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

\+ CONT.CAS(C) 675/2022 & CM APPL. 28638/2022

SAHER ALI ..... Petitioner

Through: Mr. Kamlesh Kr.Mishra, Mr. Bibhuti Bhushan Mishra, Mr. Dipak Raj, Ms. Renu, Mr. Prem Shankar Jha, Mr. Gulshan Mishra, Mr. Aditya, Ms. Tripti Juyal & Ms. Shivani, Advs.
M: 9582388509

versus

SH. MANISH KUMAR GUPTA AND ORS. ..... Respondents

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\+ W.P.(C) 4227/2016 & CM APPL. 27157/2018

MD. SAHER ALI & ORS. ..... Petitioners

Through: Mr. Kamlesh Kr.Mishra, Mr. Bibhuti Bhushan Mishra, Mr. Dipak Raj, Ms. Renu, Mr. P. Shankar Jha, Mr. Gulshan Mishra, Mr. Aditya, Ms.

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Tripti Juyal & Ms. Shivani, Advs.
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versus

DELHI DEVELOPMENT AUTHORITY & ORS. ..... Respondents

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\+ W.P.(C) 10900/2019, CM APPL. 45089/2019, CM APPL. 520/2020 & CM APPL. 6857/2021

YAMUNA KHADAR SLUM UNION ..... Petitioner

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versus

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\+ W.P.(C) 10918/2019 & CM APPL. 45133/2019

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Through: Mr. Kamlesh Kr.Mishra, Mr. Bibhuti Bhushan Mishra, Mr. Dipak Raj, Ms. Renu, Mr. P. Shankar Jha, Mr. Gulshan Mishra, Mr. Aditya, Ms. Tripti Juyal & Ms. Shivani, Advs.
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+ W.P.(C) 12504/2019, CM APPL. 51055/2019, CM APPL. 54258-54259/2023 & CM APPL. 2435/2024

RAJBIR SINGH AND ORS. ..... Petitioners

Through: Mr. Kamlesh Kr.Mishra, Mr. Bibhuti Bhushan Mishra, Mr. Dipak Raj, Ms. Renu, Mr. P. Shankar Jha, Mr. Gulshan Mishra, Mr. Aditya, Ms. Tripti Juyal & Ms. Shivani, Advs. M: 9582388509

versus

DELHI DEVELOPMENT AUTHORITY & ORS. ..... Respondents

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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
02.07.2024

MINI PUSHKARNA, J:

INTRODUCTION

1. All the present matters pertain to the action of the Delhi Development Authority ("DDA") for demolition of the jhuggis/temporary structures, existing on different areas of Yamuna Flood Plain. The petitioners have *inter-alia* prayed for restraining the DDA from further demolition of the temporary structures in question, conduct survey of the respective areas, and rehabilitate the petitioners.

FACTS & SUBMISSIONS IN W.P.(C) 4227/2016; W.P.(C) 10918/2019; W.P.(C) 12504/2019 & CONT.CAS(C) 675/2022

2. Since the petitioners in the aforesaid matters have been represented by one counsel, who made common submissions, the present matters are being taken up together.

FACTS IN W.P.(C) 4227/2016

2.1 The present case pertains to the Jhuggi Jhopri Cluster ("JJ Cluster") situated at Behlolpur, Khadar Gyaspur, near Power House, Shani Mandir, Delhi.

2.2 It is the case of the petitioners that the aforesaid JJ Cluster has approximately 200 households, who have been residing in the area since the year 1990.

2.3 In the year 2016, some officials of the respondent-DDA along with

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police officials, came along with bulldozers to demolish the dwelling units of the slum situated in the aforesaid area. However, the same was stopped due to the persistent peaceful protest of the residents. Subsequently, the present petition came to be filed on the ground that the said demolition drive by the DDA was not in consonance with the law and was infact in contravention of the decision in the case of ***Sudama Singh and Others Versus Government of Delhi and Another***, ***2010 SCC OnLine Del 612***.

2.4 Vide order dated 18th May, 2016, this Court had directed the officers of the DDA to visit and carry out inspection of the said JJ Cluster. Pursuant thereto, an inspection was carried out by the DDA and a Status Report in that regard was filed, wherein, it was stated that approximately hundred jhuggis existed in the said area.

FACTS IN W.P.(C) 10918/2019

3.1 The present case pertains to three night shelter homes situated at Nangli Chilla Khadar Village, Mayur Vihar, New Delhi, details of which, are as follows:

Location	*NS Code*	*Group*
at Nangli Khadar, Near Ramchirtra Manas Temple Near Mayur Vihar	*118*	*Cluster 12*
Opp. Mayur Vihar Metro Station Yamuna Khadar	*142*	*Cluster 12*
Nangli Chilla Khadar Village, Near Mayur Vihar	*150*	*Cluster 12*

3.2 It is the case of the petitioners that they are homeless and were dwelling in the night shelters and jhuggis in the aforesaid area. Three homeless night shelter homes were made at Nangli Khadar, near Ramchirtra Manas Temple, near Mayur Vihar, by the Delhi Urban Shelter Improvement

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Board ("DUSIB"). However, the said night shelters have been demolished, in the most cruel manner.

3.3 There were more than two hundred persons, who were regularly taking shelter in the abovementioned night shelters. The jhuggis of the slum dwellers residing at Mayur Vihar, were demolished on 10th October, 2019, without having been given any alternative shelter. Thus, the said slum dwellers moved to the night shelters at Mayur Vihar. However, the said night shelters are also sought to be demolished in an illegal manner. Thus, the present petition has come to be filed, praying for staying the further ongoing demolition activity at the shelter homes, as aforesaid. There is further prayer to conduct survey and rehabilitation of the petitioners.

FACTS IN W.P.(C) 12504/2019

4.1 The present petition pertains to the slum cluster, called T-Huts, Gyaspur Colony, Sarai Kale Khan, Hazrat Nizammudin, South Delhi-110013.

4.2 Demolition of jhuggis is stated to have been carried out on 15th November, 2019. Further demolition action was slated for 29th November, 2019, wherein, approximately 1500 jhuggis were proposed to be demolished. Thus, the present petition came to be filed, with prayer for restraining the respondents from any further demolition in the said area. There is further prayer to conduct survey and *in-situ* rehabilitation of the petitioners.

FACTS IN CONT.CAS(C) 675/2022

5.1 The present petition has been filed alleging willful disobedience of the order dated 14th October, 2019 passed in *W.P. (C) No. 4227/2016*, whereby, the DDA was directed to conduct survey and relocate the petitioners.

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5.2 The present petition concerns the slum dwellers of Jhuggi Jhopri Cluster ("JJ Cluster"), situated at Behlolpur, Khadar Gyaspur, near Power House, Shani Mandir, New Delhi.

5.3 By order dated 14th October, 2019, directions had been issued to the DDA to carry out a survey and devise ways for relocating the petitioners-slum dwellers, in the following manner:-

> *"xxx xxx xxx*
>
> *2 The subject hutments where the petitioners (i.e. slum dwellers) reside obtains on land, owned by the DDA.*
>
> *3 In these circumstances, the DDA will carry out a survey and devise ways and means of relocating the petitioners and those similarly placed within the quickest possible time.*
>
> *4 Mr. Bansal says that there is no policy for relocating the petitioners and therefore, they cannot be relocated.*
>
> *5 I tend to disagree with this submission of Mr. Bansal. There are at least two judgments which state to the contrary i.e. (i) Sudama Singh v. Govt. of Delhi (2010) SCC Online Del 612 and Ajay Maken Vs Union of lndia, (2019) SCC OnLine Del 7618.*
>
> *xxx xxx xxx "*

5.4 DDA filed an appeal being *LPA No. 720/2019*, challenging the aforesaid order dated 14th October, 2019. Vide order dated 27th April, 2022, the said appeal was disposed of, by recording statement of the DDA that it does not wish to pursue the said appeal and would argue the matter finally in the writ proceedings. The order dated 27th April, 2022, reads as under:-

> *"The learned counsel for the appellant submits that the writ petition, out of which the present appeal arise, is listed for hearing before the learned Single Judge on 24.08.2022. The appellant does not wish to pursue the present appeal and would argue the matter finally before the learned Single Judge, and at the same time, the appellant shall reserve its rights and contentions.*
>
> *The appeal is disposed of in the above terms.*

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Neither party shall seek nor be granted any adjournment and the learned Single Judge shall make an endeavour to proceed with the matter."

5.5 As per the averments made in the petition, the petitioners were told by the authorities that their jhuggies may be demolished any time after 18th June, 2022. Thus, a contempt notice was sent by the petitioners to the DDA. Subsequently, on 21st June, 2022, the DDA officials and police officials visited and threatened the petitioners that their jhuggies would be demolished on 23rd June, 2022 or immediately thereafter. Thus, the present petition has been filed stating that the action of the DDA is in complete contravention to the judgment dated 18th March, 2019, titled as ***Ajay Maken and Others Versus Union of India and Others***, ***2019 SCC OnLine Del 7618***, wherein, directions were given to the authorities to follow certain procedures, before eviction of the slums in Delhi. Further, the said action proposed to be taken by the DDA is in contempt of the order dated 14th October, 2019 passed in *W.P. (C) No. 4227/2016*.

SUBMISSIONS ON BEHALF OF THE PETITIONERS in W.P.(C) 4227/2016; W.P.(C) 10918/2019; W.P.(C) 12504/2019 & CONT.CAS(C) 675/2022

6. On behalf of the petitioners, it is submitted as follows:

6.1 The Status Report filed by the DDA pursuant to order dated 18th May, 2016 passed by this Court, clearly states that there were approximately hundred jhuggis in the said area. However, there are more than two hundred jhuggis of the slum dwellers existing on the site and the same had been in existence, prior to 1990s.

6.2 The aforesaid JJ Cluster is not in the River Bed of River Yamuna, as the jhuggis of the petitioners are situated hundreds of meters away from the

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River Yamuna.

6.3 The petitioners are entitled to protection under Article 21 of the Constitution of India ("The Constitution") and the petitioners cannot be deprived of their habitation, except according to procedure established by law. Further, as per Article 19(1)(e) of the Constitution, all citizens have a right to reside, and settle in any part of the territory of India.

6.4 In view of the aforesaid Constitutional Provisions, the petitioners can only be removed under the statutory provisions, if not, then, under the provision of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("PP Act").

6.5 The DDA can only act in terms of its legislative mandate and can take adverse action against the petitioners only in terms of the statutory powers given to it, as available under Section 30 of the Delhi Development Act, 1957 ("DDA Act").

