

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

Date of decision: 14th MARCH, 2023

IN THE MATTER OF:

+ **LPA 63/2023, CAV 63/2023. CM APPLs. 3829-3831/2023**

KASTURBA NAGAR RESIDENTS WELFARE ASSOCIATION

..... Appellant

Through: Ms. Neha Panchpal, Advocate

versus

GOVERNMENT OF NCT DELHI & ORS.

..... Respondents

Through: Mr. Parvinder Chauhan, Advocate for
DUSIB

Ms. Shobhana Takiar, Standing
Counsel with Ms. Kritika Gupta,
Advocate for DDA

Mr. Aman, Advocate for Mr. Shadan
Farasat, ASC for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. Aggrieved the Judgment dated 13.10.2022, passed by the learned Single Judge in W.P.(C) 11945/2022, dismissing the Writ Petition filed by the Appellant herein, the Appellant has approached this Court by filing the instant appeal.

2. It is stated that the Appellant Association is an association of residents of Kasturba Nagar, New Vishwas Nagar, Shahadra, New Delhi. It is stated that they are residing in the area for the last 40 years. The Appellant/Association approached this Court by filing W.P.(C) 11945/2022 with the following prayers:

“Therefore, that the Hon’ble Court may be pleased to:

a. Direct the respondents to first rehabilitate the Petitioner union residents before carrying out their demolition.

b. Direct the respondent no.2, DUSIB to notify the slum cluster in accordance with Section 2(g) of the DUSIB Act.

c. Direct the respondent no. 3, DDA to send a proposal for removal of Petitioner union cluster to DUSIB for conduction of survey and appropriate rehabilitation before conducting any demolition at the site.

d. Direct respondent no. 2, DUSIB to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ slum Rehabilitation and Relocation Policy, 2015;

e. Direct the respondent no. 1, DDA to suspend the demolition (if any) and maintain status quo at the demolished site until all residents are surveyed and rehabilitated as per the DUSIB Policy;”

3. It is stated in the Writ Petition that DDA is proposing to carry out a demolition in the area in contravention of the judgments of this Court in Ajay Maken v. Union of India, (2019) 260 DLT 581 (DB) & Sudama Singh v. Government of Delhi, 2010 SCC OnLine Del 612.

4. The learned Single Judge, in the judgment impugned herein, has placed reliance on the judgment of this Court in Dinesh Singh and Ors. v. Delhi Development Authority and Ors., W.P.(C) 12384/2022, and has held that only those clusters, which have been identified by the Delhi Urban Shelter Improvement Board (*hereinafter referred to as ‘DUSIB’*), will be eligible for the benefit of rehabilitation under the Delhi Slum & JJ

Rehabilitation & Relocation Policy, 2015 (*hereinafter referred to as 'the 2015 Policy'*) and has dismissed the Writ Petition. It is this Order which has been assailed in the instant Appeal.

5. It is the contention of the learned Counsel appearing for the Appellant that the members of the Appellant Association are residing in the area for a number of years. He submits that in October, 2020 a survey of the area was conducted by the DDA through Neo Geo Info Technologies Pvt. Ltd. and individual registration numbers were provided by the DDA to residents with description of their areas and the area of the residents of the Appellant Association was shown as part of the unauthorised colonies. Learned Counsel for the Appellant submits that the survey conducted by the DDA is not valid because the residents of the area have proof of residence. It is stated that they comprise of a slum cluster of over 200 jhuggis having valid documents, namely, Voter ID, Electricity Bill, Gas Connection Bill, MCD House Tax Receipt, Birth Certificate, Caste Certificate, etc. from 1980, and the same makes them eligible for rehabilitation. It is further contended by the learned Counsel for the Appellant that pursuant to the receipt of the notice of demolition from DDA, the residents of the area have given representations to the DDA but the same has not been considered. He further states that the learned Single Judge has placed heavy reliance on the judgment passed by the Division Bench of this Court in **LPA 271/2022**, titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., which has been challenged in the Apex Court and the same is pending. It is further contended by the learned Counsel for the Appellant that similarly situated slum dwellers at 59, JJ, Colony, Vishwas Nagar, 18 quarters, which is barely 10 meters from the area in question,

