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

Date of decision: 14th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 1733/2024 & CM APPL. 7182/2024**

SHEKH ANSAR ALI AND ORS.

..... Petitioners

Through: Ms. Anupradha Singh, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD

..... Respondent

Through: Ms. Aakriti Garg, Advocate for Mr. Parvinder Chauhan, Advocate for R-1/ DUSIB.

Ms. Prabhsahay Kaur, Standing Counsel with Mr. Bir Inder Singh Gurm, Advocate and Mr. Uditya Raj, Assistant Executive Engineer, NMD-2/DDA.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Claiming to be the residents of T-Huts, Block K, Opposite M.I.G Flats, Jahangirpuri, Delhi-110033, the Petitioners herein, who are 13 in numbers, have approached this Court seeking stay of their eviction from Hutments occupied by them on the ground that they are entitled to the Delhi JJ Slum Rehabilitation and Relocation Policy, 2015. The Petitioners have also prayed for a direction to Respondent No.1/Delhi Urban Shelter Improvement Board (DUSIB) to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ Slum Rehabilitation



and Relocation Policy, 2015(hereinafter referred to as “DUSIB Policy”). The Petitioners have also prayed for a direction to Respondent No.2/DDA to pay compensation of Rs.1,00,000/- to the Petitioner No.13 for illegally demolishing his house at T-Huts, Block K, Opposite M.I.G Flats, Jahangirpuri, Delhi- 110033. They have also prayed for grant of compensation of Rs.25,000/- to each of the Petitioners for causing stress and trauma.

2. It is the contention of the Petitioners that the Petitioners are the residents of slum colony at T-Huts, Block K, Opposite M.I.G Flats, Jahangirpuri, Delhi-110033. It is stated that the said slum colony has been in existence since 1980, and therefore, the cluster is a part of the clusters identified by DUSIB under the Policy and the Petitioners are entitled to the benefit of the DUSIB Policy. It is stated that on 01.01.2024 at about 12 PM, the officials of the Respondent No.2/DDA visited the Petitioners and asked them to vacate their premises and forcefully started demolition. The Petitioners prayed for some time and they were granted 5 days’ time to vacate the premises which expired on 05.02.2024. The present writ petition was mentioned urgently on 06.02.2024 and the matter was first listed on 07.02.2024. On 07.02.2024, the learned Counsel appearing for the Petitioner sought some time to file some additional documents which was granted to the learned Counsel for the Petitioner and the matter was listed for 12.02.2024. On 12.02.2024, the learned Counsel for the Petitioner sought a passover and the matter could not be taken up on that day and the matter was listed for 13.02.2024. The matter was heard and kept for pronouncement on 14.02.2024.

3. Learned Counsel appearing for the Petitioners states that the



Hutments of the Petitioners are at Serial No.644 and a part of the slum clusters identified by the DUSIB and, therefore, the Petitioners herein are entitled to the benefit of DUSIB Policy. Learned Counsel for the Petitioners has filed some additional documents to establish that the Petitioners are residing at K-Block Opposite MIG Flats, Jahangirpuri, Delhi. The additional documents filed by the Petitioners includes a Certificate of Survey from the Delhi Government stating that they are the residents of various Hutments at Block K, Opposite M.I.G Flats, Jahangirpuri, Delhi-110033, electoral cards and the Aadhar Card of the Petitioners to establish their address proof.

4. Learned Counsel for the Petitioners places reliance upon Paragraph No.15 of the Judgment passed by the Division Bench of this Court *vide* Judgment dated 19.04.2022 passed in **LPA 271/2022**, titled as ‘Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors.’ to contend that since the Petitioners’ Hutments have been in existence prior to 01.01.2006, they are entitled to the benefit of DUSIB Policy. Paragraph No.15 of the said Judgment reads as under:

“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.”



5. Learned Counsel for the Petitioners further places reliance upon paragraph No.2(a)(i) of the DUSIB Policy which 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).

6. *Per contra*, learned Counsel appearing for the Respondent/DDA has handed over a map in Court which indicates the exact location of the Hutments of the Petitioners and makes a categorical statement that none of the JJ Bastis which form part of the clusters identified by the DUSIB have been demolished. The map handed over by the learned Counsel for the DDA to establish that the place where the huts of the Petitioners are located is outside the slum cluster which is placed at Serial No.644, which has been identified by the DUSIB and which is entitled to the benefit of the 2015 Policy:



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DUSIB JJ Cluster JJC Code 191





In the map, the portion where the hutments of the Petitioners exists, is marked in the green colour, which is outside the clusters which is marked in red colour.

