



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

Date of decision: 20th NOVEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 13498/2023 & CM APPL. 53293/2023**

ROHTASH AND ORS

..... Petitioner

Through: Ms. Anupradha Singh, Adv.

versus

PUBLIC WORKS DEPARTMENT AND ORS Respondents

Through: Mr. Rishikesh Kumar, ASC for
GNCTD with Ms. Sheenu Priya,
Advocate for GNCTD.

Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advs for DUSIB.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners seek to challenge the Eviction Notice dated 20.09.2023 issued by the Respondent No.1/Public Works Department directing the Petitioners to vacate their Jhuggis which have been put up at Opposite Transport Authority, Gokulpuri Village, North East Delhi-110094. The Petitioners also seek for a direction to restrain the proposed demolition of the Jhuggis of the Petitioners and also rehabilitation of the Petitioners as per the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 read with Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'DUSIB Act, 2010'*)
2. It is stated that the Petitioners, who belong to Gadia Lohar community, migrated from Rajasthan to Delhi and started residing in Delhi



at Opposite Transport Authority, Gokulpuri Village, North East Delhi-110094. It is pertinent to mention here that though the Petitioners in the list of dates and in the facts as narrated in the writ petition have made such an averment but nothing has been filed before this Court to substantiate their contention.

3. It is the contention of the Petitioners that they are entitled to the benefit of Rehabilitation Policy brought out by the Delhi Urban Shelter Improvement Board (DUSIB) and also the benefit of the Judgment passed by this Court in the case of Ajay Maken & Ors. vs. Union of India & Ors., (2019) SCC OnLine Del 7618. It is stated that this Court in Ajay Maken (supra) has laid down the steps to conduct a survey of the Jhuggis and JJ Bastis before removal of the same which the Petitioner has quoted in the writ petition and the same are being reproduced as under:

“6. Steps to be followed prior to removal of Jhuggis and JJ Bastis

A.Pre-Survey Steps:

i. The process of removal/re-settlement/ rehabilitation/ in-situ improvement/redevelopment of Jhuggis and JJ Bastis in Delhi will be governed by “Delhi Slum & JJ Rehabilitation & Relocation Policy, 2015”

ii. The Land Owning Agency (LOA) will send a proposal for removal of the jhuggis and JJ bastis to DUSIB with proper justification satisfying the conditions mentioned in the policy sufficiently in advance, along with commitment to make payment of the cost of rehabilitation.

iii. The proposal will be examined by DUSIB regarding the date of existence of JJ basti i.e. whether the same



was in existence prior to 01.01.2006. If the JJ basti was in existence prior to 01.01.2006, then the DUSIB will notify the said Basti under section 2(g) of the DUSIB Act, if not notified earlier and the proposal will be placed before the Board (DUSIB) for in-principle approval for removal of the Jhuggis and JJ basti.

iv. After in principle approval of the Board, the DUSIB will conduct a joint survey and determine the eligibility of JJ dwellers for rehabilitation as per the policy along with the representative(s) of LOA. However, in special circumstances, the joint survey may be initiated even before obtaining in-principle approval of the Board, on case to case basis, with the approval of CEO, DUSIB. If the DUSIB ascertains that the JJ Basti came into existence after 01-01-2006, the LOA will be intimated accordingly to enable it to take necessary action for removal, in consonance with the law and rules in vogue.”

4. The Petitioners, therefore, contend that before conducting any demolition drive, the land owning agency has to sent a proposal to DUSIB and the DUSIB will first examine as to whether the Jhuggi Jhopri dwellers residing in the area are eligible for rehabilitation as per the policy and only after when it is ascertained that the Jhuggi Jhopri dwellers are not entitled to rehabilitation, a demolition drive can take place. The principle argument of the Petitioner is that Block-C, Sanjay Camp, Gokulpuri-I forms part of the 675 clusters identified by the DUSIB which are entitled to rehabilitation. It is stated that the Jhuggi Jhopris of the Petitioners are only 500 meters away from Sanjay Camp, Gokulpuri-I which finds mention at serial No.622 of 675 clusters identified by the DUSIB. It is stated that the since the Jhuggi Jhopris of the Petitioners is only 500 meters away from Sanjay Camp, Gokulpuri-I, the Petitioners would be automatically entitled to the rehabilitation as per the



policy. For this purpose, the Petitioners have placed reliance upon Section 2(g) of the DUSIB Act, 2010 which provides that the DUSIB 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.

5. Learned Counsel appearing for the Petitioners has reiterated the submissions made in the writ petition. Written submissions have also been filed by the Petitioners.

6. *Per contra*, learned Counsel appearing for the Respondents contends that the Jhuggi Jhopris of the Petitioners is not a part of the 675 clusters identified by the DUSIB which are entitled to the rehabilitation policy. It is stated that admittedly the Jhuggi Jhopris of the Petitioners are 500 meters away from Sanjay Camp, Gokulpuri-I. It is further stated that the contention raised by the Petitioners that the Jhuggi Jhopris of the Petitioners is very near to a cluster identified by DUSIB, and therefore, they are entitled to the benefit of rehabilitation has already been rejected by this Court *vide* Order dated 19.10.2022 passed in **W.P.(C) 14781/2022** in the case of Manoj Kumar and Ors vs. Delhi Urban Shelter improvement Board and Ors wherein this Court has held that it is always open for the Petitioners to approach the authorities to present their case to establish that their area is a part of identified cluster. Failing to do so, the Petitioners cannot approach this Court raising the very same issue. It is stated that in that case also, the Petitioners, who approached this Court, were belonged to Gadia Lohar community. It is further stated that in any event, the Respondents contest that the Petitioners belong to Gadia Lohar community which is a pure question of fact.



