



2024:DHC:5096



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

Date of decision: 09th JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 3307/2024 & CM APPLs. 13730/2024, 23635/2024**

SANJAY KUMAR & ORS.

..... Petitioners

Through: Mr. Rajiv Khosla, Mr Sunil Singh and
Mr. Ajit Khosla, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Abhinav Bhardwaj, Adv.
Mr. Kirtiman Singh, CGSC with Ms.
Manmeet Kaur Sareen, Mr. Aryan
Agrawal, Mr. Varun Rajawat, Advs.
Inspector Randheer Kumar, PS Civil
Lines.
Mr. Rishikesh Kumar, ASC for
GNCTD with Ms. Sheenu Priya, Mr.
Atik Gill, Mr. Sudhir Kumar Shukla
and Mr. Sudhir, Advocates.
Mr. Sanjeev Bhandari, ASC with Mr.
Anvita Bhandari, Mr. Kunal Mittal,
Mr. Arjit Sharma, Mr. Vaibhav Vats,
Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Writ Petition has been filed with the following prayers:

“a) Issue a writ of certiorari or any other appropriate writ or direction thereby declaring the impugned notice dated 01.03.2024 as Illegal, arbitrary, perverse and void and / or



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b) Issue appropriate writ in the nature of Mandamus or any Other writ or directions thereby directing the Respondent No.1 & 4 not to evict the Petitioners along with 200 families staying in the Khyber Pass Hostel hutments

since last almost 73 years and further to direct the Respondent no.1, 2, 3 & 4 not to demolish the houses of the Petitioners which were allotted to them by the Respondent no.2 on rent from time to time.

c) Issue appropriate orders and directions to Respondents for the Rehabilitation and Relocation of the families as per the Policy of the Respondent no. 4 i.e. Government of NCT of Delhi.

d) Any order/further order that this Hon'ble Court may deem fit and proper may be passed in favour of the Petitioners and against the Respondents. ”

2. It is the case of the Petitioners that their parents and grand-parents were lawful occupants of Kyber Pass Hostel, Civil Lines, Delhi which was allotted to them. At this juncture, it is pertinent to mention that Kyber Pass Hostel was in the occupation of Ministry of Defence for providing residential accommodation to the Officers of the Armed Forces of the country. It is stated that the Petitioners are residing in these hostels for generations now and that vide Notice dated 01.03.2024 they have been directed to vacate the hutments and remove illegal constructions from their lands before 04.03.2024. The Petitioners have, thereafter, filed the present Writ Petition with the abovementioned prayers.

3. The matter was mentioned on urgent hearing on 03.03..2024 and this



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Court passed the following Order:

“1. The present case has been listed on special mentioning and has been taken up for hearing by this Court at 09:00 PM. The writ petition and the applications are yet to be numbered. The writ petition and the applications be numbered subject to office objections. The case is taken on board.

2. The Petitioners herein, who are occupying the various hutments near the Khyber Pass, Civil Lines, Delhi have approached this Court challenging the Notice dated 01.03.2024 issued by Respondent No.3/Land and Development Office, Ministry of Housing and Urban Affairs directing the Petitioners to vacate the occupation on the ground that they are unauthorized occupants.

3. The Impugned Notice dated 01.03.2024 states that the occupants must vacate the land in question by 05:00 AM on 04.03.2024.

4. It is case of the Petitioners that their forefathers have been occupying the land in question since 1951. It is stated that the land in question was allotted to their forefathers way back in 1951 since they were serving the Army Personnel who were occupying the Khyber Pass Hostel. It is stated that though rents are not being collected from them from the year 2002, nevertheless, the Petitioners are in permissive and lawful possession of the land in question and they cannot be evicted without following the due process of law.

5. Issue notice.

6. Mr. Kirtiman Singh, learned CGSC, accepts notice on behalf of Respondent Nos.1, 2 and 3. Mr. Sanjeev Bhandari, learned Additional Standing Counsel, accepts notice on behalf of Respondent Nos.5 and 6.



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7. On payment of process fee, let notice be issued to Respondent No.4 through all permissible modes, including Dasti.

8. Since SHO Civil Lines and an Officer from the L&DO Department have joined the proceedings through video conferencing, they are directed not take any precipitative action against the Petitioners till the next date of hearing.

