioners submitted that the petitioners are poor migrants and daily wagers who have been residing at the aforesaid address for years and with the passage of time constructed temporary shelters for residing. It is also submitted that several ID/Address proofs (including Ration card, Voter ID, etc.), electricity and gas connections, bank accounts, and educational qualification certificates have been issued to the petitioners on the address at which they are staying currently and are being sought to be evicted from.

This is a digitally signed Judgement.

6. It is alleged that on several occasions, the Respondent No. 1 threatened the petitioners of demolition of their shelters and evicting them. In response thereto, a letter was written to the Chief Minister on 19.06.2017. Subsequently, in July, 2017, a Suit was filed by the petitioners bearing No. CS No.793/2017 titled 'Shanti Thapa and Ors. vs. Central Public Welfare Department and Ors.' before Additional Senior Civil Judge, Patiala House Courts, New Delhi, seeking mandatory and permanent injunction directing the Respondent No. 1 to 3 not to demolish and evict them from their jhuggis and comply with the 2015 Rehabilitation Policy.

7. It is submitted that on 04.02.2019, Respondent No. 1 made the statement before the Senior Civil Judge that they shall not dispossess the petitioners/jhuggi dwellers without adopting the due processes of law. In view of the same, the said suit was disposed off as withdrawn with liberty to avail the remedies under the relevant previsions of law. Thereafter, eviction/demolition notice dated 16.02.2019 was issued.

8. Learned counsels for the petitioners further submitted that the impugned action of the respondent no. 1 is illegal, arbitrary, illogical and capricious and smacks of complete non-application of mind leading to gross violation of right of shelter guaranteed under Article 21 of the Constitution of India and also against the 2015 Policy approved by the Respondent No.2 vide its resolution No. 16/3 dated 11.04.2016 which provides that JJ Basti which has came up before 01.01.2006 would not be removed without providing alternative housing facilities, on the same land or in the vicinity within a radius of 5 Kms and in exceptional

This is a digitally signed Judgement.

circumstances beyond 5 Kms with prior approval of DUSIB, with amenities in the nature and form of water, electricity supply and sanitation facilities.

9. *Per Contra,* learned counsels for the Respondent No.1/ submitted that the area at which the aforesaid jhuggis are situated were declared dangerous in September 2009. It is stated that Respondent No. 4 notified the redevelopment plan for Mohammadpur Govt. Colony vide letter no. 15011/1/2010-W2 dated 25.02.2010. After declaration of redevelopment scheme, the allottees of Mohammadpur Govt. Colony were relocated in the nearby government accommodation by the Director of Estates. During this period and in previous survey of Mohammadpur Govt. Colony no such jhuggis where the Petitioners are currently residing were noticed. As such, the only reasonable possibility is that of the aforesaid jhuggis being made after the said period.

10. It is submitted that as soon as these jhuggis came into notice, the process for eviction of unauthorized occupation of land was initiated and after notice issued by the Assistant Engineer and no action being taken by the unauthorized occupants of land, the notices under PP Act were issued to the unauthorized dwellers.

11. It is also submitted that mere furnishing of id proof mentioning the said address does not legitimise the illegal occupation of the land that belongs to the Central Government. In any case, the Petitioners are recent encroachers since the documents annexed have been issued in recent years and there is not even a single document appended to show their

This is a digitally signed Judgement.

existence at the subject site prior to 01.01.2006, which is necessary to be considered to be eligible for consideration for the grant of alternative accommodation. It is further pertinent to note that, though the subject area is not a JJ Cluster, however, even if it is taken for a moment that the Petitioner is a resident of a JJ Cluster, in terms of the extant Policy, she has to show her existence at site, prior to 01.01.2015.

12. Additionally, it is submitted that in the present case, the perusal of the documents appended with the Petition, clearly shows that the Petitioners do not qualify the said cut off. Therefore, even if the entire case of the Petitioners is seen to be true still, in terms of the extant policy, the Petitioners are not entitled to any alternative accommodation.

13. It is submitted that the Union Government requires this land for development of accommodation of Government Employees and hence, the said area needs to be vacated in public interest.

14. Learned counsel appearing on behalf of the Respondent No. 2/DUSIB submitted that the DUSIB is a Statutory Board constituted in terms of the provisions contained in the Delhi Urban Shelter Improvement Board Act, 2010 (hereinafter referred to as "DUSIB Act") which is an enactment of the Legislative Assembly of the National Capital Territory of Delhi. Vide Section 10 of the aforesaid DUSIB Act, the DUSIB has been empowered to prepare a scheme of removal of "Jhuggi Jhopri Basties" and re-settlement of the residents thereof with the prior of consultation with the Government.