6.6 The petitioners are entitled to rehabilitation under the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 ("Rehabilitation Policy"). As per the said policy, JJ Clusters, which have come up before 01st January, 2006, shall not be removed without providing them alternate housing. Likewise, jhuggis which have come up in such JJ Clusters, before 14th February, 2015, shall not be demolished without providing alternate housing.

6.7 The Master Plan for Delhi-2021 ("MPD-2021") has established a statutory relief for slum and JJ Clusters. Among the strategies outlined in MPD-2021, one key approach involves relocation of jhuggi dwellers, when the land on which their settlements exist, is needed for a public purpose. Reliance is placed on Clause 4.2.3 and 4.2.3.1 of the MPD-2021.

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6.8 The various slum dwellers of Mayur Vihar have proof of their residence in the area for the last many years, and are also covered by the judgment in the case of ***Sudama Singh (supra)***. The petitioners are eligible for rehabilitation in terms of the Rehabilitation Policy of the Delhi Government and also the *Pradhan Mantri Awas Yojna*.

6.9 The demolition of the jhuggis of the petitioners is contrary to the policy as well as the judicial pronouncements, as the same was done without conducting any survey.

6.10 The petitioners have Right to Shelter, Right to Education, Right to Health and Right to Livelihood, which have been affected on account of demolition of their jhuggis unlawfully.

6.11 The Slum Dwellers of T-Huts, Gyaspur Colony, Sarai Kale Khan, Hazrat Nizammudin, South Delhi-110013, have been residing peacefully for the past many years, since 1985. The residents include more than 200 families, indulging women, school going children and senior citizens, among the population living there.

6.12 The residents are in possession of various proofs of residence and identity, including Ration Cards, Election ID Cards, Aadhar Cards, BPL ("Below Poverty Line") Cards, etc.

6.13 No survey of the said area has been carried out, as required by the judgment in the case of ***Ajay Maken (Supra)***. The land is not required for any public purpose. Hence, the demolition is illegal.

6.14 The Supreme Court in the case of ***Ahmedabad Municipal Corporation Versus Nawab Khan Gulab Khan and Others***, ***(1997) 11 SCC 121***, has dealt with the issue of Right to Shelter for the urban poor.

6.15 When the Government proposes to evict residents from land, in order

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to respect the rights of the residents and fulfill the obligations of the Government, proper procedures must be followed.

6.16 The proposed evictions and demolitions would be completely against the "*Rajiv Awas Yojana Scheme*" as envisaged by the Government of India. The Right to Residence and Settlement is a fundamental right under Article 19(1)(e) and it is a facet of meaningful Right to Life under Article 21 of the Constitution of India.

6.17 The respondents in *CONT.CAS(C) 675/2022* have threatened the slum dwellers with forceful eviction, in contravention of the orders passed by this Court. It is the duty of the State to provide Right to Shelter to the poor and indigent weaker sections of the society. The respondents have committed wilful and contumacious violation and disobedience of the order dated 14th October, 2019 passed in *W.P. (C) No. 4227/2016*.

6.18 Learned counsel appearing for the petitioners relies upon the judgment in the case of ***Sudama Singh (Supra)*** and relies upon Paras 55 and 62 of the said judgment, to submit that it has categorically been recorded that MPD-2021, clearly identifies the re-location of slum dwellers, as one of the priorities of the Government. Spaces have been earmarked for housing of the Economically Weaker Sections. It is submitted that as per the directions in the said case, petitioners are entitled to be considered for re-location.

6.19 Learned counsel for the petitioners also relies upon the Rehabilitation Policy of the DUSIB to submit that petitioners are eligible for rehabilitation. It is further submitted that as per the said policy of rehabilitation, demolition of any JJ Cluster, which is eligible for re-location, shall not be undertaken, unless the encroached land is required by the Land Owning Agency for

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specific public project. In case of demolition, necessary steps for re-location of the slum dwellers, has to be taken.

6.20 Learned counsel relies upon Draft Protocol for Removal of Jhuggis and JJ Bastis in Delhi issued by the DUSIB dated 14th June, 2016. It is submitted that the said Protocol has to be followed by all the agencies uniformly in the event of any action for removal of jhuggis and JJ Bastis in Delhi. There are certain steps which have been stated in the said Draft Protocol, which are required to be followed prior to removal of jhuggis and JJ Bastis.

6.21 Thus, even if petitioners are to be removed, the DDA will have to follow the Draft Protocol and take steps for rehabilitation of the petitioners.

6.22 The cases of the petitioners have to be considered in a humane manner. There are more than 100 jhuggis existing in each of the JJ Cluster, in question, while the minimum limit as per the Rehabilitation Policy is 50 jhuggis. Therefore, the petitioners are entitled for rehabilitation.

6.23 The various slums have come up in connivance with the various officials of the DDA, and have been existing since 1990 or even prior to that. The petitioners render various kinds of services in domestic households and work as drivers, maids etc. in the nearby households.

6.24 The Ministry of Housing and Urban Poverty Alleviation, Government of India, has envisaged the Scheme of "*Pradhan Mantri Awas Yojana*", which is a scheme to provide the slum dwellers with basic civic amenities, as also to give them land rights on the same place, where their slums exist, under the *in-situ* rehabilitation.

6.25 The list of identified slum and JJ Clusters, as available on the DUSIB website, cannot be accepted, as no opportunity was given to anyone to

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submit objections to the survey carried out by the respondents. No details are available in public domain as to what was the procedure adopted for survey of Slum and JJ Clusters, when was such survey carried, and when were the Slum and JJ Clusters notified.

6.26 The order dated 14th October, 2019 passed in *W.P. (C) No. 4227/2016,* was not an interim order, but a final order. Therefore, the respondents are obliged to carry out survey of the area, in compliance to the directions passed in the aforesaid order. No proper exercise of survey has been conducted by the respondents. The directions as issued in the case of ***Ajay Maken (supra)***, are binding directions, which have to be strictly followed. Therefore, the petitioners are entitled to rehabilitation by the respondents and the requisite survey, in this regard, ought to be done by the respondents.

6.27 Learned counsel for the petitioners has relied upon the following judgments:-

(i) ***Sudama Singh & Ors. Versus Government of Delhi & Anr.***, ***2010 SCC OnLine Del 612***.

(ii) ***Ajay Maken & Ors. Versus Union of India & Ors.***, ***2019 SCC OnLine Del 7618.***

(iii) ***Bandhua Mukti Morcha Versus Union of India & Ors., (1984) 3 SCC 161.***

(iv) ***Chameli Singh & Ors. Versus State of U.P. & Anr., (1996) 2 SCC 549.***

(v) ***Olga Tellis & Ors. Versus Bombay Municipal Corporation & Ors.***, ***(1985) 3 SCC 545.***

(vi) ***N.D Jayal & Anr. Versus Union of India & Ors., (2004) 9 SCC 362.***

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FACTS IN W.P.(C) 10900/2019

7.1 The present case pertains to slum dwellers of YK Jhuggi Camp, Yamuna Khadar, Chilla Village, Phase-1, Mayur Vihar, Delhi-110091.

7.2 As per the averments made in the petition, the JJ Cluster at the aforesaid site came into existence in the 1970s. This slum settlement came to house more than two thousand households and 12,000 residents.

7.3 On 09th October, 2019, the DDA started conducting demolition in the aforesaid area, without any prior notice and arrangement for rehabilitation. About 500 houses were demolished. Thus, the present petition came to be filed with prayer for staying further demolition action and for reconstruction of the jhuggis in the said area. There is further prayer for conducting survey of the area and rehabilitating the petitioners, in terms of the *Mukhyamantri Awas Yojana* and the Rehabilitation Policy.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

8.1 Learned counsel appearing for the petitioners submits that the residents of the area sent several representations to the DUSIB, requesting to add the petitioners' Basti, to the list for survey as per the Rehabilitation Policy of the DUSIB. However, unfortunately DUSIB replied that DDA had asked it to put on hold the survey in respect of the JJ Cluster existing on DDA and Central Government land. Despite the willingness of DUSIB to conduct the survey of the JJ Cluster of the petitioners, the DDA asked the DUSIB not to conduct the survey.

8.2 Learned counsel relies upon letter dated 07th November, 2019 issued by the DUSIB, wherein, it is stated that in view of a letter received from the Commissioner (Housing), DDA, survey in respect of JJ Clusters existing on DDA and Central Government land be put on hold.

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8.3 Learned counsel also relies upon an undated letter issued by Member Expert, DUSIB to submit that DUSIB was ready to conduct survey of the land in question, i.e., Yamuna Khadar, Chilla Khadar, Phase-1, Mayur Vihar, Delhi. However, DDA denied to conduct, the survey of the area.

8.4 No survey has been conducted of their area, on account of which, the said slum cluster, has not been included in the list of slum and JJ Clusters identified by the DUSIB. Thus, the jhuggi dwellers in question have not been identified, for want of survey.

8.5 The petitioners are not claiming any right to continue to occupy the area in question, but are only seeking their rehabilitation. The Slum and JJ Cluster of the petitioners is not a notified cluster, as the DDA and the DUSIB did not survey the land in question. The petitioners had been proactively making request to include their JJ Cluster as part of a notified cluster, and start the process of survey, so that it could be assessed, as to who all were eligible for rehabilitation.

8.6 The documents of the petitioners-Jhuggi dwellers, show they have been residing at the camp before 01st January, 2006 and 01st January, 2015, which are the mandated cut-off dates under the DUSIB policy, which has been adopted by the DDA.

8.7 The petitioners have also filed the documents with the list of residents of more than 1500 families showing proof of residence, possessing documents from the year 1995 to till date, which shows their continued existence on the site in question.

8.8 The slum dwellers of the petitioner-union are eligible for survey and rehabilitation by the DDA. This Court in the case of ***Sudama Singh (Supra)***, has held that denial of benefits of rehabilitation, violates Right to

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Shelter guaranteed under Article 21 of the Constitution. Removal of jhuggis without ensuring relocation, would amount to gross violation of their fundamental rights.

8.9 The policy of rehabilitation, which is in conformity with the decisions of the Supreme Court in the case of ***Ajay Maken (Supra)*** and ***Sudama Singh (Supra),*** would apply across the board to all the JJ Clusters and Jhuggis, across Delhi.