7. Learned Counsel for the DDA and DUSIB state that the Hutments of the Petitioners are outside the clusters identified by the DUSIB and therefore, they are not entitled to the benefit of DUSIB Policy. She states that the issue raised by the Petitioners are squarely covered by the several Judgments in Vaishali (minor) through next friend Mrs. Sita Devi & Ors vs. Union of India & Ors., passed by this Court in **LPA No.271/2022** vide Judgment dated 19.04.2022, in Shakarpur Slum Union vs. DDA and Ors, passed by this Court in **W.P.(C) 6779/2021** vide Judgment dated 02.08.2022, in Rohtash and Ors. vs. Public Works Department & Ors, **2023 SCC OnLine Del 2356** and in Urmila vs. DDA & Ors., **2022 SCC OnLine Del 2356**.

8. Heard learned Counsel for appearing for the parties and perused the material on record.

9. This Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612**, observed that there was no proper policy which was in existence for the purpose of rehabilitation and relocation of those persons who were residing in various slums and clusters which existed on the parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities. Pursuant to the Judgment passed by this Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612**, the Legislative Assembly of National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to*



as 'DUSIB Act') for the purpose of establishing DUSIB. Section 2(f) and Section 2(g) of the DUSIB Act define the terms 'jhuggi' and 'jhuggi jhopri basti'. A policy was framed in terms of the DUSIB Act, 2010 for the purpose of rehabilitation and DUSIB was made 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. In case of JJ Colonies existing on lands belonging to the Central Government/Agencies, Railways, DDA, Land and Development (L&D) Office, the Delhi Cantonment Board, the New Delhi Municipal Council (NDMC) etc., the respective agency was to either carry out the relocation/rehabilitation themselves, as per the policy of the Delhi Government, or could entrust the job to the DUSIB. 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."

10. A survey was conducted by the DUSIB, and as many as 657 JJ Bastis were found to be situated on the lands belonging to different Government departments.

11. The Petitioners states that the T-Huts at Block K, Opposite M.I.G Flats, Jahangirpuri, Delhi-110033 are part of the clusters identified by the DUSIB. Learned Counsel for the Petitioners is relying on the various addresses to demonstrate that the Petitioners' Hutments are part of the identified clusters. The contention raised by the learned Counsel for the Petitioners cannot be accepted by this Court for the reason that the Geo Fencing of the Hutments of the Petitioners shows that it lies outside the clusters identified by the DUSIB. Even though, these Hutments are in Jahangirpuri and may be near the identified clusters, the same cannot be a part of the slum dwelling clusters which have been identified by the DUSIB to be entitled to the benefit of DUSIB Policy. On the basis of the material on record, this Court is unable to accept the stand of the Petitioners that they were in existence prior to 01.01.2006. The prayer of the Petitioners to conduct a second survey also cannot be accepted for the reason that DUSIB had already conducted a survey in the year 2012-13 and the slum dwellings



outside the jahangirpuri are identified and the area occupied by the Petitioners do not come within the clusters as identified by the DUSIB.

12. It is now settled and on more than one occasion the Court has repeatedly held that such of those slum dwellings which are not identified by the DUSIB are not entitled to the benefit of DUSIB Policy. The Division Bench of this Court *vide* Judgment dated 19.04.2022 passed in **LPA 271/2022**, titled as ‘Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors.’ has held as under:

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."

13. This Court in Shakarpur Slum Union vs. DDA and Ors, vide Judgment dated 02.08.2022 passed in **W.P.(C) 6779/2021** has observed as under:

*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."

14. Similarly, this Court in Rohtash and Ors. vs. Public Works Department & Ors., **2023 SCC OnLine Del 2356** has observed as under:

"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 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 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.”

15. This Court in Urmila vs. DDA & Ors., **2022 SCC OnLine Del 2356** has observed as under:

“13. Also, in the present case, there is a serious doubt as to whether the address in the address proofs furnished and relied upon by the petitioners correspond to the location of sites A and B. This aspect, coupled with the divergence between the Google Earth images filed along with the petition and the rejoinder, and the Google earth images of the years 2004, 2006 relied upon by the respondent, repel the assertion that the petitioners have been residing in the said sites on or before 01.01.2006.”

16. It is open for the Petitioners to establish that the slum dwellings of the Petitioners are part of the clusters identified by the DUSIB but this can be done only by filing a suit and lead evidence to establish that the slum dwellings of the Petitioners are a part of the clusters originally identified by



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the DUSIB. It is also open for the Petitioners to establish that the Hutments of the Petitioners were in existence prior to 01.01.2015 for which purpose they have to lead evidence to show that the Petitioners were in occupation of the Hutments prior to 01.01.2015 and continue to occupy the Hutments after 01.01.2015.

17. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 14, 2024

S. Zakir