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

Date of decision: 2nd May, 2023

+ **W.P.(C) 1654/2023 and CM APPL. 8230/2023, 8231/2023**

JAYANTI DEVI

..... Petitioner

Through: Mr Avinash Advocate (M: 9555913622).

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr Rishikesh Kumar ASC GNCTD with Mr Aditya Raj, Mr Sudhir Kumar Shukla, Mr Sumit Choudhary, Mr Sudhir, Mr Muhammad Zaid, Miss Sheenu Priya Advocates for R/GNCTD (M: 9911483611).
Mr. Parvinder Chauhan, Advocate for DUSIB. (M: 9868102274)

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WITH

+ **W.P.(C) 1860/2023 and CM APPL. 7126/2023**

BHUPINDER KUMAR AND ORS

..... Petitioners

Through: Mr. Paul Kumar Kalai and Mr. Kaoliangpou Kamei, Advocates (M: 8376813694).

versus

PUBLIC WORK DEPARTMENTMN , GNCTD
AND ORS.

..... Respondents

Through: Mr Rishikesh Kumar ASC GNCTD with Mr Aditya Raj, Mr Sudhir Kumar Shukla, Mr Sumit Choudhary, Mr Sudhir, Mr Muhammad Zaid, Miss Sheenu Priya Advocates for R/GNCTD (M: 9911483611).
Mr. Parvinder Chauhan, Advocate for DUSIB.
Mr. Harish Vaidyanathan Shankar CGSC with Mr. Srish Kumar Mishra
Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday,

Advocates. (M:9810788606)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. In WP(C) 1654/2023, the Petitioner- Jayanti Devi is a resident of a *jhuggi* at Bhairon Marg in front of Gate No.1, Pragati Maidan, New Delhi. She has filed the present writ petition challenging the impugned eviction notice bearing no. S23 (ROAD)/S.B.A. MANDAL M-321/166 dated 28th January, 2023 issued by the Public Works Department (hereinafter 'PWD ') which reads as under:

“All you slum dwellers Bhairo Marg, Opposite Gate No.1, Pragati Maidan are informed to voluntarily demolish your slum within 15 days of information phase, otherwise, your slum will be removed with the help of police and Will be sent to the shelter home (Dwarka, Geeta Colony) identified by the Delhi Urban Improvement Shelter Board (DUSIB), in which the maximum period of stay will be 03 months.”

3. The case of the Petitioner is that she has been living in this *jhuggi* since 2012 and also has gas and electricity connections for the said premises. Even the voter ID card of the Petitioner is stated to have been issued to the Petitioner with the address of the said *jhuggi*.
4. Further it is the case of the Petitioner that, in terms of the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (*hereinafter 'Policy'*) dated 14th June, 2016, the Petitioner's *jhuggi* having come up before 1st January, 2015, the Petitioner is entitled to rehabilitation and the Petitioner ought not

to be removed from the present place of occupation, that too without notice and hearing.

5. It is the case of the Delhi Urban Shelter Improvement Board (hereinafter '*DUSIB*') that the Petitioner's *jhuggi* cluster does not belong to notified clusters, which are 675 and 82 in number. Reliance was placed upon the order passed by this court in *W.P.(C) 1386/2023* titled '*Kash Ram v. Public Works Department, GNCTD*' where the court had directed the demolition of *jhuggis* in the Dhaula Kuan area, subject to certain conditions.

6. The petition *W.P.(C) 1654/2023* was listed on 10th February, 2023 on which date, after hearing the parties, the following order was passed. The operative portion of the said order is set out below.

"7. Heard. It is now the settled position in law that until and unless the jhuggi clusters are duly notified, stay on demolition would not be feasible.

8. This position of law has recently been reiterated by this Court in Shakarpur Slum Union v. DDA, [W.P.(C) 6779/2021, decision dated 2nd August, 2022,] wherein the Court held as under:

"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.**

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42. Resultantly, the instant writ petition is disposed of with a direction to the DDA to carry out further demolition only in consultation with the DUSIB. The DDA is further directed to give sufficient time to the dwellers to make alternate arrangements or, alternatively, steps should be taken to accommodate the dwellers in the shelters provided by the DUSIB for three months so that the persons, whose jhuggis are being demolished, are able to find some alternate accommodation. Pending applications, if any, also stand disposed of."

9. In view of the fact that the impugned eviction notice itself identifies the alternative accommodation which is to be given to the Petitioner i.e., shelter home in Dwarka, Geeta Colony, it is directed that the reliefs sought by the Petitioner would not be liable to be granted.

10. The Respondent authorities will give the Petitioner a period of one week for moving to the shelter home in Dwarka, Geeta Colony.

11. It would be the responsibility of the Respondent authorities to ensure that the basic amenities at the relocated shelter home are duly made available for the Petitioner.