8.10 The DUSIB in its reply dated 20th April, 2022 to an application under the Right to Information Act, 2005 ("RTI Act"), has stated that it has not notified even a single cluster as per the provisions of the DUSIB Act, 2010. Hence, there is not a single notified cluster in Delhi. The figure of 675 slums, on the website of DUSIB is misleading. The list of 675 clusters, as shown on the DUSIB website, is a list of identified clusters, and not notified clusters. Thus, there is no notified cluster in Delhi.

8.11 Admittedly, the Delhi Government conducted a survey of slums and JJ colonies in the year 2014. About 6343 slums, with approximately 10.20 lakhs households, were estimated to be in existence, in urban Delhi in 2012.

8.12 The poor residents of the aforesaid slum cluster seek only the right to Rehabilitation. The DDA can provide relocation to the eligible residents, as Right to Shelter is an inherent right under Article 21 of the Constitution.

8.13 This Court by its order dated 14th October, 2019 in *W.P. (C) No. 4227/2016*, had directed to conduct survey in the said area. However, the survey has not been conducted.

8.14 The petitioners are entitled for rehabilitation under the DUSIB Policy of Rehabilitation. Alternatively, the petitioners can also be rehabilitated under the *Pradhan Mantri Awas Yojna*. It is the DDA which is the

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implementing agency under the said Scheme.

8.15 It is not the fault of the petitioners that their area has not been surveyed by the respondents. Verification process ought to be undertaken by the respondents for the purposes of identifying the eligible persons who can be rehabilitated. The petitioners are poor persons who are migrant workers, factory workers, domestic workers, etc., who have been staying in the area in question for more than 20-30 years.

8.16 The petition has been filed in a representative capacity. The petitioner may be an unregistered union, however, there is no law that an unregistered union/society, cannot agitate a cause for its members.

8.17 The petitioner-union had submitted a representation with the DDA for conduct of survey of its area, however, to no avail. Thus, the respondents ought to be directed to do the survey in the area, so that the petitioners can take benefit of the Policy of the Government with respect to rehabilitation.

8.18 The Supreme Court is also seized of the matter pertaining to the issue regarding the rehabilitation of dwellers of un-notified slums, which have been occupied prior to the cut-off date in 2015, as envisaged in the Rehabilitation Policy. Learned counsel appearing for the petitioners has handed over copy of order dated 17th August, 2022 passed by Supreme Court in *Special Leave to Appeal (C) No. 14342/2022*, ***Shakarpur Slum Union Versus Delhi Development Authority & Others***.

8.19 Learned counsel appearing for the petitioners has relied upon the following judgments:-

(i) ***Olga Tellis & Ors. Versus Bombay Municipal Corporation & Ors.***, ***(1985) 3 SCC 545***.

(ii) **M/s *Shantistar Builders Versus N.K. Totame and Ors.*, *(1990) 1***

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SCC 520.

(iii) ***Chameli Singh & Ors. Versus State of U.P. and Anr.***, ***(1996) 2 SCC 549***.

(iv) ***Ahmedabad Municipal Corporation Versus Nawab Khan Gulab Khan & Ors.***, ***(1997) 11 SCC 121***.

(v) ***P.G. Gupta Versus State of Gujarat & Ors.***, ***1995 Supp (2) SCC 182***.

(vi) ***Sudama Singh & Ors. Versus Government of Delhi & Anr.***, ***2010 SCC OnLine Del 612.***

(vii) ***Ajay Maken & Ors. Versus Union of India and Others***, ***2019 SCC OnLine Del 7618.***

SUBMISSIONS ON BEHALF OF RESPONDENT/DELHI DEVELOPMENT AUTHORITY in W.P. (C) No. 4227/2016 & CONT.CAS(C) 675/2022

9.1 The petitioners have *inter-alia* sought directions to undertake a survey of the petitioners and other residents of the slums of Behlolpur Khadar, Gyaspur, near Power House, Shani Mandir, Delhi and rehabilitate them. However, Status Report dated 13th June, 2016 filed by the DDA for the site in question, records that the said site near Shani Mandir falls in Village Kilokri and not Behlopur Khadar. The petitioners are attempting to combine two entirely different settlements which are at a considerable distance from each other, only to try and fall within the legal definition of 'JJ Basti'.

9.2 The site in question falls in Khasra No. 504, Village Kilokri, which was acquired by the DDA vide Award No. 14/92-93. The physical possession of the land was taken by the Land & Building Department of Government of NCT of Delhi ("GNCTD") and handed over to the DDA on 27th December, 1990. Further, the land was placed at the disposal of the

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DDA vide notification dated 09th September, 1993 under Section 22(1) of the DDA Act. Therefore, no right to sue, whatsoever, arises in favour of the petitioners, as they are rank encroachers on Government land.

9.3 There are scattered jhuggis in the area and no slum cluster as such, as claimed by the petitioners.

9.4 Petitioners have miserably failed to show their alleged possession of the site in question prior to 01st January, 2006. Evidence in the form of satellite photographs/google map images show that the jhuggis have not been in existence, since 1995, as alleged. The petitioners have failed to present any proof to substantiate their claim of possession of the site in question for over two decades.

9.5 The Memo of Parties shows three petitioners, from two family units. However, in the petition, it has been alleged that 500 jhuggis were sought to be demolished by the DDA. The list of residents, attached as *Annexure-P1*, is without any jhuggi numbers. Besides, most of the persons are from the same family, with no specific jhuggi number shown against their names.

9.6 Though list of 269 persons has been attached along with the petition, however, documents of only 10 persons have been attached. Even during the pendency of the present petition, no documents were shown by the petitioners.

9.7 Vide order dated 12th July, 2018, petitioners were directed to file affidavits of individuals, who are similarly placed, and join the petitioners in the present petition, since the petition was filed in a representative capacity. Pursuant to that only 22 affidavits, out of list of 269 persons, have been filed.

9.8 The persons, whose documents have been filed as *Annexure-P2*, have

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not even filed their affidavits. The documents of persons residing in other slum clusters have been placed on record, in the present petition. The said other persons had filed other petitions, and have already lost their individual cases for rehabilitation. Thus, documents of such persons have been filed, who have already been denied relief in other cases for rehabilitation.

9.9 Attention of this Court has been drawn to the google map to show that there is no existing slum cluster at the site in question. Further, at the time of inspection of the area, no residential houses were found. There were only temporary sheds found existing in the area at the time of inspection, which were being used for carrying out commercial activities. Thus, there was only temporary occupation at the site in question, for carrying out commercial activities and no settled possession was found, as evident from the photographs filed by the DDA during the inspection.

9.10 The distance of the site from the Yamuna River is only approximately 600 meters. Floods come in the area every year, so there cannot be any settled possession.

9.11 The area is to be developed as Biodiversity Park, for betterment of the city.

9.12 Following the judgment in the case of ***Sudama Singh (Supra)***, 675 clusters were identified by the DUSIB for rehabilitation. However, the site in question is not part of the said list of identified clusters.

9.13 There is no case of any contempt having been committed by the respondents, as the order dated 14th October, 2019 passed in *W.P. (C) No. 4227/2016*, was only an interim order, when even the pleadings in the matter were not complete. The interim order cannot override any final order, to be passed by this Court. Thus, in the absence of any pleadings, an interim order

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cannot be considered as a final order.

9.14 The site is located on Yamuna floodplains, which ought to be protected. No encroachment or construction of any kind is allowed by the DDA in the said area. Thus, regular/periodical inspections and demolition drives are conducted by the DDA to maintain the natural ecology of the Yamuna floodplains.

SUBMISSIONS ON BEHALF OF RESPONDENT/DELHI DEVELOPMENT AUTHORITY IN W.P.(C) No. 10918/2019

10.1 The main allegation in the present writ petition is that the respondent no. 1/DDA had demolished a DUSIB shelter at Nangli Chilla Khadar Village, Mayur Vihar, Delhi. It is submitted that the DDA has not carried out demolition of any DUSIB shelter in the said area.

10.2 Moreover, the DUSIB has not raised any objection about the alleged demolition of its night shelter, which shows the falsity of the case put up by the petitioners.

10.3 The present petition has been filed on behalf of five petitioners. However, affidavit of only one petitioner has been filed.

10.4 The petitioners have concealed the fact that they are squatting on the Yamuna floodplains and carrying out commercial activity, thereby polluting River Yamuna.

10.5 Petitioners are not entitled to any protection or rehabilitation, as they do not reside in a cluster forming part of the list of 675 identified JJ Clusters, released by the DUSIB. The DUSIB had carried out an extensive and comprehensive survey of the entire city, pursuant to the directions given by this Court. It is now settled law that, JJ Clusters which have not been identified by the DUSIB, are not entitled to protection under DUSIB Policy

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of Rehabilitation.

10.6 As per DUSIB Act as well as Rehabilitation Policy, every JJ dweller and JJ Basti/Cluster, is not automatically entitled to alternate housing and/or *in-situ* rehabilitation. They are also not entitled to seek survey as a matter of right.

10.7 The area in question is located on the land in Village Chak Chilla, which was acquired by DDA vide Award dated 09th June, 1992, for public purpose, namely, Planned Development of Delhi. The possession of the land lies with the DDA, and petitioners and other residents, are illegal encroachers on the subject land.

10.8 The DDA is in the process of taking action with respect to various public projects on the Yamuna floodplains. A Biodiversity Park, namely Mayur Nature Park, is to be developed at the site in question, the development of which is hindered due to the pendency of the petition.

10.9 Regular inspection of the area is done, and, if any illegal encroachment is found, the same is removed.

SUBMISSIONS ON BEHALF OF RESPONDENT/DELHI DEVELOPMENT AUTHORITY IN W.P.(C) No. 12504/2019

11.1 The present matter has become infructuous, as on 17th October, 2023, pursuant to Public Notice dated 11th October, 2023, demolition drive in the area stood completed on 17th October, 2023. The DDA has removed the encroachments and has taken possession of the public land i.e., T-Huts, Gyaspur Colony, Sarai Kale Khan, Hazrat Nizammudin, South Delhi-110013. The present petition was filed in the year 2019, whereas, the *status quo* order was passed by this Court only on 18th October, 2023, before which, demolition action had already been taken by the DDA.

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11.2 The claim of similarly situated residents of Gyaspur Colony, Sarai Kale Khan, has already been rejected by this Court in the case of ***Urmila and Others Versus DDA & Ors., 2022 SCC OnLine Del 2356***.

11.3 The alleged JJ Cluster does not form part of JJ Cluster, as identified by the DUSIB. Thus, the said alleged Cluster was not in existence prior to 2006, which disentitles its residents for *in-situ* rehabilitation or alternate housing as per the Rehabilitation Policy.