have been rehabilitated and, therefore, the benefit of rehabilitation under the 2015 Policy should be extended to the members of the Appellant Association as well. Learned Counsel for the Appellant also places reliance on the judgment of Ajay Maken (supra) to contend that the members of the Appellant Association are also entitled to rehabilitation even though they are not part of a cluster identified by the DUSIB.

6. *Per contra*, learned Counsel appearing for DUSIB supports the impugned judgment and submits that the matter is no longer *res-integra* and the case is squarely covered by the judgment passed by the Division Bench of this Court in Vaishali (supra).

7. Heard the counsel for the parties and perused the material on record.

8. Prior to the judgment, passed by this Court in Sudama Singh (supra), no proper policy was in existence for the purpose of rehabilitation of encroachers of various parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities. This Court in Sudama Singh (supra) pointed out that no protocol has been developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation, etc. and, therefore, the GNCTD was directed to take measures to relocate those persons. In compliance of the judgment of Sudama Singh (supra), the Legislative Assembly of National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'the Act'*) and under the said Act Delhi Urban Shelter Improvement Board was

established. Under the said Act, DUSIB was to be the nodal agency for rehabilitation and relocation of jhuggi jhopri basti dwellers in respect of the lands belonging to the MCD and the Delhi Government and its Departments/Agencies. Chapter III of the said Act deals with the functions of the Board. Section 9 of the Act gives power to DUSIB to conduct a survey of any JJ basti which is defined under the Act to ascertain the number of residents thereof, the existing standard of health, sanitation and civic amenities, the availability of medical and educational facilities for the residents thereof. Section 10 of the Act gives power to the DUSIB to prepare a scheme for the removal and resettlement of JJ bastis. Section 11 of the Act directs the Board to prepare a scheme for improvement of any JJ basti which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving, and provision of dustbins, or sites for garbage collection, street lighting, etc. Section 12 of the Act directs the Board to prepare schemes for redevelopment of JJ bastis with the consent of the owner of the land on which the JJ basti is situated.

9. In terms of the DUSIB Act, the 2015 Policy was framed. Under the DUSIB Policy, JJ colonies which came up before 01.01.2006 could not be removed without providing for an alternate housing as well as the jhuggis which came up in such JJ Clusters before 01.01.2015 could not be demolished without providing alternate housing. It was also laid down in the policy that the Government was to ensure that no new jhuggi came up after 01.01.2015, and if any jhuggi did come up after this date, the same would immediately be removed without providing any alternate housing. Relevant portion of the DUSIB Policy reads as under:

"2....
(a)...

(i) Who is eligible for rehabilitation or relocation

Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed (as per National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such Jhuggi Jhopri Bastis before 01.01.2015 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).

(ii) No new jhuggis to be allowed in Delhi

Government of National Capital Territory of Delhi shall ensure that no new jhuggi comes up after 01.01.2015. If any jhuggi comes up after this date, the same shall immediately be removed without providing them any alternate housing

*Delhi Slum & JJ Rehabilitation and Relocation Policy,
2015 (PART-B)*

1. The eligibility criteria for allotment of alternative dwelling units to rehabilitate and relocate JJ dwellers would be as under:

(i) The JJ dweller must be a citizen of India and not less than 18 years of age;

(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 of 04.06.2009 as notified in the guidelines of 2013);.."

10. In terms of the 2015 Policy, 675+82 bastis were identified by the DUSIB which were entitled for rehabilitation.

11. The learned Single Judge, after examining the material on record, came to the conclusion that in the identified list of 675+82 bastis, the name of the basti in question is not included.