7. Heard learned Counsel for the Parties and perused the material on record.

8. Various parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities were under encroachment. There was no proper policy in existence for the purpose of rehabilitation of the said encroachers. This Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612**, while dealing with a batch of petitions wherein a prayer was made for rehabilitating the persons who were residing in slums, who had encroached upon lands belonging to Central Government/State Government, DDA and other municipal authorities, observed that no protocol has been developed to rehabilitate the encroachers. This Court held that surveys must be conducted and policy must be made to indicate the kind of relevant documentation that each resident has to produce to justify entitlement to relocation. This Court in the said Judgment passed the following directions:

“CONCLUSION

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.”

9. In compliance of the directions in Sudama Singh (supra), the Delhi Urban Shelter Improvement Board Act, 2010 was enacted for the purpose of establishing DUSIB. A policy was framed in terms of the DUSIB Act, 2010 for the purpose of rehabilitation and DUSIB was made the Nodal Agency. The 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."



10. The DUSIB conducted the survey and identified 675 JJ bastis which were situated on the lands belonging Central Government/ State Governments/DDA/and other Municipal authorities. Sanjay Camp, Gokulpuri-I finds mention at serial No.622 of 675 clusters identified by the DUSIB.

11. The short question which arises for consideration is whether the Jhuggi Jhopris of the Petitioners which according to the Petitioners is only 500 meters away from Sanjay Camp, Gokulpuri-I would be entitled to the benefit of Rehabilitation Policy or not.

12. The Policy came up in the year 2015. The clusters were identified by DUSIB in the year 2015. Admittedly, the Jhuggi Jhopris of the Petitioners is 500 meters away from Sanjay Camp, Gokulpuri-I. Nothing prevented the Petitioners to approach the DUSIB to substantiate their claim that the Jhuggis are a part of the Sanjay Camp. Material on record indicates that only RTI applications have been filed by the Petitioners seeking information on attachment of jhuggis in Delhi as per Section 2(g) of the DUSIB Act, 2010. There is nothing on record to show that the Petitioners approached the Court or the DUSIB for attaching the Jhuggi Jhopris/clusters where the Petitioners are residing with Sanjay Camp, Gokulpuri-I. The Petitioners have also not filed any documents to substantiate their claim. In any event, the Petitioners have to substantiate that their Jhuggi Jhopris/clusters are part of Sanjay Camp, Gokulpuri-I and for which purpose the Petitioners have to file a suit and produce documentary and oral evidence to substantiate their claim and approaching a Writ Court for the same would not be an appropriate remedy for the Petitioners.



13. A Coordinate Bench of this Court in Manoj Kumar (supra) while dealing with a similar issue has observed as under:

“.....That only leaves the Court to consider whether the petitioners are entitled to protection under the Rehabilitation Policy of 2015 and whether DDA is obliged to take steps for their rehabilitation independently and under the 2003 Scheme.

3. It becomes pertinent to note that the area which is occupied by the petitioners is admittedly not included in the list of 675+82 jhuggi jhopri bastis which had been identified by DUSIB for the purpose of extension of benefits under the Rehabilitation Policy of 2015. Learned counsel for the petitioner, however, contends that, in terms of Section 2(g) of the Delhi Urban Shelter Improvement Board Act, 2010 [“the DUSIB Act”], clusters which are adjacent to or scattered in the vicinity of identified jhuggi jhopri clusters are also entitled to the benefits of rehabilitation.

4. It becomes pertinent to note that Section 2(g) of the Act contemplates the Board attaching any jhuggi jhopri cluster scattered in the “nearby areas” of any jhuggi jhopri basti. The phrase “nearby areas” cannot possibly be interpreted to extend to include a cluster which is, as per the petitioners own showing, situate at least 3 kilometres away from a recognised cluster. For the purposes of attachment of a cluster under the DUSIB Act, it would have to be established that the cluster though standing independently is either contiguous or adjacent to an identified cluster. The expression “nearby areas” would have to be interpreted to mean a cluster which is in the nature of an extension or an adjunct to an identified jhuggi jhopri basti. It would also have to be additionally established that the separate cluster was in existence along with the identified jhuggi jhopri basti from prior to the recognised cut-off date of 01 January 2006.



Viewed in that light, it is manifest that the arguments addressed on lines noted above, would not sustain.”

14. In view of the aforesaid Judgment, the contention of the Petitioners that since the Jhuggi Jhopris of the Petitioners are only 500 meters away from Sanjay Camp, Gokulpuri-I and their case stands covered under Section 2(g) of the DUSIB Act, 2010 is not tenable. This Court does not find any reason to differ from the view taken by the Coordinate Bench of this Court in the aforesaid Judgment.

15. A Division Bench of this Court *vide* Order dated 19.04.2022 passed in **LPA 271/2022** in the case of Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., has already held that any cluster which does not form part of 675 clusters identified by the DUSIB would not be entitled to the benefit of rehabilitation policy. The relevant portion of the said Judgment reads 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 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.”

16. Similarly, this Court (Subramonium Prasad, J.) vide Judgment dated 02.08.2022 passed in **W.P. (C) 6779/2021** in the case of Shakarapur Slum Union vs. DDA and Ors, has observed 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.

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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.

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.”

17. In view of the aforesaid, the Petitioners are, therefore, not entitled to the benefit of rehabilitation policy. However it is made clear that the directions given by this Court in Shakarpur Slum (supra) must be adhered to by the Respondents inasmuch as the Petitioners must be provided with temporary alternate shelters and be relocated to these shelters.

18. With these directions, the writ petition is disposed of, along with any pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2023

S. Zakir