11.4 The Clusters of the alleged Gyaspur Colony were situated on Yamuna floodplains. Thus, they were removed for restoring the ecosystem of the Yamuna floodplains.

11.5 Under the garb of *status quo* order dated 18th October, 2023 passed by this Court, attempts are being made to re-encroach and to construct fresh structures at site. The petitioners had made mis-representations and stated incorrect facts before this Court, which led to passing of order dated 18th October, 2023.

11.6 Though the petitioners have claimed that there were 200 families residing at Gyaspur Colony, Sarai Kale Khan for the last 20 years, however, the present petition has been filed only on behalf of five petitioners. The residential address has been given only for 48 persons. Even in the list of 48 addresses, the address locality varies in the range of approximately 15 sq. kms.

11.7 Despite claiming that petitioners have proofs of residence for last 20 years, only four persons have given their address proofs. The four persons, who have given their address proofs, have furnished Aadhar Card as proof of residence, which was introduced in the country only in the year 2010.

11.8 Petitioners were occupying land on Yamuna floodplains and carrying

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out commercial and agricultural activities, as well as rearing livestock, and polluting the Yamuna River.

11.9 Attention of this Court has been drawn to the satellite photos of the year 2010 that have been filed by the DDA, to show that there was no cluster existing on the land in question.

SUBMISSIONS ON BEHALF OF RESPONDENT/DELHI DEVELOPMENT AUTHORITY IN W.P.(C) No. 10900/2019

12.1 Petitioner-union has no locus to file the present petition, since there is no averment as to whether the petitioner is a society, trust, firm/corporation or any other incorporated body. Thus, the present petition is not maintainable.

12.2 Petitioners have concealed that their Basti is located on the Yamuna floodplains. Furthermore, commercial activities are being carried out at the site, resulting in pollution of River Yamuna.

12.3 The JJ Cluster in question is not in the list of 675 identified JJ Clusters released by the DUSIB, which are entitled to rehabilitation. Thus, these Bastis, which are not identified by the DUSIB, are not entitled to protection under the DUSIB Policy of Rehabilitation.

12.4 The JJ Cluster in question is located on the land in Village Chak Chilla, which was acquired by the DDA vide Award dated 09th June, 1992, for Planned Development of Delhi. Therefore, any possession by the petitioners or other residents, is illegal, as the land vests with the DDA.

12.5 A Biodiversity Park, namely, Mayur Nature Park, is to be developed at the site in question. Further, regular inspections of the Yamuna floodplains, are carried out by the DDA, and encroachment in the form of temporary jhuggis/thatch huts, are removed regularly.

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COMPREHENSIVE SUBMISSIONS ON BEHALF OF RESPONDENT/DELHI URBAN SHELTER IMPROVEMENT BOARD

13.1 The clusters in question, do not find their name in the Master list of the 675 identified JJ Clusters, as compiled by the DUSIB. As such, the petitioners are neither entitled to any protection nor to any rehabilitation.

13.2 There exists no binding obligation upon DUSIB to carry out relocation, as the clusters exist on land belonging to Central Government and its agencies. Section 10(3) of the DUSIB Act takes away the jurisdiction of DUSIB to carry out rehabilitation in respect of jhuggis belonging to Central Government and/or its agencies. Needless to say, DDA is an agency of the Central Government.

13.3 From the documents on record, it is clear that many of the petitioners are carrying out commercial activities. All these relevant facts have been concealed by the petitioners from this Court.

13.4 DUSIB has no role in the present petitions, as the subject area is not part of any identified JJ Cluster. Even otherwise, DUSIB is not in a position to carry out any rehabilitation, since it does not have any rehabilitation units available at its disposal for allotment to eligible dwellers.

13.5 The petitioners are only trying to attempt revaluation of the list of 675 identified JJ Clusters, which cannot be allowed.

13.6 Letter relied upon by the petitioners written by a member of DUSIB, stating that the DUSIB was ready to carry out survey of the area in question, is totally misplaced, as the said letter has been issued by a non-official member, who was not an authorized person to issue the said letter. Therefore, the said letter will not provide any benefit to the petitioners.

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13.7 On behalf of the DUSIB, following judgments have been relied upon:-

(i) ***Vaishali (Minor)(Through Next Friend Mrs. Sita Devi) & Ors. Versus Union of India & Ors., Order dated 11th April, 2022 in W.P.(C) 5941 of 2022.***

(ii) ***Vaishali (Minor) Through Next Friend & Ors. Versus Union of India & Ors., Order dated 19th April, 2022 in LPA 271/2022.***

(iii) ***Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. Versus Union of India & Ors., Order dated 02nd May, 2023 in SLP No. 9300/2023.***

(iv) ***Shakarpur Slum Union Versus DDA & Ors., 2022 SCC Online Del 2336.***

(v) ***Shobha Dikshit Versus DUSIB & Ors., MANU/DE/1445/2023.***

(vi) ***Bela Estate Mazdoor Basti Samiti Versus Delhi Urban Shelter Improvement Board & Ors., MANU/DE/2084/2023.***

(vii) ***Randheer and Ors. Versus Commissioner of Police & Ors., MANU/DE/1893/2023.***

(viii) ***Urmila & Ors. Versus DDA and Ors., 2022 SCC Online Del 2356.***

(ix) ***Manoj Kumar and Ors. Versus Delhi Urban Shelter Improvement Board and Ors., Order dated 19th October, 2022 in W.P.(C) 14781/2022.***

(x) ***Manoj Kumar and Ors. Versus Delhi Urban Shelter Improvement Board and Ors., Judgment dated 21st February, 2023 in LPA 71/2023.***

FINDINGS AND ANALYSIS:

14. I have heard learned counsels for the parties and have perused the record.

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15. At the outset, this Court notes that it has been the consistent stand of the DDA that the lands in question stand acquired by the DDA and ownership vests in the DDA. The alleged JJ Clusters are on the Yamuna Riverbed/Floodplains and constitute encroachment on public land. Further, the petitioners have been carrying out commercial activities and agricultural activities, along with livestock rearing. The encroachment by the petitioners has a direct adverse impact on the river's morphology and ecology.

16. This Court notes that in its affidavit filed in *W.P. (C) 4227/2016*, the DDA has categorically stated, as follows:-

> *"xxx xxx xxx*
>
> *6. It is submitted that the* ***subject land falling in khasra No. 504 of Village Kilokri which was acquired vide Award No.14/92-93, the physical possession was taken by LAC/L&B of GNCTD and handed over to DDA on 27-12-1990. The land in question was also placed at the disposal of DDA vide Notification No. F9(15)/91/L&B dated 09-09-1993 under Section 22(1) of the Delhi Development Act, 1957. Therefore, no right to sue whatsoever arises in favour of the petitioners as they are rank encroachers on Government land****. True Copy of the award and possession proceedings are annexed herewith as* ***Annexure R-1 (Colly).*** *Copy of the said Notification No. F9(15)/91/L&B dated 09-09-1993 is annexed herewith as* ***Annexure R2.***
>
> *7. It is further submitted that the Yamuna River Bed on both sides of River Yamuna falls in 4 old Nazul-I villages which are Bela, Inderpat, Chiragah Janubi and Chiragah Shumali and all the aforesaid villages were placed at the disposal of DIT (erstwhile DDA) vide Nazul Agreement dated 31-03-1937* ***and, 3 villages of Nazul-II which are Chak-Chilla, Behlolpur Khadar and Kilokri which were placed at the disposal of DDA under the Land Acquisition Act. The Respondent No. 1/DDA has the right to protect its land from any form of encroachment. Furthermore, the subject land is a part of "O Zone" of the MPD-2021 (Master Plan of Delhi), which are the '1 in 25 years' floodplains, on which any activity whether commercial/ residential/agricultural is illegal and is completely banned****.*
>
> *8.* ***That the Petitioners/residents are carrying out commercial activities, agricultural activities along with livestock rearing and living on Yamuna's flood plains and their encroachment has a direct adverse***

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impact on the river's morphology and ecology. Such activities are not only detrimental to the ecology and morphology of the Yamuna, but are directly prohibited by the Hon'ble National Green Tribunal. Moreover, the waste material from these sites is being dumped in the Yamuna River, immensely polluting and destroying the river*. The dumping of waste material in the Yamuna River is completely in the teeth of the Orders of the Learned National Green Tribunal. The Respondent No.1/DDA has been entrusted with the affirmative duty to fiercely protect the River Yamuna, its morphology and its flood plains. Photographs of the area under question are annexed herewith as* ***Annexure R3 (Colly).***

9. ***That the area/land in question located at a distance of approximately 600 meters from the Yamuna River. It is located squarely on the Yamuna floodplains, where, inter-alia, eco-restoration plantation is to be undertaken by the DDA as a part of the Restoration and Rejuvenation of River Yamuna Floodplains. The Respondent No.1 /DDA carries out regular/periodic inspections and conducts demolition drives on the Yamuna Floodplains with the objective to maintain the natural ecology of the Yamuna floodplains.*** *A satellite map showing the distance of Sites from the Yamuna River is annexed herewith as* ***Annexure R-4****.*

10. ***It is further submitted that the site is question is to be utilized for planned development of Delhi viz. channelization of Yamuna River****.*

11. That it is further submitted that it has been stated by DUSIB/ Respondent No.3 in the Counter Affidavit filed that ***the site/ hutments where demolition is proposed to be carried out, do not form part of any notified JJ Cluster/JJ Basti as per the List of 675 Notified JJ Bastis released by DUSIB/Respondent No.3. This list of 675 Notified JJ Bastis was prepared by DUSIB/Respondent No. 3 after undertaking an extensive and comprehensive survey of the entire city in pursuance of the directions given by this Hon'ble Court in Ajay Maken v. Union of India & Ors, 2019 SCC OnLine Del 7618. As such, not being a part of the 675 Notified JJ Basti's by DUSIB makes it indubitably clear that the alleged clusters were not in existence prior to 2006, which disentitles its residents for in situ rehabilitation or alternate housing as per DUSIB's Policy, 2015, being relied upon by the Petitioners. The Petitioners have miserably failed to show their alleged possession of the Sites A and B prior to 01.01.2006. As a matter of fact, irrefutable evidence in the firm of Satellite photographs/maps shows that they have not been in existence since 1995, as alleged.*** *The Google Earth Images of the area, through the past years, are annexed herewith as* ***Annexure R-5 (Colly)****.*

xxx xxx xxx"

(Emphasis Supplied)

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17. Perusal of the aforesaid affidavit of DDA categorically shows that the area in question in *W.P. (C) 4227/2016,* is at a distance of approximately only 600 meters from River Yamuna. There is categorical assertion that the said cluster is not part of the 675 JJ Clusters, as identified by DUSIB, and has not been in existence prior to 2006.