12. The issue as to whether a jhuggi jhopri basti which is not a part of the list of identified jhuggi jhopri bastis of DUSIB is entitled to rehabilitation or not, came up for consideration before the Division Bench of this Court in Vaishali (supra). The Division Bench of this Court *vide* judgment dated 19.04.2022 has held as under:

"5. As noted hereinabove, the learned Single Judge dismissed the petition, observing that the petitioners/appellants have been unable to show that their jhuggi cluster was notified under the Act, nor were they able to show any statutory provision which may be read or construed as placing an obligation upon-either respondent no.1, or respondent no.2, to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act.

10. We have considered the submissions made by the learned counsels for the parties. Section 2(g) of the Act defines „Jhuggi Jhopri basti“ as under:

“(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 1st January, 2006: 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;” (Emphasis supplied)

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 JJ 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.

13. As far as the Policy is concerned, the Policy stipulates “eligibility for rehabilitation or relocation” only for those JJ basti, which have come up before 01.01.2006. Therefore, for seeking benefit of the said

Policy, it was incumbent on the appellants to show that their JJ basti was in existence since before 01.01.2006. Though the learned senior counsel for the appellants sought to place reliance on a list of families allegedly residing in the said cluster of jhuggis, and submits that many therein have been residing much prior to the cut-off date of 01.01.2006, we find that the addresses mentioned in the said list vary between different blocks of Sarojini Nagar. They, therefore, cannot, at least prima facie, be stated to be forming part of one JJ basti, entitling them to the benefit of the Policy.

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

The said judgment is under challenge before the Apex Court and the Apex Court has not stayed the said judgment and is only considering as to how to find solution to the human problem. As things stands today, only such of those 675+82 clusters which have been identified by the DUSIB alone are entitled to the benefit of the Policy.

13. The learned Single Judge has placed reliance on another judgment passed by this Court in **W.P.(C) 6779/2021**, titled as Shakarapur Slum Union v. DDA & Ors., wherein the judgment of Ajay Maken (supra) and Sudama Singh (supra) have been considered. Relevant portion of the said judgment reads 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 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.

34. A co-ordinate Bench of this Court vide Order dated 11.04.2022, in W.P.(C) 5941/2022 titled as

Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., while dealing with the case of certain jhuggi dwellers of Sarojini Nagar seeking quashing of demolition notice issued to them, has held that the JJ cluster in question therein did not find mention in the list of clusters which are entitled to the benefit of the DUSIB Policy and, therefore, they are not entitled for rehabilitation measures under the said Policy. Relevant portions of the said judgment read as under:

"This Court notes that the obligation to formulate a scheme for rehabilitation and relocation stands extended to clusters which stand duly notified in Section 3. In fact the Act itself while defining the expression jhuggis, jhopris and bastis provides that it would cover clusters of jhuggis which the Board may by notification declare as such. Undisputedly, no such notification has been issued insofar as this cluster is concerned."

"It becomes pertinent to note that the petitioners had also placed reliance on clause 2.6 of a Memorandum of Understanding stated to have been executed between the Ministry of Urban Development and NBCC. Clause 2.6 stipulates that the Land and Development Office of the Union respondents would take steps and action for relocation and rehabilitation of jhuggi clusters if any existing in these colonies. Mr. Dhanda on instructions apprises the Court that there appears to be an evident and inadvertent mistake in the drawing up of clause 2.6 since it was never the intent of the Union to frame a scheme for rehabilitation or relocation in respect of jhuggis which are not notified under the provisions of the Act.

It becomes relevant to note that despite repeated queries, learned counsel for the petitioner was

unable to draw the attention of the Court to any observation made or appearing in either Sudama Singh or Ajay Maken, which may be read as placing the respondents under a statutory duty to frame a scheme for rehabilitation and relocation in respect of a cluster which is not notified for the aforesaid purposes under the Act. The Court has not been shown any statutory provision which may be read or construed as placing an obligation upon either respondent No.1 or respondent no.2 to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act. The petitioners do not appear to have taken any steps for requiring DUSIB or the first respondent to extend coverage of the Act to this cluster."