9. List on 11.03.2024.”

4. Counter affidavit has been filed by the L&DO wherein it is stated that the land in question is situated at Khyber Pass, adjacent to Civil Lines, Police Station and is a part of the land acquired by the Government for public purpose, namely, for the new capital of India at Delhi vide Notification No.775 dated 21.12.1911. It is stated that vide letter dated 25.01.1926 the land in question got transferred to the Management of Notified Area Committee on the following conditions:

“1) That the Committee shall acquire no right to alienate in any way of these properties.

2) That only the management and care of them is made over to the Committee.

3) That the Committee shall receive the income of the properties so long as they continue under the Committee's management and

4) That lease for a period of more than 10 years shall require the sanction of the Chief Commissioner.

Under these orders in the cases of perpetual lease the



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*premium recovered if any will be credited to Govt.
The Committee will have as manager of the property no
authority to permit any building to be erected on the
transferred lands.”*

5. The Counter Affidavit also states that the erstwhile Secretary, Delhi Administration vide letter dated 31.03.1958 addressed to the office of the L&DO informed that the Government of India decided to transfer the management and care of the Nazul land, including the land in question, within the jurisdiction of NAC (Civil Station), Delhi District Board, Delhi and Delhi Municipal Committee to the management and care of the L&DO. In view of the said letter all Nazul lands, including the land in question, were handed over by the Superintendent, Tax, Notified Area Committee, Civil Station to the Building Officer of L&DO on 03.04.1958. The Counter Affidavit indicates that the land in question was in occupation of the Ministry of Defence even though the land had been transferred to L&DO.

6. Learned Counsel for the Petitioner strenuously contends that the Petitioners are residing in the Kyber Pass Hostel as these hostels were allotted to their fathers/grand-fathers about 70 years back and the Petitioners are entitled to resettlement. Learned Counsel for the Petitioner also contends that even assuming but not admitting that the Petitioners have become unauthorised occupants, they can only be evicted by following the due process of law as they were inducted by the Officers of the Armed Forces to cater to their needs and the Petitioners are paying rents and, therefore, they are in purposive possession of the land in question and, therefore, they cannot be ousted without following the due process of law, i.e. the Petitioners have to be issued notice by the competent Department under the



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Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (*hereinafter referred to as 'the PP Act'*). Learned Counsel for the Petitioner draws the attention of this Court to various provisions of the PP Act to state that the notice which is under challenge in the present Writ Petition is not a notice under the PP Act. He states that the notice under the PP Act has to be issued by the competent authority under Section 4 of the PP Act.

7. *Per contra*, learned Counsel for the Union of India contends that the Petitioners are rank trespassers on the land in question. He states that except for Petitioners No.5 & 7, other Petitioners have to nothing to show as to how they got the possession of the premises. He states that other than filing some receipts of persons who are not a party to the present Writ Petition, there is nothing on record to show as to how the Petitioners entered into the possession. He, therefore, states that PP Act need not be invoked for removing the Petitioners from the land in question. He places reliance on the Judgment of the full Bench of this Court in Chandu Lal v. MCD, **1977 SCC OnLine Del 130**, to contend that most of the Petitioners have not shown that they have paid any license for the hutments they are presently residing in and, therefore, they are trespassers.

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

9. At the outset, it is to be stated that the Petitioners have not shown any document as to who inducted them. In absence of any document the Petitioners ought not to have approached this Court by filing a Petition under Article 226 of the Constitution of India to say that they were inducted by a person competent to induct them and put them in possession. Since this



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issue requires leading of evidence, the Petitioners need to file Suit and lead evidence to show that they were inducted lawfully by persons who were competent to induct them. As far as for Petitioners No.5 & 7 are concerned, there is nothing to show that they have paid license fee till 2024.

10. Section 2(g) of the PP Act, which defines unauthorised occupation, reads as under:

“(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

11. Admittedly, it is not the Petitioners who were inducted in the premises. If at all, it was their fathers and grand-fathers who were inducted in the land in question. There is nothing on record to show that the Petitioners have paid any rent. The Petitioners themselves in paragraph No.3 have stated as under:

“3. It is submitted that the Petitioners are the lawful occupants of the Khyber Pass Hostel hutments and the hutments have been allotted to the grand parents / parents of the Petitioner and they have regularly paying the rent since 1951. Lastly the rent was paid in the year 2001 and thereafter no one came forward to collect any rent form the Petitioners. Since, then the Petitioners are lawfully occupying the hutments and are residing with their family members uninterruptedly without any hindrance and are directly paying water and electricity charges to the authorities.”