18. Similarly, with respect to land, subject matter of *W.P. (C) No. 12504/2019*, i.e., T-Huts, Gyaspur Colony, Sarai Kale Khan, Hazrat Nizammudin, South Delhi-110013, it is the clear stand of the DDA that the said land is a Government land falling within the Floodplain and/or Riverbed of River Yamuna. Thus, the categorical stand of the DDA, as stated in its counter affidavit, is as follows:-

> *"xxx xxx xxx*
>
> *10.* ***That the petitioners were encroacher on the Government land in Inderpat Estate. They were removed on 15.11.2019. It is submitted that there is no jhuggi cluster or identified jhuggi cluster is existed on the land in question****.*
>
> *11.* ***That the land in question is a government land falls within the flood plain and/or riverbed of Yamuna. It is not a private land. The area in question falls in The Zonal Development Plan for Zone 'O' has been approved by Ministry of Urban Development, vide letter No. K-12011/23/2009- DDIB dated the 8th March, 2010 under Section 9(2) of DD Act, 1957 and notified under section 11 by DDA on 10.08.2010****.*
>
> *12.* ***The River Yamuna/River front, Zone 'O' has special characteristics and ecological significance for which various studies have been conducted from time to time. As such, the Zonal Development Plan of Zone 'O' is conceived to set the strategies for rejuvenation of river Yamuna and eco-friendly development. The work of development of Yamuna Khadar is to be completed in seven phases. The work of two phases are in progress****.*
>
> *13. That various measures have been taken by the authorities and through various court cases in the nature of PIL etc. to make River Yamuna pollution free. High Powered Committees have also recommended channelisation of river with various provisions, i.e. development of river front to be taken up, by considering all the ecological*

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and scientific aspects as a project of special significance for the city. Strict enforcement of Water Pollution Act is needed to keep the river clean etc.

14. ***That Area in question falls in Zone 'O'. DDA has a plan of Yamuna River Front Development Plan. It is an integrated project of recreational areas along with bio-diversity parks in four of the sub zones of 'O' Zone. It is active flood plain area which is frequently flooded by medium floods. Topographical changes in the area can control floods. In view of Expert Committee's report it was decided that beautification of river Yamuna would not achieve desired results unless effective steps are taken to remove encroachments and to stop dumping of any waste and debris in river Yamuna****. In view of this various orders have been passed by the Hon'ble NGT for making the entire area free from encroachment. The Hon'ble NGT vide order dated 13.01.2015 & 11.09.2019 passed in OA No. 6/2012 as well as in vide order dated 07.12.2017 in OA No. 65/2016, OA No. 76/2016 & OA No. 81/2016 has directed the respondent to remove the encroachments from the flood plain of river Yamuna. It is further submitted that if these directions are not complied with by the respondent which are given by the NGT, in that case the National Green Tribunal has imposed fine of Rs.5,00,000/- per month from 1st April, 2020 which can also be recovered from the erring officers of the I authority. Thus, in compliance with order passed by the Hon'ble NGT, the respondent has already carried out demolition on 15.11.2019 and has made the area free from encroachment. Copy of plan of Zone O is annexed as* ***Annexure-I****. Copy of orders passed by NGT are annexed as* ***Annexure-II*** *colly.*

xxx xxx xxx "

(Emphasis Supplied)

19. Perusal of the aforesaid affidavit filed by the DDA makes it manifest that the area in question falls in Floodplain and/or Riverbed of River Yamuna. Further, the said JJ Cluster is not part of the identified list of JJ Clusters of the DUSIB.

20. Likewise, with respect to land in *W.P. (C) No. 10900/2019*, i.e., YK Jhuggi Camp, Yamuna Khadar, Chilla Village, Phase-1, Mayur Vihar, Delhi-110091, it is again the categorical stand of the DDA that the said area falls in the River Yamuna Floodplain/Riverbed. The said land stands acquired by the DDA and physical possession of the same was taken by the

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DDA long back. Thus, the petitioners are mere encroachers on the land. Thus, the DDA in its affidavit filed in *W.P. (C) No. 10900/2019*, has stated as follows:-

> *"xxx xxx xxx*
>
> *7. **That it is humbly submitted that JJ Basti/cluster in question is located on land in Village Chak Chilla, which was acquired by the Answering Respondent/DDA vide Award No. 22/92-93 dated 9.06.1992 (1272 Bigha 3 Biswa) for a public purpose, namely for the Planned Development of Delhi 'For Channelization of River Yamuna'. A copy of the Award No. 22/92-93 dated 9.06.1992 is annexed herewith and marked as Annexure-R1. It is submitted that the physical possession of the land was handed over to DDA by LAC/L&B, GNCTD on 31.10.1997, 24.04.1998 and 08.05.1998. The land in question was transferred to the Horticulture Department of the Answering Respondent/DDA on 19.06.2017 for development**. A copy of the Kabza karwai dated 31.10.1997 is annexed herewith and marked as **Annexure R-2**. Ergo, **the possession lies with the Answering Respondent/DDA and the Petitioner and other residents are illegal encroachers on the subject land**.*
>
> *8. That as the per the Delhi Urban Shelter Improvement Board Act, 2010 and the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 every JJ Dweller and every JJ Basti/cluster is not automatically entitled to alternate housing. In this regard, Clause 2(a)(i) of Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 (Part A) clearly specifies that only those JJ Basti's which have come up prior to 01.01.2006 shall not be removed/demolished without providing alternate housing. Clause 1 of Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 (Part B) enlists 11 eligibility criterion for allotment of alternate dwelling units for the purpose of rehabilitation and relocation of JJ dwellers. **It is pertinent to mention that JJ Basti/cluster in question is not a notified JJ Basti as per DUSIB's list of 675 Notified JJ Basti's in Delhi, which further clarifies that the Petitioner and other residents living illegally**. Copy of Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 is annexed herewith and marked as **Annexure R-3**.*
>
> *9. That the Answering Respondent/DDA has been entrusted with an affirmative duty to protect the River Yamuna, its morphology and its flood plains. That by way of Judgment dated 13.01.2015 titled Manoj Mishra vs. UOI in O.A. No. 6 of 2012, the National Green Tribunal dealt with the project for cleaning and rejuvenation of the River Yamuna and approved the project for construction and upgradation of STPs, rehabilitation, prohibition on carrying on any construction activity in the demarcated floodplain of River Yamuna, and other measures to protect the River*

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Yamuna. The entire area of River Yamuna falling in NCT of Delhi was divided into two phases, Phase I and Phase II. The demarcation of floodplain with reference to '1 in 25 years' was also directed. Accordingly, DDA implemented the said judgment and the floodplain was demarcated and delineated. A copy of judgment dated 13.01.2015 titled Manoj Mishra v. UOI in O.A. No. 6 of 2012 passed by the NGT has been annexed herewith and marked as ***Annexure R-4****.*

10. Furthermore, it is a matter of record that no construction or occupation has been allowed by the Hon'ble Courts on the Yamuna Flood Plains. A writ petition was filed in the Delhi High Court bearing W.P. (C) No. 2344 of 2007 titled Anand Arya & Anr. vs. UOI & Ors. challenging the holding of the event 'Times Global Village Festival' on the western bank of River Yamuna on the North of the DND flyway. This Hon'ble Court appointed a Committee to review the said event. The recommendations of the Committee were accepted by this Hon'ble Court and the event was stopped for the reason that floodplains of river form an essential ecological continuum of healthy rivers. These are also lands that play an extremely important role in facilitating the self-cleansing ability of rivers; providing habitat to large number of riparian plants and animals and creating wetlands including marshes that help biological cleaning of waste water before it could enter and pollute the river. It is humbly submitted that on the same principle in the year 2017, another project of the Art of Living organization called the 'World Culture Festival Celebration' was challenged in the NGT. Ultimately, vide judgment dated 7.12.2007 titled Manoj Mishra vs. UOI & ors. in O.A. No. 65 of 2016, OA No. 76 of 2016 and OA No. 81 of 2016, the NGT held that the Art of Living was responsible for causing environmental degradation of the floodplain of river Yamuna and directed it to carry out restoration and restitution of the floodplain. It was further directed by the NGT to establish a Biodiversity Park at the site of the floodplain which is a part of Phase II of the plan prepared by DDA. ***It was reiterated that the floodplains of Yamuna should not be permitted for any occupation, construction, habitation etc. and it is the responsibility of the Answering Respondent/DDA to maintain the natural feature and ecology of the floodplain****. A Copy of judgment dated 7.12.2017 titled Manoj Mishra vs. UOI & Ors. in O.A. No. 65 of 2016, OA No. 76 of 2016 and OA No. 81 of 2016 annexed herewith and marked as* ***Annexure R-5****.*

11. That it is humbly submitted that in compliance of the above Judgment, DDA has already developed 25 hectares of the floodplain land which was surrendered to it by Art of Living and re-possessed by DDA through the order of the NGT, into a Green belt and planted many different varieties of trees and shrubs. Similar work on 75 hectares to develop the flood plain land into a Green belt is ongoing.

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xxx xxx xxx

15. ***That it is respectfully submitted that the Answering Respondent/DDA carries out regular/periodic inspections on the Yamuna floodplains with the objective to maintain the natural ecology of the Yamuna floodplains. During a site inspection, illegal encroachment was found on the land in question, i.e. at Village of Temporary Chilla in the form Jhuggis/Chappars/Thatch Huts***.

16. ***With a view to remove the encroachment, an encroachment drive was held on 10.10.2019 and illegal encroachment in the form of Temporary Jhuggis/Chappars/Thatch Huts were demolished***. *Photographs from the demolition are annexed herewith and marked as* ***Annexure R-11***.

17. ***It is pertinent to mention that the JJ Cluster on the land in question is barely at any distance from the river Yamuna. A satellite image from Google maps showing the approximate location of the JJ cluster has been annexed herewith and marked as Annexure-R12. Moreover, the JJ Basti/Cluster in question is not a notified JJ Cluster as per the List of 675 Notified JJ Basti's released by DUSIB/Respondent No. 2 and hence it is unidentified/unrecognised by DUSIB, which disentitles its residents for rehabilitation***. *A copy of DUSIB's list of 675 Notified JJ Basti's in Delhi is annexed herewith and marked as* ***Annexure R-13***.

xxx xxx xxx"

(Emphasis Supplied)

21. Reading of the aforesaid affidavit demonstrates that the area in question again falls in the Yamuna Floodplains, barely at any distance from the River Yamuna. Further, the said JJ Cluster is not an identified cluster and action for removal of the encroachment in the form of temporary jhuggis etc., is taken by the DDA routinely at regular intervals.