35. *The said Judgment has been upheld by a Division Bench of this Court vide Order dated in LPA 271/2022, titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors...*

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36. *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 Apex Court has entertained the petition only to find a solution as to how the human problem can be resolved.*

37. *This Court while dealing with Ajay Maken (supra) and Sudama Singh (supra) never gave any licence to any person to encroach upon Government property. However, this Court is dealing with a human problem and right to shelter has been described as right which has to be protected by Courts, especially for those who will have no place to go with their family and belongings if they are faced with mid-night*

demolitions. In order to ameliorate the human problem, this Court in Sudama Singh (supra) had directed that the State Government must formulate a comprehensive protocol to ensure that persons who have encroached upon Government lands are not rendered shelter-less and, therefore, a rehabilitation policy has to be brought out to rehabilitate those persons. It was in pursuance of that judgment that DUSIB was made the nodal agency for rehabilitation of the persons living in JJ clusters. Parameters were laid down as to who would be entitled to the benefit of the DUSIB Policy. The judgment of this Court in Ajay Maken (supra) cannot be interpreted to mean clusters not identified by the DUSIB would be entitled to rehabilitation.”

14. The purpose of restricting the benefit of 2015 Policy is clear from the policy itself which forbade coming up of jhuggis after 01.01.2015. As rightly pointed out by the learned Single Judge, no material has been provided by the Appellant/Association that the cluster, in which its members are residing, has been identified by the DUSIB. Rather, the stand of DUSIB is categorical that the area where the members of the Appellant Association reside does not form a part of the list identified by the DUSIB for the purpose of rehabilitation.

15. The contention that the members of the Appellant/Association have been residing in the basti from 1980 has been denied by the Respondents. Filing documents to show that they have proof of residence is not conclusive proof of continuous stay in the area because this Court can take judicial notice of the fact that persons who stay in such bastis migrate from the place when they get a better accommodation or a new job but they continue to have papers showing these addresses. This issue can only be decided in

proper suit where it has to be established by leading evidence that they continue to reside in these addresses.

16. The contention of the Appellant that certain persons in Vishwas Nagar, who were residing in that area were rehabilitated, holds no water because Vishwas Nagar is mentioned in the list of clusters identified by the DUSIB. Further, even if some persons who were not entitled for rehabilitation and have been rehabilitated, cannot be a ground to grant rehabilitation in violation of the Policy because the law does not recognize the concept of negative equity. The judgment of this Court in Shakarpur (supra) has recognized the human problem and directions have been given in that judgment to ensure that persons who are facing demolition are not rendered homeless straightway. Relevant portions of the said judgment reads as under:

“38. However, at the same time, this Court cannot be ignorant of the observations made in paragraph No.60 of Sudama Singh (supra) that it is not uncommon to find a Jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. The action of DDA in removing a person, whom they claim to be an encroacher, overnight from his residence, also cannot be accepted. The DDA has to act in consultation with the DUSIB before embarking upon any such venture and persons cannot be evicted with a bulldozer at their door step early in the morning or late in the evening, without any notice, rendering them completely shelter-less. A reasonable period has to be given to such persons and temporary location has to be provided to them before embarking on any demolition activities.

39. When this Court pointedly asked Mr. Chauhan, learned counsel for DUSIB, as to whether they have any provision for accommodating such persons, who are to be evicted, this Court was informed that normally when DUSIB conducts any demolition drive, it ensures that no demolition takes place when academic year is about to end or during monsoons. He stated that normally demolition takes place between March to June and August to October. This Court expects from the DDA to follow similar norms for demolition as well.”

17. The Respondents are directed to ensure that the mandate of this Court is followed in letter and spirit. In view of the above, this Court does not find any reason to interfere with the judgment impugned herein.

18. Resultantly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 14, 2022

Rahul