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12. A perusal of the abovementioned paragraph shows that no rent has been paid by the Petitioners after 2001 and, therefore, after 2001 the Petitioners cannot be called as legal occupants of the land in question and are rank trespassers. A full Bench of this Court in Chandu Lal (supra) has observed as under:

“34. Shri Saigal next contended that on revocation of the license, the petitioners' possession of the Kiosks was that of a trespasser and having accepted license fee subsequent to the revocation of the license, the Corporation acquiesced in the possession of the petitioners as trespassers, in the circumstances the Corporation has no right to disposses the petitioners by force. This submission is equally devoid of force. In accepting license fee subsequent to the revocation of the license, all that can be said is that the license was extended up to the period the license fee was accepted but it cannot be said that the Corporation in any manner acquiesced in the alleged trespass or that the petitioners came to acquire “settled possession”. The basic fallacy in this argument is the assumption that on acquiring liberty to occupy the Kiosk possession of it was passed to the petitioners. The petitioners being licensees legal possession all along remained with the Corporation. That being so, as held by the Supreme Court, in Munshi Ram v. Delhi Administration, A.I.R. 1968 S.C. 702 (15), the Corporation had a right to re-enter the premises and reinstate itself provided it does not use more force than necessary. Such an entry would be received only as a resistance to an intrusion upon possession which had never been lost. Further, the law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities, there being nothing more degrading to the human spirit than



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to ran away in the face of peril.

37. Temporary injunction sought by the petitioners could be granted if their case was covered by the three well-established principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in their favour, in that the refusal of the injunction would cause greater inconvenience to them and (3) whether on refusal of the injunction they would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the petitioners have a triable case. Before invoking the jurisdiction of the Court to seek temporary injunction the petitioners were bound to show that they have a legal right and that there was an invasion of that right. They have failed to show a legal right. Facts and circumstances, on the contrary, prima facie show that the petitioners on the revocation of the license are trespassers, there exists no justification or allowing them to continue perpetuating their unlawful act.”

13. A Coordinate Bench of this Court in Brahampal v. Union of India, 2005 SCC OnLine Del 329, has observed as under:

“18. This Court had occasion to examine the issue raised by certain persons aggrieved by action of the respondents in denying appropriate notice and proceedings under the Public Premises (Eviction of Unauthorised Occupants), Act. The judgment of the learned Single Judge was 2003 (69) DRJ 311, Jafar Siddique v. Delhi Development Authority The matter was taken in appeal and vide a judgment dated 17th September, 2003 passed in LPA No. 447/2003 entitled Sh. Vakil Ahmed v. Delhi Development Authority, the Division Bench held as under:



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“21. Learned Single Judge on admitted position, considered the case and found that as these persons were trespassers and the order that can be passed by the authority would be removing the unauthorised occupants i.e., encroachers (even if we assume that the appellants are right, the competent authority would have passed the said order in law). Even if hearing was granted under the Act, some time was required to be granted to vacate by the public authority. If that opportunity, according to the appellant was denied, the learned Judge has granted that opportunity by” providing a hearing. Both the sides have made their submissions before the learned Single Judge elaborately on facts as well as on law. In view of the fact that the appellants were trespassers on a public land which was acquired by the competent authority under the provisions of the Acquisition Act and was allotted for residential purpose to a society and, in view of the pendency of petitions the appellant continued in possession (even after demolition), even if the authority under the Act would have given hearing, the matter would have been over much earlier and therefore no further delay was required.””

14. Similarly, in Jafar Siddique v. Delhi Development Authority, 2003 (69) DRJ 311, this Court held as under:

“12. It is thus apparent from the aforesaid that there is no doubt about the proposition that if a person is a tenant, licensee or occupies the property in any legal capacity, if rights are terminated, proceedings must take place in accordance with law and it is not open to a party to forcibly dispossess such a person. This is so since the said party itself cannot be permitted to decide the status of the occupant and the occupant has a right



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to defend himself.

13. The question thus which arises for consideration is whether such a right would be available to a person who is a rank trespasser on a govern-. ment land which land has been acquired under the LA Act. The LA Act is a code by itself providing for procedure for acquisition of the land. Parties are given right to file objections and be heard. In fact, under Section 9 of the said Act, notices are to be given to all persons interested in the land. It is only thereafter that an award is made and published under Sections 11 and 12 of the LA Act. Under Section 16 of the Act, the Collector after having made an award can take possession of the land which vests with the government, free from all encumbrances. This procedure was followed in the present case and the land was duly acquired. The award is of 1972-73.”