This is a digitally signed Judgement.

15. It is also submitted that in terms of the proviso to Sub - Section (3) of Section 10 of the Act, where any "Jhuggi Jhopri Bastis" is situated on the land belonging to the Central Government or any of its organization, the process of the removal and re-settlement is to be undertaken with the prior consent of the Central Government or the concerned organization. Hence, there is no binding obligation on the Central Government or any of its Organisation for removal and/or re-settlement of "Jhuggi Jhopri Bastis" situated on land belonging to them to be carried out by the DUSIB. It is submitted that none of the provisions of the aforesaid DUSIB Act empowers the DUSIB to, unilaterally, take up and execute any project or scheme *qua* the properties of the Respondents No. 1 or 4.

16. It is further submitted that the DUSIB has been nominated Nodal Agency of relocation of JJ Bastis upon the land belonging to Delhi Government or its Agency. It is further relevant to note that there are as many as 675 JJ Bastis and 82 Additional Bastis which are situated on the land belongings to the different Government Department or Agencies. It is relevant to note that the subject area does not find its name mentioned in the said list of JJ Cluster. In any case, as per the Respondent No.1, the Petitioner is not a resident of a JJ Cluster.

17. It is also pertinent to mention that, as per the Notification of the Govt. of N.C.T. of Delhi bearing No. F. No. 692(7)/UD/ BSUP/2015/ Vol- 1/2450-2457, dated 20.09.2017, the Hon'ble Lt. Governor of Delhi has nominated the Delhi Development Authority, as the Nodal Agency for Rehabilitation of Slum Dwellers, in respect of land belonging to the Central Govt. and its agencies. Therefore, the subject area being owned

This is a digitally signed Judgement.

by the Central Govt., any steps as to survey or rehabilitation, needs to be taken by the Delhi Development Authority. However, the Delhi Development Authority has not been impleaded by the Petitioner.

18. It is also stated that the subject area is not a part of any JJ Basti. Moreover, since, it is the case of the Petitioner itself that there are only 8 houses at the subject premises, the same would also not qualify to be labelled as a JJ Basti, within the meaning of Section 2 (g) of the DUSIB Act, 2010. As such, the subject jhuggis would not be entitled to be considered for rehabilitation. Accordingly, it is submitted that the instant petitions do not merit consideration of this Court and be accordingly dismissed.

19. Heard learned counsels for the parties and perused the record.

20. The only question that merits deliberation and consideration of this Court in the instant petition is whether the petitioners are entitled to any protection/rehabilitation under the existing policy framework for rehabilitation of residents of Jhuggi-Jhopri in Delhi. In order to answer this issue, it is pertinent to refer to the provisions and policies referred to and applicable in the instant set of circumstances.

21. Relevant provisions of the DUSIB Act, 2010 are furnished hereunder:

> *"2(f) "jhuggi" means a structure whether temporary or pucca, of whatever material made, with the following characteristics, namely:-*

This is a digitally signed Judgement.

(i) it is built for residential purpose;
(ii) its location is not in conformity with the land use of the Delhi Master Plan;
(iii) it is not duly authorized by the local authority having jurisdiction; and
(iv) it is included in a jhuggi jhopri basti declared as such by the Board, by notification;

(g) "jhuggi jhopri basti" means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri basti in accordance with the following factors, namely:-

(i) the group of jhuggis is unfit for human habitation;
(ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and
(iii) it is inhabited at least by fifty households as existing on 31st March, 2002:

Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;"

22. In terms of the DUSIB Act, the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 was framed, the relevant provisions thereof read as under:

*" **2(a) Nodal Agency***

The Delhi Urban Shelter Improvement Board (DUSIB) shall act as the Nodal Agency for implementation of this policy as per the

This is a digitally signed Judgement.

mandate given to it under the provisions of Delhi Urban Shelter Improvement Board Act, 2010.

(i) Who is eligible for rehabilitation or relocation

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 01-01-2015 shall not be demolished without providing them alternate housing; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013)

(ii) No new jhuggis to be allowed in Delhi

GNCTD shall ensure that no new jhuggis come up after this date, the same shall immediately be removed without providing them any alternate housing. Government of National Capital Territory of Delhi will use the following methods to ensure that no new jhuggis come up:

> *a. Government of National Capital Territory of Delhi has started procuring satellite maps every three months to keep an eye on any new constructions. New illegal constructions would be removed immediately.*
>
> *b. Government of National Capital Territory of Delhi is willing to do joint inspections with land owning agencies at regular intervals and any fresh jhuggis would be removed immediately.*
>
> *c. Government of National Capital Territory of Delhi would enroll volunteers from Jhuggi Jhopri Bastis, who will act for the Government and would inform Government if any fresh jhuggi comes up in any area."*

This is a digitally signed Judgement.