22. As regards *W.P. (C) No. 10918/2019* is concerned, it is the clear stand of the DDA that no night shelter, as maintained by the DUSIB, was demolished.

23. The documents on record do not show the possession of the petitioners on the site in question prior to 01st January, 2006, which is the

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cut-off date for existence of any JJ Cluster for it to be eligible for rehabilitation. Rather, irrefutable evidence in the form of satellite photographs and Google map images have been filed by the DDA, which show that the clusters in question were not in existence prior to 2006. Further, the petitioners have failed to furnish any proof to substantiate their claim of possession of the site in question for over two decades, as alleged.

24. It has come on record in clear terms that the sites in question are located on the Yamuna Floodplains and commercial activity is being carried out at the said sites, leading to pollution of River Yamuna. The sites are located in close proximity of River Yamuna, falling on the Yamuna Riverbed/Floodplain. Thus, no residence or any commercial activity can be allowed in the area in question.

25. It has also come on record that the alleged JJ Clusters do not form part of the list of 675 JJ Clusters, as identified by the DUSIB. This Court notes the stand of the DDA and the DUSIB that the list of 675 identified JJ Clusters was prepared by the DUSIB, after undertaking an extensive and comprehensive survey of the entire city, pursuant to the directions given by this Court in the case of ***Ajay Maken (Supra)***. Thus, in the case of ***Ajay Maken and Others Versus Union of India and Others***[1], Learned Division Bench of this Court, directed as follows:-

> *"xxx xxx xxx*
>
> *197.* ***In view of the positive stand of the Respondents, including the Railways, that in terms of the DUSIB Act, the 2015 Policy and the decision in Sudama Singh, it is essential to first complete a survey****……*

[1] ***(2019) SCC OnLine Del 7618***

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xxx xxx xxx"

(Emphasis Supplied)

26. Considering the aforesaid, since the JJ Cluster in question are not part of the 675 identified JJ Cluster, it is indubitably clear that the alleged clusters were not in existence prior to the year 2006, which disentitles its residents for *in-situ* rehabilitation or alternate housing as per the Rehabilitation Policy. Even otherwise, on the basis of the documents on record, it cannot be said that the clusters in question were in existence, prior to the year 2006.

27. The issue whether jhuggi dwellers staying on the Yamuna Floodplains have any right under law for rehabilitation, was considered by this Court in the case of ***Bela Estate Mazdoor Basti Samiti Versus Delhi Urban Shelter Improvement Board & Ors.***[2]**,** wherein, it has been held as follows:-

> *"xxx xxx xxx*
>
> *26.* ***The moot question to be addressed in the present writ petition is whether the Petitioners, who are admittedly jhuggi dwellers staying at the Yamuna Flood Plains, have any right under law for the rehabilitation****.*
>
> *27.* ***At this juncture, it would be apt to refer to the decision of this Court in Shobha Dikshit case (supra)***[3]***, where this Court dealt with a writ petition praying for similar reliefs****. In that case, this Court also dealt with the judgments relied upon by the Petitioner in present case i.e. Sudama Singh (supra) and Ajay Maken (supra), and it was held as follows:*
>
> > *"46.* ***Further, it would be apposite to refer to the decision of a Coordinate Bench of this Court in Dinesh Singh & Ors. Vs Delhi Development Authority & Ors., W.P. (C) 12384/2022, wherein the Court after considering the various judgments of this Court observed as follows****:*
> >
> > *"11.* ***From the decisions aforenoted, it is manifest that a***

[2] ***MANU/DE/2084/2023***
[3] ***MANU/DE/1445/2023***

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cluster in order to be eligible for extension of benefits under the Rehabilitation Policy must necessarily meet the qualifying criteria as specified in Section 2(g) of the Act. Consequently, it must be a notified cluster comprising of not less than 50 jhuggis. The aforesaid cluster must additionally form part of the 675 clusters which had been identified by the DUSIB. The recitals and recordal of facts of the present case leads the Court to the inescapable conclusion that the cluster in question would not meet those requirements. In view of the aforesaid, the reliefs as claimed cannot possibly be granted.

12. ***The Court deems it apposite to observe further that neither Sudama Singh nor Ajay Maken mandate a rehabilitation measure being adopted and coverage under the Rehabilitation Policy being extended without the cluster otherwise conforming to the requirements as placed under the Act***. *The Court also bears in mind that the undisputed fact that the Rehabilitation Policy which was placed in the shape of a protocol in Ajay Maken was neither interfered with nor any adverse observation in respect thereof entered."*

47. ***A Coordinate Bench of this Court had similar facts before it in the case of Shakarpur Slum Union Vs DDA & Ors., W.P. (C) 6779/2021. The Coordinate Bench distinguished the facts presented before it from the facts before the Court in Ajay Maken (supra) and Sudama Singh (supra). The relevant portion of the said judgment is extracted hereinbelow***:

"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)***

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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."

48. ***A Division Bench of this Court was also presented with similar facts in a LPA and while disposing of the same, the Ld. Division Bench of this Court observed in its Order dated 19.04.2022, passed in LPA 271/2022, titled as 'Vaishali (Minor) through Next Friend & Ors. Vs Union of India & Ors.', as follows:***

"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***

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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.

*****

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

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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."

49. ***Further, it would be apposite here to refer to a decision of a Single Bench of this Court in Kasturba Nagar Residents Welfare Association Vs Government of NCT of Delhi & Ors., W.P.(C) 11945/2022, passed on 13.10.2022, wherein it observed as follows****:*

"6. ***Ultimately it was incumbent upon the petitioners to have established that they were part of an identified cluster and formed part of the list of 675+82 bastis which had been duly identified by DUSIB for the purposes of extension of benefits under the 2015 Policy. The Court further notes that the decisions noticed in Dinesh Singh have consistently held that the question whether the cluster forms part of those which were identified by DUSIB is determinative of whether the residents thereof are entitled to extension of benefits under the 2015 Policy. That was a detailed and comprehensive exercise which was undertaken by DUSIB for the purposes of identifying those clusters to which the relocation and rehabilitation policy would apply****.*

7. ***The Court also notes that the 2015 Policy incorporated an injunct against recognition and extension of the benefits envisaged therein to clusters which may spring into existence thereafter. Viewed in that light, there appears to be no scope in law to undertake a fresh exercise to determine whether a cluster was in existence prior to the cut-off date prescribed under the 2015 Policy. That issue clearly attained finality once the list of eligible clusters had been duly identified by DUSIB. The prayers for the Court to embark down that path would not only lead to it being compelled to delve into disputed questions of fact and a de novo assessment of evidence, it would also unsettle a position which was statutorily conferred finality****.*

8. ***The Court also bears in mind that the petitioners are not shown to have assailed their exclusion from the list of identified clusters at any point of time prior to the filing of the instant writ petition. The record would indicate and***

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establish that the identity of clusters which came to be included for the purposes of extension of benefits under the 2015 Policy, was a matter of common public knowledge. It is not the case of the petitioners that they were oblivious to their exclusion from the list of identified JJ bastis. If the Court were to countenance or entertain a challenge as suggested in the present petition, it would become an unending exercise and scuttle the very objective of the Act and the 2015 Policy*."*

50. ***In view of the authorities discussed hereinabove, the law is well settled that after coming into force of the DUSIB policy, 2015, the residents of jhuggis whose jhuggis were not notified by DUSIB, are not entitled to any rehabilitation or relocation. Therefore, in light of the decisions mentioned hereinabove, this Court is not willing to injunct to the Respondents to provide rehabilitation to the Petitioner or other residents of the said Jhuggis****."*

(Emphasis supplied)

28. It is apposite to also refer to the decision of Division Bench of this Court in Kasturba Nagar Residents Welfare Association case (supra) wherein it was held as follows:

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

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

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

> *"38. However, at the same time, this Court cannot be ignorant of the observations made in paragraph No. 60 of Sudama Singh (supra) that it is not uncommon to find a Jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. The action of DDA in removing a person, whom they claim to be an encroacher, overnight from his residence, also cannot be accepted. The DDA has to act in consultation with the DUSIB before embarking upon any such venture and persons cannot be evicted with a bulldozer at their door step early in the morning or late in the evening, without any notice, rendering them completely shelter-less. A reasonable period has to be given to such persons and temporary location has to be provided to them before embarking on any demolition activities.*
>
> *39. When this Court pointedly asked Mr. Chauhan, learned counsel for DUSIB, as to whether they have any provision for accommodating such persons, who are to be evicted, this Court was informed that normally when DUSIB conducts any demolition drive, it ensures that no demolition takes place when academic year is about to end or during monsoons. He stated that normally demolition takes place between March to June and August to October. This Court expects from the DDA to follow similar norms for demolition as well."*

xxx xxx xxx"

(Emphasis Supplied)

28. As noted above, though the petitioners have averred that the JJ

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Clusters in question are in existence for more than three decades, but they have been unable to place any documentary evidence in order to support the said averment. Thus, it was enjoined upon the petitioners ultimately to establish that the Slum and JJ Clusters in question have been in existence prior to the cut-off date, as envisaged in the Rehabilitation Policy.