15. In view of the above, the Petitioners cannot take the benefit of the PP Act until and unless they show that they are in authorised occupation by showing that they were lawfully inducted.

16. On the facts of this case, this Court is not inclined to accept the contention of the Petitioners that they were inducted lawfully and that they are authorised occupants. Even Petitioners No.5 & 7 also cannot be said to be lawful occupants as they have not paid rents since 2001.

17. The question as to whether the Petitioners are entitled to resettlement or not is no longer res Integra as the same stands settled by various Judgments of this Court, namely, in Vaishali (minor) through next friend Mrs. Sita Devi & Ors vs. Union of India & Ors., passed in **W.P.(C) 5941/2022** vide Judgment dated 11.04.2022, in Vaishali (minor) through



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next friend Mrs. Sita Devi & Ors vs. Union of India & Ors., passed in **LPA No.271/2022** vide Judgment dated 19.04.2022, in Shakarpur Slum Union vs. DDA and Ors., passed in **W.P.(C) 6779/2021** vide Judgment dated 02.08.2022 and in Manoj Gupta and Ors, vs. Delhi Development Authority & Ors., passed in **W.P.(C) 9625/2022** vide Judgment dated 04.08.2022, in Manoj Kumar and Ors. vs. Delhi Urban Shelter Improvement Board and Ors., passed in **W.P.(C) 14781/2022** vide Judgment dated 19.10.2022 and in Manoj Kumar and Ors. vs. Delhi Urban Shelter Improvement Board and Ors., (**2023:DHC:2225-DB**) and the Hon'ble Supreme Court has still not interfered in any of the said Judgments passed by this Court. In Sethi Devi & Ors v. Central Public Works Department & Ors., **2024 SCC OnLine Del 1085**, this Court has observed as under:

*“6. Various parcels of land belonging to the Central Government/State Governments/DDA/and other Municipal authorities were under encroachment, and 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 seeking intervention of this Court to rehabilitate and relocate the persons residing in the various slums clusters in the Capital city to a suitable place and providing them alternative land with ownership rights pursuant to demolition of their jhuggis, gave the following directions:*

64. It is declared that:

(i) The decision of the respondents holding that the petitioners are on the “Right of Way” and are,



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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.”

7. *In compliance with 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 'DUSIB Act') for the purpose of establishing Delhi Urban Shelter Improvement Board (DUSIB). The said Act lays down the terms 'jhuggi' and 'jhuggi jhopri basti'. 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, with a view to ascertaining 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*



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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.

8. *Under the DUSIB Policy, the Delhi Urban Shelter Improvement Board (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. Paragraph No.2 of the DUSIB Policy lays down as to who would be eligible for rehabilitation and Relocation. The relevant portion of the said paragraph 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



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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."

9. A survey was conducted by the DUSIB and about 657 JJ Bastis were found to be situated on the lands belonging to different Government departments. These were the areas which had been identified by the DUSIB to be entitled to the benefit of the DUSIB Policy. This Court in Ajay Maken & Ors v. Union of India & Ors., 2019 SCC OnLine Del 7618, after going through the history of DUSIB Act and DUSIB protocol, has observed as under:

"141. Sections 10 and 11 of the DUSIB Act, which are relevant for the case at hand, read as under:

"10. Removal and resettlement of jhuggi jhopri bastis

(1) The Board shall have the power to prepare a scheme for the removal of any jhuggi jhopri basti and for resettlement of the residents thereof, and the consent of the residents of the jhuggi jhopri basti shall not be required for the preparation or implementation of such a scheme.

Explanation. - Nothing in sub-section (1) shall derogate the power of the Central Government to



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remove jhuggis, if required. Every such scheme shall specify the amount to be paid by the land owner and by the persons to be resettled towards the cost of new houses to be allotted to them and also the criteria for eligibility for resettlement.

Explanation. - For the removal of doubts it is hereby clarified that owner of the land from where the basti is removed and the subsequent beneficiary-residents to be resettled shall contribute towards the cost of new houses to be allotted to them and the said amount of the contribution shall be specified in the scheme.