12. The petition, along with all pending applications, is disposed of in the above terms "

7. An application i.e. **CM APPL. 8230/2023 in W.P.(C)1654/2023** has been moved seeking recall of the order dated 10th February, 2023. The

ground on which the application has been moved is that the Petitioners case is identical to the case in **WP(C) 1860/2023** and that the Petitioner would suffer irreparable loss and injury if the demolition of the *jhuggis* takes place.

8. **WP(C) 1860/2023** - The petition relates to a JJ Cluster described as ‘Janta Camp, Mathura Road, Delhi’. The said JJ cluster is stated to be located in the vicinity of Gate No. 1, Pragati Maidan, Bhairo Road, Delhi. The Petitioners, who are 30 dwellers and occupants of *jhuggi jhopris* in the said cluster, have filed the writ petition seeking stay of demolition pursuant to the notice issued by the PWD dated 28th January 2023 which reads as under-

“All you slum dwellers Bhairo Marg, Opposite Gate No.1, Pragati Maidan are informed to voluntarily demolish your slum within 15 days of information phase, otherwise, your slum will be removed with the help of police and Will be sent to the shelter home (Dwarka, Geeta Colony) identified by the Delhi Urban Improvement Shelter Board (DUSIB), in which the maximum period of stay will be 03 months.”

9. An application for interim relief i.e. **CM APPL. 7126/2023 in WP(C) 1860/2023** was also filed to maintain the *status quo* on the ground that the Petitioners were from marginalised communities and economically weaker sections of society who do not have any alternative place of residence.

10. This court vide order dated 14th February 2023 had granted a stay on the demolition in **WP(C) 1860/2023**. The operative portion of the said order is extracted below.

“10. A perusal of the above submissions would show that:

a) Firstly, there is no clarity as to which organisation, the land on which the Petitioners’ JJ cluster stands, vests in.

b) Secondly, it is also not clear as to whether the said JJ cluster is covered by the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 and if it is a part of the notified clusters list.

c) Thirdly, before any demolition can take place, the authorities would have to arrive at a consensus as to whether there is a decision for demolition and for eviction of the occupants or not.

11. In view of the above issues that have been raised, it is directed that a meeting be held in the office of the Chief Secretary, Delhi wherein officials of all the concerned departments including GNCTD, PWD, DUSIB and Railways shall be present. A decision shall be taken and be placed on record qua the three issues identified in the preceding paragraph. Until such a decision is taken, no demolition shall take place.”

11. In WP(C) 1860/2023, this Court had called for a status report from the PWD as also DUSIB. The case of the PWD is that the actual demarcation would be clarified by DUSIB as to whether the Petitioners’ *jhuggi* cluster is a notified *jhuggi* cluster or not.

12. On behalf of DUSIB, it is submitted that the actual identification and physical verification of the *jhuggi* cluster would show that the *jhuggi* of the Petitioners falls on the road side and is not a part of the identified *Basti* of DUSIB. The extracts from the status report of DUSIB are set out below.

“4. That the entire case of the Petitioners is predicated upon the impression that her jhuggie falls in the above

named JJ Basti which is an identified Basti by DUSIB in terms of the DUSIB Act and 'The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015'. As per the Petitioner, the JJ Cluster find mention in the list of JJ Bastis prepared by DUSIB against nomenclature of 'JJ Cluster, Janta Camp Railway Nursery Behind Pragati Maidan' and is listed in the Sr. No: 10, Code No: 10, AC No: 41, Div: C-05.

5. That as per the clause 2(i) of the Rehabilitation Policy- 2015, issued vide order dated 11.12.2017 and renamed later on as Mukhya Mantri Awas Yojna, Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed 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.

6. That as per the clause 2(v), of the Rehabilitation Policy- 2015, issued vide order dated 11.12.2017 and renamed later on as Mukhya Mantri Awas Yojna, the Land Owning Agency will not demolish any JJ Basti which is eligible as per para 2(i) above unless :

1. There is any court order.

2. That basti has encroached a street, road, footpath, Railway safety zone, or a park.

3. The encroached land is required by LOA for specific public project as envisaged in the NCT of Delhi Laws (Special provisions) Second Act, 2011 which is extremely urgent and can't wait.

7. That in the above context of the matter, it is submitted that, in the area around Pragati Maidan, there are at least three chunk of JJ Clusters. Out of those three chunk of JJ Clusters, two are situated on the piece of land which abuts the Bhairon Marg i.e. the Road connecting Ring Road to Mathura Road, while, the third one is situated on a land parcel which is at a distance from the Bhairon Marg. Pertinently, it is only the JJ Cluster which is at a distance from the Bhairon Marg which is an identified Basti of DUSIB. A

screenshot of the Google Map showing the location of the aforesaid JJ Clusters is being annexed herewith as ANNEXURE-R2/1.