29. Further, it is to be noted that, in the case of ***Tejpal Gautam and Others Versus Central Public Works Department & Anr***[4]**,** it has been held in categorical terms that in the absence of notification/identification by the DUSIB, it is not possible to extend the benefit of the Rehabilitation Policy to such JJ Cluster. Thus, it has been held as follows:-

> *"xxx xxx xxx*
>
> *11.* ***As far as the policy, to which attention is drawn, the same is of DUSIB of GNCTD and is titled "Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015****".*
>
> *12.* ***The said policy, in Part A thereof, in Clause 2(a)(i) titled "Who is eligible for Rehabilitation or Relocation" provides as under:***
>
> > ***"JJ Bastis which have come up before 01.01.2006 shall not be removed (as per NCT of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such JJ Bastis before 01-1-2015 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)"***
>
> *13.* ***And in Part B thereof under Clause 1(ii) provides the eligibility criteria for allotment of alternative dwelling units to rehabilitate and relocate JJ dwellers inter alia as under:***
>
> > ***"(ii) The Jhuggi Jhopri basti in which the JJ dwellers are residing must be in existence prior to 01-01-2006. However, the cut-off date of***

[4] ***2018 SCC OnLine Del 10484***

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residing in the jhuggi for becoming eligible for rehabilitation shall be 01-01-2015 (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013)"

14. On enquiry, as to what is the definition/criteria of "JJ bastis" mentioned in Part A under Clause 2(a)(i), the counsel for the petitioners has drawn attention to the Delhi Urban Shelter Improvement Board Act, 2010 Section 2(g) wherein defines 'Jhuggi Jhopri Basti' as meaning any group of jhuggis which the Board i.e. DUSIB may, by Notification declare as a jhuggi jhopri basti in accordance with the factors prescribed therein.

xxx xxx xxx

19. The counsel for the respondent No. 2 DUSIB has in addition, pointed out (i) that the land which the petitioners are occupying is of the Government of India and the policy relied upon does not apply to such land, per Section 10 of the DUSIB Act; (ii) that though the petitioners have filed photocopies of a number of documents to show their possession since prior to 1st January, 2015, being the cut-off date in terms of Clause 2(a)(i) of Part A supra of the policy but except for one or two documents, all the other documents are of after the said date; (iii) that for Clause 2(a)(i) of Part A to apply, what has to be proved is that the basti was in existence before 1st January, 2006 and the date of 1st January, 2015, is only with respect to occupation of such jhuggis which may have come up in such bastis; (iv) there is no averment in the petition, of the existence of any basti where the jhuggis of the petitioners are situated, prior to 1st January, 2006 and the petitioners thus, even if the policy were to apply, have no right under the policy.

xxx xxx xxx"

(Emphasis Supplied)

30. Similarly, in the case of ***Shakarpur Slum Union Versus DDA & Others***[5]**,** the position has been reiterated that any JJ Cluster, which does not form part of the identified Cluster, is not eligible for rehabilitation in terms of the Rehabilitation Policy. Thus, it has been held as follows:-

"xxx xxx xxx

30. A perusal of the DUSIB Policy shows that only those clusters which

[5] ***2022 SCC OnLine Del 2336***

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existed prior to 01.01.2006 are entitled to the benefit of the DUSIB Policy. *The Petitioner-Union has been exceedingly vague in describing as to when the Clusters in question came into existence. Paragraphs No. 4 to 9 of the writ petition read as under:*

> *"4. The JJ bastis at Shakarpur has been in existence since 1980's and most of the residents are migrants from Bihar, Uttar Pradesh and Bengal. The residents are mostly daily wage laborers, rag pickers, rickshaw pullers, auto drivers and domestic workers. Due to the demolition, the residents have lost their livelihood. They had already exhausted their savings during the lockdown and are struggling to survive amid Covid-19 pandemic.*
>
> *5. The above-mentioned Basti is listed at serial number 553 and 569 in the list of Additional JJ Clusters List published by DUSIB on its website for rehabilitation. Therefore, Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 ought to be followed for rehabilitation by the respondents. True Copy of the relevant parts of JJ clusters List issued by the DUSIB is at Annexure P-1 at page no. 48 to 93.*
>
> *6. Resultantly, any resident who can establish his residence prior to 01.01.2015 is eligible for rehabilitation under the 2015 9 policy. True copy of the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 approved on dated 2017 is at Annexure P-2 at page no. 94 to 101.*
>
> *7. Most people have the proof of residence prior to 01.01.2015 as required by the DUSIB Policy, 2015. The documents of the some of the residents of the area who were forcefully and illegally removed by the DDA are marked and annexed herewith as Annexure P-3 (colly) at page no. 102 to 182.*
>
> *8. DDA ought to be held guilty for conducting the demolition without providing any advance notice to the residents, conducting any survey and providing any rehabilitation. No rehabilitation has been provided to the people at the site even though they ought to be given the same as per the laid down policies, statues and judgments. No reason has been given by the DDA for the demolition of the houses at the Shakarpur Basti.*
>
> *9. The Petitioners were first evicted from their houses in the year 2006 when the construction and expansion of Delhi Metro was going on and no rehabilitation was provided to them at that time. The people were earlier residing at the Thokar no. 8 of the Ramesh and Lalita Park area in Shakarpur but because of the demolition, they moved to Thokar no. 10 of the area."*

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xxx xxx xxx

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****.*

xxx xxx xxx

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***

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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.

xxx xxx xxx

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

(Emphasis Supplied)

31. With respect to applicability of the Rehabilitation Policy, the learned Division Bench of this Court in the case of ***Vaishali (Minor) Through Next Friend & Ors. Versus Union of India & Ors.***[6], has held that only those JJ Clusters which have come up before 01st January, 2006, are eligible for rehabilitation. Thus, it has been held as follows:-

"xxx xxx xxx

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***

[6] *Order dated 19th April, 2022 in LPA 271/2022*

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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.

xxx xxx xxx"

(Emphasis Supplied)

32. The aforesaid order passed by the learned Division Bench was affirmed by the Supreme Court in *Special Leave to Appeal (C) No. 9300/2023*, ***Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. Versus Union of India & Ors.,*** vide order dated 02nd May, 2023.

33. This Court cannot accept the submissions made on behalf of the petitioners that the JJ Clusters in question, have been in existence prior to 01st January, 2006, on the basis of the material placed on record. It is to be noted that the documents that have been filed on behalf of the petitioners, do not show the continued existence of the Slum and JJ Clusters, prior to the cut-off dates, in terms of the Rehabilitation Policy. Few documents filed on behalf of some of the petitioners, do not in any manner evidence the existence of the Slum and JJ Clusters in question, in order to entitle the said petitioners to rehabilitation under the Rehabilitation Policy.

34. This Court also notes the judgment passed in the case of ***Jayanti Devi Versus Government of NCT of Delhi & Others***[7], wherein, it has again been held that it is settled position in law that until and unless jhuggi clusters are duly notified, stay on demolition, would not be feasible. Thus, it has been held as follows:-

"xxx xxx xxx

5. Ld. counsel for the Respondents, including ld. Counsel for DUSIB, have entered appearance. Mr. Chauhan, ld. Counsel for the DUSIB, upon a specific query from the Court as to whether the JJ cluster at Bhairon

[7] *2023 SCC OnLine Del 768*

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Marg is a notified cluster under the Policy or not, states that the Petitioner's jhuggi cluster does not belong to notified clusters, which are 675 and 82 in number.

xxx xxx xxx

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

xxx xxx xxx"

(Emphasis Supplied)

35. Accordingly, the position of law that emerges is that only the clusters that have been identified by the DUSIB shall be entitled to rehabilitation. Clusters that have not been identified by DUSIB would not be entitled to any rehabilitation.

36. It may also be noted that in the case of ***Dinesh Singh and Others Versus Delhi Development Authority & Others***[8], it has been recorded as follows:-

"xxx xxx xxx

11. ***From the decisions aforenoted, it is manifest that a cluster in order to be eligible for extension of benefits under the Rehabilitation Policy must necessarily meet the qualifying criteria as specified in Section 2(g) of the Act. Consequently, it must be a notified cluster comprising of not less than 50 jhuggis. The aforesaid cluster must additionally form part of the 675 clusters which had been identified by the DUSIB. The recitals and recordal of facts of the present case leads the Court to the inescapable conclusion that the cluster in question would not meet those requirements. In view of the aforesaid, the reliefs as claimed cannot possibly be granted****.*

12. ***The Court deems it apposite to observe further that neither Sudama Singh nor Ajay Maken mandate a rehabilitation measure being adopted and coverage under the Rehabilitation Policy being extended without the cluster otherwise conforming to the requirements as placed under the Act. The Court also bears in mind that the undisputed fact that the Rehabilitation Policy which was placed in the shape of a***

[8] *Order dated 26th August, 2021 in W.P. (C) No. 12384/2022*

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protocol in Ajay Maken was neither interfered with nor any adverse observation in respect thereof entered.

xxx xxx xxx"

(Emphasis Supplied)

37. It is also apposite to refer to judgment of the learned Division Bench of this Court in the case of ***Kasturba Nagar Residents Welfare Association Versus Government of NCT Delhi & Ors***.[9], wherein, it has been held as follows:-

"xxx xxx xxx

8. Prior to the judgment, passed by this Court in Sudama Singh (supra), no proper policy was in existence for the purpose of rehabilitation of encroachers of various parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities. This Court in Sudama Singh (supra) pointed out that no protocol has been developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation, etc. and, therefore, the GNCTD was directed to take measures to relocate those persons. ***In compliance of the judgment of Sudama Singh (supra), the Legislative Assembly of National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010 (hereinafter referred to as 'the Act') and under the said Act Delhi Urban Shelter Improvement Board was established. Under the said Act, DUSIB was to be the nodal agency for rehabilitation and relocation of jhuggi jhopri basti dwellers in respect of the lands belonging to the MCD and the Delhi Government and its Departments/Agencies***. *Chapter III of the said Act deals with the functions of the Board. Section 9 of the Act gives power to DUSIB to conduct a survey of any JJ basti which is defined under the Act to ascertain the number of residents thereof, the existing standard of health, sanitation and civic amenities, the availability of medical and educational facilities for the residents thereof. Section 10 of the Act gives power to the DUSIB to prepare a scheme for the removal and resettlement of JJ bastis. Section 11 of the Act directs the Board to prepare a scheme for improvement of any JJ basti which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply,*

[9] *Order dated 14th March, 2023 in LPA No. 63/2023*

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street paving, and provision of dustbins, or sites for garbage collection, street lighting, etc. Section 12 of the Act directs the Board to prepare schemes for redevelopment of JJ bastis with the consent of the owner of the land on which the JJ basti is situated.