The Board may, after prior consultation with the Government, cause any jhuggi jhopri basti to be removed and may resettle such residents thereof as may be eligible in accordance with the scheme prepared under sub-section (1), and it shall be the duty of the local authority having jurisdiction and of the police and of any other agency or department whose assistance the Board may require to cooperate with and render all reasonable assistance to the Board:

Provided that where jhuggi jhopri basti is on the land belonging to the Central Government or any of its organizations, the process of removal and resettlement shall be undertaken with the prior consent of the Central Government or its organization concerned:

Provided further that such resettlement shall not be done in contravention of the provisions of the Delhi Development Act, 1957 (61 of 1957) and those of the Master Plan for Delhi or the zonal development plans prepared thereunder



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Scheme of improvement of jhuggi bastis

11. (1) The Board may prepare a scheme for the improvement of any jhuggi jhopri 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, or any of them, or provision of any like facilities:

Provided that no such scheme shall be prepared if the owner of the land on which the jhuggi jhopri basti is situated has already consented to the preparation of a scheme for the removal of the jhuggi jhopri basti under section 10 and has paid his share of the cost thereof.

(2) The Board may take all measures which may be necessary for the implementation of any scheme for improvement of a jhuggi jhopri basti prepared under subsection (1) and it shall be the duty of the local authority, power generation and distribution companies or any licensee under the Electricity Act, 2003 (36 of 2003) having operations in the area, and any department or undertaking of the Government to render all reasonable assistance for the implementation thereof.

(3) A scheme prepared under sub-section (1) may include provision for payment or for contribution of labour by the residents of the jhuggi jhopri basti individually or collectively, and may also include provision for recovery of charges for the use of toilets and bathing facilities:



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Provided that no such payment or contribution of labour, other than charges for use of toilet and bathing facilities, shall be levied unless the scheme has been published and the residents given an opportunity to make representations and suggestions regarding it in such manner as may be prescribed by regulations, and such representations or suggestions, if any, have been duly considered by the Board.”

171. While the 2015 Policy lays down a framework in terms of the decisions in Sudama Singh for the authorities to follow if they propose to undertake eviction of slum dwellers for any reason, even for those JJ clusters and jhuggis which are situated on the land of the Central Government, including those entrusted to the Railways, where the Central Government or the Railways seeks to take action independent of the DUSIB, the basic elements of that framework would certainly apply. The decision in Sudama Singh is binding on all agencies including the Central Government and the Railways. In sum, it is not as if only the JJ clusters and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB that are required to be dealt with in terms of the decision in Sudama Singh but every jhuggi dweller, anywhere in the NCT of Delhi, has to be dealt with in terms of the said decision. In effect, therefore, no slum dweller in the NCT of Delhi in one area can be treated differently from that in another.

X

The 2015 Policy



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172. It is necessary at this stage to discuss the provisions of the 2015 Policy. As already noticed, the Policy itself delineates principles on which it is based. In this context paras 1 (i, ii and iii) are relevant and they read as under:

“(i) The people living in jhuggis perform critical economic activities in Delhi like drivers, vegetable vendors, maid servants, auto and taxi drivers, etc.

(ii) In the past, adequate housing was not planned for these people in middle or upper class areas, to which they provide services. As a result, a number of jhuggi bastis mushroomed all over Delhi close to the areas where they provide services.

(iii) They have encroached upon the lands on which they live.”

173. After setting out the decisions of the Supreme Court and of this Court in Sudama Singh and the decision of the Supreme Court in Gaiinda Ram v. Municipal Corporation of Delhi (supra) which reiterated that “hawkers have a fundamental right to hawk”, the Policy notes in paras 1(vi) and (vii) as under:

“(vi) Government of National Capital Territory of Delhi recognizes that the habitat and environment in which Jhuggi Jhopri Bastis exist is often dirty, unfit for human habitation and unhygienic both for the inhabitants living in that area as well as for the people living in surrounding areas.

(vii) Government of National Capital Territory of Delhi, therefore, wishes to put in place and



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implement this policy to house the poor in a permanent and humane manner; at the same time, clear lands for specific public projects and roads etc.”

174. The 2015 Policy states that DUSIB is to be the Nodal Agency for relocation/rehabilitation of jhuggi jhopri bastis “in respect of the lands belonging to MCD and Delhi Government and its department/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. it stipulated that “the respective agency may either carry out the relocation/rehabilitation themselves as per the policy of the Delhi Government or may entrust the job to the DUSIB.”