23. The question *qua* rehabilitation of residents of *Jhuggi-Jhopri* is no longer *res integra.* The issue has been adjudicated in a plethora of cases.

24. In view of the rampant encroachment of land in Delhi, and lack of proper policy for rehabilitation of encroachers, this Court in ***Sudama Singh* v. *Government of Delhi*, 2010 SCC OnLine Del 612** passed certain observations and guidelines furnished as under:

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

25. In compliance with the order of ***Sudama Singh*** (supra), the Legislative Assembly of National Capital Territory of Delhi brought out

This is a digitally signed Judgement.

the DUSIB Act, 2010 and subsequently in terms of the said Act, the 2015 Policy was rolled out.

26. In ***Tejpal Guatam* 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 J J 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 J J 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*

This is a digitally signed Judgement.

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, the petitioners 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

This is a digitally signed Judgement.

others, the action against the petitioners cannot be faulted with."

27. A Division Bench of this Court had occasion to deal with an identical situation in ***Vaishali (Minor)(Through Next Friend Mrs. Sita Devi)*** **v.** ***Union of India*****, LPA No. 271/2022** decided on 19.04.2022 in the context *of jhuggi jhopri* cluster at Sarojini Nagar, wherein it was held as under:

"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 J J 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.

XXX XXX XXX

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

This is a digitally signed Judgement.

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 J J cluster as on 01.01.2006. Therefore, the said judgments would have no application to the facts of the present case."

28. The said judgment has been challenged in the Supreme Court by filing a Special Leave Petition, however, the Apex Court has not stayed the judgment. The reasoning given by the Division Bench in the aforesaid case squarely applies to the present case as well.

This is a digitally signed Judgement.

29. In ***Shakarpur Slum Union v. DDA*, W.P.(C) 6779/2021** decided on 2 August, 2022, a Coordinate Bench of this Court has 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 and ***Ajay Maken* v. *Union of India*, 2019 SCC OnLine Del 7618** and ***Sudama Singh*** (supra) has also been considered 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*

This is a digitally signed Judgement.

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."

30. In view of the aforesaid rulings as well as the provision of Act and the policy framework, regarding rehabilitation/relocation in Delhi, the following principles emerge:

(i) A temporary/pucca structure must be unauthorized by jurisdictional local authority, built for residential purpose, and must not be in conformity with the land use of the Delhi Master Plan.

(ii) The board shall notify any group of such structures/jhuggis as a "*jhuggi jhopri basti*" if the group of jhuggis is unfit for human habitation, and it, by reason of dilapidation, overcrowding, faulty arrangement and its design, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene and it must be inhabited at least by fifty households as existing on 31.03.2002.

(iii) Such notified "*jhuggi jhopri basti*" which have come up before 01.01.2006 shall not be removed without providing them alternate

This is a digitally signed Judgement.

housing. Whereas any jhuggis which have come up in such *jhuggi jhopri basti* before 01.01.2015 shall not be demolished without providing them alternate housing.

(iv) Any new jhuggis beyond this cut-off date are not to be allowed in Delhi and the GNCTD shall ensure that no new jhuggis come up after this date, the same are immediately required to be removed without providing them any alternate housing.

31. Applying the aforesaid principles to the instant case, *firstly,* there is no notification by the DUSIB which is an essential pre-requisite to be qualified/recognized as a *jhuggi jhopri basti* for the purpose of the Act and the 2015 Policy. As such, reliance placed by the petitioners relying upon the 2015 Policy is totally misconceived, for the reason that same is applicable only to such *jhuggi jhopri bastis* which are duly notified by the DUSIB.

32. *Secondly,* there is also nothing on record to suggest that the said settlement of the petitioners had come up before the cut-off date i.e. 01.01.2015.

33. *Thirdly,* the petitioners have clearly been unable to fulfil the requirement of fifty households being part of their settlement the claim of it for being considered as a part of *jhuggi jhopri basti* and being entitled to rehabilitation.

34. In view of the aforesaid, the instant set of petitions being devoid of merits is accordingly dismissed.

This is a digitally signed Judgement.

35. Pending applications, if any, also stand dismissed.

36. Order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 7, 2022
Dy/@dityak.

This is a digitally signed Judgement.