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

> *"2….*
>
> *(a)…*
>
> *(i) Who is eligible for rehabilitation or relocation*
>
> *Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed (as per National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such Jhuggi Jhopri Bastis before 01.01.2015 shall not be demolished without providing alternate housing; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013).*
>
> *(ii) No new jhuggis to be allowed in Delhi*
> *Government of National Capital Territory of Delhi shall ensure that no new jhuggi comes up after 01.01.2015. If any jhuggi comes up after this date, the same shall immediately be removed without providing them any alternate housing……*
>
> *****
>
> *Delhi Slum& JJ Rehabilitation and Relocation Policy, 2015 (PART-B)*
>
> *1. The eligibility criteria for allotment of*

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> *alternative dwelling units to rehabilitate and relocate JJ dwellers would be as under:*
>
> *(i) The JJ dweller must be a citizen of India and not less than 18 years of age;*
>
> *(ii) The Jhuggi Jhopri basti in which the JJ dwellers are residing must be in existence prior to 01-01-2006. However, the cut-off date of residing in the jhuggi for becoming eligible for rehabilitation shall be 01-01-2015(this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013);.."*

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

xxx xxx xxx

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

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

16. The contention of the Appellant that certain persons in Vishwas Nagar, who were residing in that area were rehabilitated, holds no water because Vishwas Nagar is mentioned in the list of clusters identified by the DUSIB. Further, even if some persons who were not entitled for rehabilitation and have been rehabilitated, cannot be a ground to grant rehabilitation in violation of the Policy because the law does not recognize the concept of negative equity. The judgment of this Court in

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Shakarpur (supra) has recognized the human problem and directions have been given in that judgment to ensure that persons who are facing demolition are no rendered homeless straightway. Relevant portions of the said judgment reads as under:

> *"**38.** However, at the same time, this Court cannot be ignorant of the observations made in paragraph No.60 of Sudama Singh (supra) that it is not uncommon to find a Jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. The action of DDA in removing a person, whom they claim to be an encroacher, overnight from his residence, also cannot be accepted. The DDA has to act in consultation with the DUSIB before embarking upon any such venture and persons cannot be evicted with a bulldozer at their door step early in the morning or late in the evening, without any notice, rendering them completely shelter-less. A reasonable period has to be given to such persons and temporary location has to be provided to them before embarking on any demolition activities.*
>
> ***39.** When this Court pointedly asked Mr. Chauhan, learned counsel for DUSIB, as to whether they have any provision for accommodating such persons, who are to be evicted, this Court was informed that normally when DUSIB conducts any demolition drive, it ensures that no demolition takes place when academic year is about to end or during monsoons. He stated that normally demolition takes place between March to June and August to October. This Court expects from the DDA to follow similar norms for demolition as well."*

xxx xxx xxx"

(Emphasis Supplied)

38. Considering the aforesaid judgment, it is clear that no fresh survey of the area can be directed, as a comprehensive and detailed exercise has

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already been undertaken by the DUSIB in this regard, for identification of clusters to which the Rehabilitation Policy would apply. In this regard, it would also be pertinent to note the observations of learned Single Judge of this Court in the case of ***Kasturba Nagar Residents Welfare Association Versus Government of NCT of Delhi and Others***[10], wherein, it has been held as follows:-

> *"xxx xxx xxx*
>
> ***6. Ultimately it was incumbent upon the petitioners to have established that they were part of an identified cluster and formed part of the list of 675+82 bastis which had been duly identified by DUSIB for the purposes of extension of benefits under the 2015 Policy. The Court further notes that the decisions noticed in Dinesh Singh have consistently held that the question whether the cluster forms part of those which were identified by DUSIB is determinative of whether the residents thereof are entitled to extension of benefits under the 2015 Policy. That was a detailed and comprehensive exercise which was undertaken by DUSIB for the purposes of identifying those clusters to which the relocation and rehabilitation policy would apply***.
>
> *7. The Court also notes that the 2015 Policy incorporated an injunct against recognition and extension of the benefits envisaged therein to clusters which may spring into existence thereafter. Viewed in that light, there appears to be no scope in law to undertake a fresh exercise to determine whether a cluster was in existence prior to the cut-off date prescribed under the 2015 Policy. That issue clearly attained finality once the list of eligible clusters had been duly identified by DUSIB. The prayers for the Court to embark down that path would not only lead to it being compelled to delve into disputed questions of fact and a de novo assessment of evidence, it would also unsettle a position which was statutorily conferred finality.*
>
> *8.* ***The Court also bears in mind that the petitioners are not shown to have assailed their exclusion from the list of identified clusters at any point of time prior to the filing of the instant writ petition. The record would indicate and establish that the identity of clusters which came to be included for the purposes of extension of benefits under the 2015 Policy, was a matter of common public knowledge. It is not the case of the petitioners that they were oblivious to their exclusion from the list of***

[10] *Order dated 13th October, 2022 in W.P. (C) No. 11945/2022*

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identified JJ bastis. If the Court were to countenance or entertain a challenge as suggested in the present petition, it would become an unending exercise and scuttle the very objective of the Act and the 2015 Policy.

xxx xxx xxx"

(Emphasis Supplied)

39. There is another aspect of the matter. As per the Rehabilitation Policy of the DUSIB, to declare a group of jhuggis as 'Jhuggi Jhopri Basti', one of the conditions to be fulfilled is that it must be inhabited by atleast 50 households, as existing on 01st January, 2006. Thus, in the case of ***Vaishali (Minor) Through Next Friend & Ors. Versus Union of India & Ors.***[11], the learned Division Bench of this Court, has held, as follows:-

"xxx xxx xxx

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.***

xxx xxx xxx"

(Emphasis Supplied)

40. However, in the present case, the DDA has brought forth in categorical terms that in *W.P. (C) No. 4227/2016*, out of the list of 269 persons, who claimed to have been residing in the area, only 22 persons filed their affidavits pursuant to order of this Court, to show that they were

[11] *Order dated 19th April, 2022 in LPA 271/2022*

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bonafide residents of the area and pursuing the case. However, no documents were filed on record with respect to the said 22 persons to show that they had been residing in the area in question. Further, the persons whose documents have been filed along with the petition, did not file any affidavit supporting their claim. Moreover, no documents were brought by the petitioners, even during the course of hearing of the present petitions. Besides, the DDA has clearly pointed out that documents have been filed in the present petition with respect to persons, who were residing in other slum clusters, and who had filed their separate petitions with similar claims, and had already been refused relief for rehabilitation, in their respective cases.

41. This Court also notes the stand of the DDA in *W.P. (C) No. 12504/2019*, that the encroachments in the form of jhuggis had already been demolished during the pendency of the present proceedings. Further, this Court also takes note of the satellite photos attached by the DDA of the year 2010, which show that there was no cluster existing in the area in question.

42. Similarly, in *W.P. (C) No. 10900/2019,* a tentative list of 48 persons has been filed, without any jhuggi number or specifications. Documents with respect to few of such persons have been filed. Some of the documents, which have been filed in support, show the address of Uttar Pradesh. Further, Google Earth Images have been filed, which clearly point out to the fact that no JJ Cluster, was as such, existing in the area in question.

43. Similarly, in *W.P. (C) No. 10918/2019,* the petition was filed on behalf of five petitioners and affidavit of only one petitioner was filed.

44. This Court also notes that with respect to encroachment on the Yamuna Floodplains, a Coordinate Bench of this Court in the case of

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Urmila and Others Versus Delhi Development Authority and Others[12], has observed, as follows:-

> *"xxx xxx xxx*
>
> *20.* ***Another aspect, which cannot be lost sight of is that the alleged clusters are located squarely on the Yamuna floodplains, and thus, they pose a threat to life, particularly in the monsoon season, as the said area can be prone to flooding at short notice****.*
>
> *xxx xxx xxx*
>
> *23.* ***I find force in the contention that DDA is attempting to clear the floodplains of any encroachment to protect life and property, and that the stay order passed by this Court is not only thwarting the project plans of DDA, but also puts the petitioners themselves at risk in the event of any flooding in the floodplains. The public purpose undertaken by DDA on the Yamuna floodplains is in the interest and betterment of the entire city. The alleged sites in question fall squarely in the intended project site****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

45. It is pertinent to note that, in a recent case decided by this Court, titled as, ***Pracheen Shiv Mandir Avam Akhada Samiti Versus Delhi Development Authority and Others***[13], while discussing the issue with respect to an unauthorised Shiva Temple existing in the Yamuna Riverbed/Floodplain, the Court, has held, as under:

> *"xxx xxx xxx*
>
> *23.* ***In view of the forgoing discussion, this Court unhesitatingly finds that the petitioner society has miserably failed to demonstrate any legal rights existing with it so as to continue to use and occupy the civic property for running the temple services.*** *The half-hearted plea by the learned counsel for the petitioner that Lord Shiva, being the deity of the temple, must be also impleaded in the present matter is a desperate attempt to give an altogether different colour to the entire dispute to sub-serve the vested interest of its members. It goes without saying that Lord*

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[12] *2022 SCC OnLine Del 2356*
[13] *2024 SCC OnLine Del 4156*

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> *Shiva does not need our protection; rather, we, the people, seek his protection and blessings.* ***There could be no iota of doubt that Lord Shiva would be happier if the Yamuna River bed and the flood plains areas are cleared of all encroachments and unauthorised construction****.*
>
> *xxx xxx xxx*
>
> *25.* ***Lastly, the DDA shall be at liberty to carry out demolition of the unauthorised construction, and the petitioner society and its members shall not cause any impediment or obstacles in such a demolition process. The local police and the administration shall render full assistance in the said process in order to maintain law and order****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

46. Considering the aforesaid detailed discussion, no merit is found in the present petitions. This Court is of the considered view that the petitioners herein are not entitled to any rehabilitation, in terms of the Rehabilitation Policy.

47. At this stage, it is to be noted that vide its order dated 02nd May, 2023 in *Special Leave to Appeal (C) 9300/2023*, ***Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. Versus Union of India & Ors****.,* though the Supreme Court held that the petitioners therein were not entitled to rehabilitation, however, it directed that the case of the petitioners shall be considered for accommodation available under other Schemes, as per their eligibility and in accordance with law, if an application was made in that regard. Thus, Supreme Court, held, as follows:-

> *"xxx xxx xxx*
>
> *3.* ***Since it is pointed out that there are other accommodation which is available under the schemes for persons like the petitioners, if the petitioners make application in regard to the same under the same to the concerned Competent Authority, who will take decision based on eligibility and in accordance with law. Needless to say, any such application will be considered with sympathy that the applicants deserve****.*
>
> *xxx xxx xxx"*

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(Emphasis Supplied)

48. Resultantly, it is directed that the DDA is at liberty to carry out further demolition, wherever, such action has already not been carried out. However, the dwellers of the said area, shall be given accommodation in the shelters maintained by the DUSIB, for a limited period, so as to enable such persons to make alternate arrangements for themselves.

49. Since the petitioners have also canvassed their case for consideration of their rehabilitation under the *Mukhyamantri Awas Yojana* and *Pradhan Mantri Awas Yojana*, liberty is granted to the petitioners to make applications in that regard. As and when such applications are made, the same shall be considered by the authorities, based on eligibility and in accordance with law.

50. Accordingly, the present petitions are disposed of with the aforesaid directions.

(MINI PUSHKARNA)
JUDGE

JULY 2, 2024
c

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