175. The proviso to para 2(a) of the Policy states:

“Provided that, the Agencies while doing relocation rehabilitation/in-situ redevelopment of the dwellers of Jhuggi Jhopri Bastis must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of Pradhan Mantri Awas Yojna and provisions which have been notified by the Central Government from time to time”⁵⁹

176. As already noticed, as regards who is eligible for rehabilitation or relocation, the 2015 Policy states that JJ bastis that had come up before 1st January 2006 shall not be removed in terms of the National Capital Territory of Delhi Laws (Special Provisions) Act 2011.



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177. In the brief note submitted by Mr. Kirtiman Singh, counsel for the MoUD, a reference has been made to the affidavit filed by the Central Government (MoUD) on 6th December 2018 and the Office Memorandum dated 20th March 2017 whereby the MoUD conveyed to the DoUD its response to the 2015 Policy inter alia in respect of paras 2(a) and 2(b) as under:

“(i) Para 2(a) (Part-A) Nodal Agency:

This Ministry broadly concurs with provision but the agencies while doing relocation/rehabilitation/in-situ redevelopment of the dwellers of JJ Clusters must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of the Pradhan Mantri Awas Yojna.

(i) Para 2(a)(v) (Part-A) Relocation in rare cases:

This Ministry has no objection to the revised proposal. This provision will come into effect only when the Central Government Land Owning Agency approaches DUSIB for rehabilitation, removal and relocation of Jhuggi Jhopri Basti. However in this case also the provisions which have been notified by Central Government will prevail. This issues with the approval of Hon'ble Union Urban Development Minister.”

XI

The Draft Protocol

178. The Draft Protocol framed by the DUSIB in consultation with all stake-holders, 60 and



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pursuant to the orders of this Court in the present writ petition, sets out the steps to be taken for removal of jhuggis and JJ bastis. It states that “the process of removal/re-settlement/rehabilitation/in-situ improvement/re-development of jhuggis and JJ Bastis in Delhi will be governed by the 2015 Policy. The Land Owning Agency (LOA) is to send a proposal for removal of the jhuggis and JJ bastis to DUSIB sufficiently in advance “with proper justification satisfying the conditions mentioned in the Policy, along with commitment to make payment of the cost of rehabilitation”. DUSIB then examines the proposal with reference to the cutoff date and after an in-principle approval undertakes a joint survey along with the representative(s) of LOA to determine the eligibility of JJ dwellers for rehabilitation as per the 2015 Policy.

179. A detailed procedure has been set out for conducting the joint survey receiving claims and objections which would be disposed of by a Claim and Objection Redressal Committee. The procedure for determination of the eligibility of the JJ dweller to rehabilitation has also been set out. There is to be an Eligibility Determination Committee (EDC) constituted by the CEO of DUSIB which will comprise the officers of DUSIB and representatives of the concerned ERO and AERO (Electoral Registration Officer and Assistant Electoral Registration Officer) as nominated by the District Election Officer (DEO).

180. A detailed programme is to be drawn up by the DUSIB including holding of a pre-camp at the side to facilitate filling up the requisite application form. A schedule is to be permanently



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displayed in the JJ basti mentioning the place and time to appear before the EDC along with the requisite documents. A finalised list of eligible and ineligible JJ dwellers is then to be submitted by the EDC to the CEO DUSIB for approval. If a genuine case is left out, an Appellate Authority is to be provided for to whom such left out person may appeal.

181. Post survey, and after receiving the cost of rehabilitation from the Land Owning Agency (LOA), DUSIB, in the presence of representatives of eligible JJ dwellers, is to conduct a draw of flats to be allotted to the eligible JJ dwellers. After receipt of the beneficiary contribution and verification of possession, letters are to be issued and the JJ dwellers are to be given two months' time for shifting. Thereafter, steps are to be taken for removal with the assistance of the police. Para 7 of the Protocol sets out the steps for actual removal of the jhuggis after the above steps are complete. Inter alia, it talks of DUSIB facilitating "transportation of household articles/belongings of eligible JJ dwellers to the place of alternative accommodation, if necessary."