8. That, after the receipt of the advance copy of the captioned writ petition, the officials of the DUSIB have carried out a physical verification of the site and have reported that the Jhuggie of the Petitioner is part of the JJ Cluster which abuts Bahiron Marg, opposite Gate No.1, Pragati Maidan. Further, the jhuggi of the petitioner falls on the road side, thus, is not part of the identified Basti of DUSIB. During the process of Physical Verification, the officials of the DUSIB have taken photograph of the Jhuggie of the Petitioner and have also prepared a rough sketch of the area. A copy of the Photograph and Sketch is being annexed herewith as ANNEXURE-R2/2.

9. That, in view of above, it is evident that the Petitioner is not entitled to any benefit of Rehabilitation under the Rehabilitation Policy-2015. Consequently, the writ petition is absolutely misconceived."

13. Ld. counsel for the Petitioners were given an opportunity to respond to the said status reports. However, no response has been filed.

14. Mr. Paul Kumar Kalai, Id. Counsel submits that in terms of the DUSIB Act of 2010, the term 'Jhuggi Jhopri Basti' has been defined 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 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;

15. On the strength of the abovementioned proviso, it is argued by Mr. Paul Kumar Kalai, Id. Counsel that the DUSIB can attach the *jhuggis* which are scattered in the nearby or contiguous areas and that such *jhuggis* shall be deemed to be part of the *Basti*. He further submits that the toilet facilities are located in between the recognised *Basti* and the Petitioners' residence and thus even the Petitioners' *jhuggis* should be included in the notified *Basti*.

16. The clear position in law as on today is that unless and until a *jhuggi* is a part of the recognised cluster of the DUSIB, no rehabilitation can be directed. This is clearly laid down in the decision of this Court in ***Shakarpur Slum Union v. DDA, [W.P.(C) 6779/2021, decision dated 2nd August, 2022]***.

17. Moreover, in this case, there is no doubt that the Petitioners' *jhuggis* are not a part of the recognised *Basti* as the map which has been filed by the Respondent would show that there is considerable distance between the recognised *Basti* which shows a dense cluster unlike the location of the Petitioners where there are some scattered *jhuggis*.

18. Further, the physical verification also shows that the Petitioner-Jayanti Devi and her husband have a *jhuggi* which comprises of a shop and a residence. The same falls on the road side. The physical verification of both these *jhuggis* are set out below:-

“As desired, I along with Sh. R. K. Kanojia, S.I. visited the site on 17-02-2023 of Jhuggie Sh. Bhupender Kumar & Smt. Jayanti Devi, and it was found that the Jhuggie of both was comprising of shop and residence as well. The Jhuggies situated on Bharo Marg, opposite Gate No. 1, Pargati Maidan. It was further found the shop cum Jhuggie falls on the road side.

Sd.-

17.02.2023

*Subhash Chand
Sr. Investigator”*

“As desired, I alongwith Sh. R.K. Kanojia S.I. visited the site on 21-02-2023 of Jhuggies Sh. Bhupender Kumar and others petitioners and it was found that Jhuggies of all 30 petitioners situated on Bharo Marg, opposite Gate No. 1, Pargati Maidan, further Jhuggies of all petitioners falls on the Road Side.

Matter tellephonically discussed with concerned Astt. Eng (Sh. Laxmi), he told that no basic facilities provided at Road side Jhuggie, Bharo Marg, due to these Jhuggie are not part of the J. J. Basti, Janta Camp. behind Railway Nursery Pargati Maidan.

Submitted please

Sd.-

22.02.2023

Dy. Director (Socio/rehab) ”

19. In the physical verification, a sketch has also been placed on record to show that the Petitioners' Jhuggis are on the road side of Bhairon Marg.
20. Under these circumstances, in view of the fact that they are not part of the recognised Jhuggi Jhopri Clusters, this Court is not inclined to restrain the eviction and demolition.
21. However, it is made clear that, as stipulated in the impugned notice itself, the alternative accommodation in the shelter home Dwarka shall be

provided to the Petitioners.

22. In view of the above, the Petitioners are given one month's time to move to the shelter home in Dwarka (Geeta Colony) for temporary shelter as per the applicable norms.

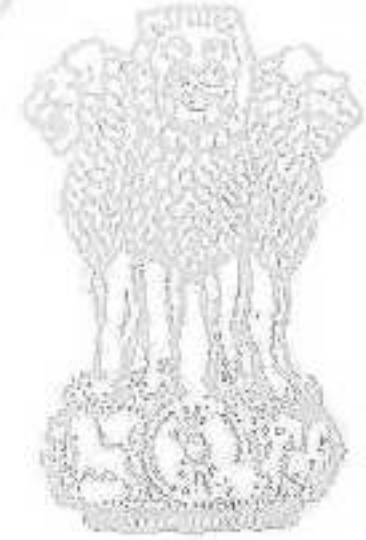
23. After 31st May, 2023, the Respondents are free to take action for demolition. By the said date, all the belongings of the Petitioners may be removed.

24. Accordingly, the present petitions along with all pending applications are disposed of in these terms.

MAY 2, 2023

mr/rp

**PRATHIBA M. SINGH
JUDGE**



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