182. Suitable facilities are to be provided at the site where rehabilitation is to take place, for (i) for admission of the wards of the jhuggi dwellers in the nearby schools (ii) for setting up a dispensary/Mohalla Clinic in the vicinity of the flats (iii) opening a fair price shop/Co-operative store to cater to the basic daily needs of the jhuggi dwellers, if not available in the vicinity. For this purpose, DUSIB is expected to make requests to the Directorates of Education and Health Services of the GNCTD and the MCDs to



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make arrangements. DUSIB is also to request the Delhi Transport Corporation (DTC) to make arrangements for DTC buses. DUSIB is to facilitate the “availability of drinking water and sewerage facilities in the flats to be allotted.” It further states that “the demolition/shifting shall not be carried out during night, Annual Board Examinations or during extreme weather conditions.” Further, “as far as practicable, DUSIB will provide potable water, sanitation and basic health facilities at the site of demolition of the jhuggis.” The steps to be followed post removal of jhuggis are set out in para 8 of the Protocol.

183. The Protocol thus seeks to put into effect the core elements of the 2015 Policy which acknowledge that the right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the other rights to life viz., the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage facilities and transport facilities. The constituent features of the RTTC thus find place in the 2015 Policy.

184. The MoUD has also pointed out that the PMAY which has been referred to in the 2015 Policy also talks of some of the aspects of “in-situ slum redevelopment using land as a resource.” In view of the integration of the PMAY aspects into the 2015 Policy and the Draft Protocol, the Central Government has categorically informed the Court that it has no objection to the rehabilitation Policy notified by the LG by order dated 11th December 2017, “as well as the draft protocol for removal.” With the above stand of



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the Central Government being made categorical, the questions that arose earlier for determination in the order dated 12th October 2018 of this Court have been rendered academic.

185. At this juncture, it requires to be noted that there has been a distinct shift in the approach of the State to the issue of rehabilitation of slum dwellers. The MPD 2021 makes a shift from resettlement to rehabilitation in-situ i.e. at the place where the dwelling is found. The shift is from allotting plots of unreasonably small sizes (12.5 sq.m) to building multi-storey building blocks to house the dwellers in the JJ clusters, based on their eligibility in terms of the policy from time to time.

186. In the present case, since that stage is yet to be reached, the Court is not called upon to comment on the adequacy of such policy in the matter of dealing with the needs of the dwellers in the JJ clusters. As and when such an issue arises it would have to be addressed by the Court. For that reason, the Court is also not commenting on the individual elements of the 2015 Policy or the Draft Protocol which have been responded to by the Petitioners as well as the Respondents.

187. It must be noted that the Petitioners have some reservations to the specific aspects of the Draft Protocol. However, as of now there is no threat of forced eviction of the dwellers of Shakur Basti as all the Respondents, including the Railways, have taken a stand recognising that in terms of the DUSIB Act, the 2015 Policy and the decision in Sudama Singh it is essential to first complete the survey and consult the JJ dwellers.



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Further, under Section 10(1) of the DUSIB Act, read with the 2015 Policy, and even otherwise, unless it is possible for the JJ dwellers to be rehabilitated upon eviction, the eviction itself cannot commence.

188. If no in situ rehabilitation is feasible, then as and when the Respondents are in a position to rehabilitate the eligible dwellers of the JJ basti and jhuggis in Shakur Basti elsewhere, adequate time will be given to such dwellers to make arrangements to move to the relocation site. The Court would not like to second guess the time estimate for such an exercise and, therefore, keeps open the right of the JJ dwellers to seek legal redress at the appropriate stage if the occasion so arises. At that stage, the Court would possibly examine the objections that the JJ dwellers may have to the Protocol. Subject to this, the Court permits DUSIB to operationalise the Protocol.

189. The key elements of the 2015 Policy, which are in conformity with the decisions of the Supreme Court of India discussed in Part VII of this judgment as well as in Sudama Singh, would apply across the board to all bastis and jhuggis across the NCT of Delhi. In other words, conducting a detailed survey prior to the eviction; drawing up a rehabilitation plan in consultation with the dwellers in the JJ bastis and jhuggis; ensuring that upon eviction the dwellers are immediately rehabilitated - will all have to be adhered to prior to an eviction drive. Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be



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contrary to the law explained in all of the above decisions.

xxx

XIII

Concluding observations

xxx

196. Once a JJ basti/cluster is eligible for rehabilitation, the agencies should cease viewing the JJ dwellers therein as ‘illegal encroachers’. The decisions of the Supreme Court of India on the right to shelter and the decision of this Court in Sudama Singh require a Court approached by persons complaining against forced eviction not to view them as ‘encroachers’ and illegal occupants of land, whether public or private, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in the above decisions.”

10. A perusal of the above indicates that the judgment of Ajay Maken (supra) applies only to those clusters which have been identified under the DUSIB Policy. Only such of those persons living in that clusters can be treated as illegal encroachers and they cannot be removed from that location without being rehabilitated in accordance with the DUSIB Policy. The judgment of Ajay Maken (supra) is, therefore, cannot be extended to any or all encroachers on Government lands. This Court has again and again stated that encroachment on government land cannot



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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 fundamental right to be able to get the benefit of rehabilitation policy on the ground that they are encroachers.

11. 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.,* has categorically held that the JJ clusters which did not find mention in the list of clusters identified by the DUSIB are not entitled to the benefit of DUSIB 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



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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."

*12. The aforesaid Judgment has been upheld by a 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.,. Relevant portions of the said Judgment reads 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



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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.

6. The learned senior counsel for the appellants has placed reliance on the judgment of this Court in Ajay Maken (supra). He submits that this Court had observed that one reason for the failure to notify slums was that a notified slum would have to be dealt with only in accordance with the Slum Areas (Improvement and Clearance) Act, 1956 in terms of in-situ rehabilitation, which clearly was not the priority of the State. The Court further held that not only the jhuggi jhopri (hereinafter referred to as „JJ“) cluster and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB are required to be dealt with in terms of the decision in Sudama Singh (supra), but every jhuggi dweller, anywhere in the National Capital Territory of Delhi (hereinafter referred to as „NCTD“), has to be dealt with in terms of the said decision. No slum dweller in the NCTD-in one area, can be treated differently from that in another.

7. Further referring to the order dated 11.12.2017 issued with the approval of the Lieutenant Governor of the NCTD, notifying the Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015 (hereinafter referred to as the „Policy“), he submits that DUSIB is only to act as a nodal agency for relocation/rehabilitation of the JJ bastis. Any of the JJ bastis which have come up before 01.01.2006, cannot be removed without providing them alternative housing.



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8. *The learned senior counsel for the petitioner has further drawn our attention to the „Draft Protocol for Removal of Jhuggis and JJ Bastis in Delhi” (hereinafter referred to as the „Draft Protocol”), to submit that, in compliance with the judgment of this Court in Ajay Maken (supra), the Draft Protocol was framed, clearly providing for a survey to be conducted to determine the existence of JJ basti prior to 01.01.2006 and to determine the eligibility of JJ dwellers for rehabilitation as per the Policy. He submits that in the present case, no such survey has been conducted by the respondent no.1 and/or the respondent no.2 and, therefore, the action of removal of the jhuggis of the appellants is illegal and cannot be allowed.*

9. *On the other hand, the learned counsels for the respondent nos. 1 and 2 submit that the jhuggi cluster, where the jhuggis of the appellants are situated, was not in existence as on 01.01.2006. They submit that pursuant to a survey carried out in 2016, a list of 675 JJ cluster that were in existence as on 01.01.2006, was notified under the provisions of the Act. They submit that, therefore, the appellants are not entitled to rehabilitation and/or any protection from this Court.*

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:-



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(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.



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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



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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. The aforesaid Judgment has been challenged in the Hon'ble Supreme Court by filing a Special Leave Petition, however, the Hon'ble Supreme Court has not interfered with the said Judgment. The said Judgment



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Vaishali (Minor) (supra) has also been followed by this Court in various Judgments.”

18. The Petitioners have themselves claimed to be Jhuggi Jhopri Cluster and have claimed the benefit of resettlement under the DUSIB Act. A perusal of the Judgment of this Court in Sethi Devi (supra) shows that until and unless the Petitioners form a part of the cluster identified by the DUSIB, they are not entitled to resettlement or allotment of alternate land. The claim of the Petitioners for resettlement, therefore, cannot be entertained by this Court. There is nothing on record to show that the land on which the Petitioners are residing is a part of any JJ Cluster identified by the DUSIB.

19. This Court does not find any reason to quash the Notice dated 01.03.2024. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

20. It is always open for the Petitioners to file a Suit to show that they have been lawfully inducted in the premises and that they cannot be dispossessed contrary to law.

SUBRAMONIUM PRASAD, J

JULY 09, 2024

Rahul