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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13262/2024 & CM APPLs. 55404/2024, 55405/2024**
MEENA AND OTHERS Petitioners

Through: Mr. Choudhary Ali Zia Kabir, Ms. Sumayya Khatoon, Mohd. Nadeem, Mr. Sushant Singh, Mohd. Akram, Mr. Mohd. Aman and Ms. Aafreen Anjum, Advocates.

versus

DUSIB AND OTHERS Respondents
Through: Mr. Parvinder Chauhan, Ms. Aakriti Garg and Ms. Rani Bala, Advocates for R-1.
Mr. Anuj Chaturvedi and Ms. Harshita Maheshwari, Advocates for R-3/ DDA.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Varun Pratap, Mr. Maulik Khurana and Mr. Ranjeev Khatana, Advocates for L&DO.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
23.09.2024

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1. The Petitioners are residents of a slum settlement adjacent to Khyber Pass Mess quarters, which is located within 32 Acres of Land of Khyber Pass, Civil Lines, and constitute the Khyber Pass Mess Jhuggi Bastis.¹ Their grievance stems from a notice dated 1st March, 2024, issued by Respondent No. 2, the Land and Development Office, Ministry of Housing and Urban



Affairs, which orders the eviction of all residents within the 32-acre area of Khyber Pass, Civil Lines, and mandates the demolition of the settlement. In such circumstances, Petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking directions to Respondent No. 1/ Delhi Urban Shelter Improvement Board² to conduct a survey and rehabilitate them in accordance with Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015.³

2. Mr. Choudhary Ali Zia Kabir, counsel representing the Petitioners submits that the Khyber Pass area in Civil Lines, Delhi is sub-divided into six different sub area *viz.* Khyber Pass Market, Dhobi Lane, 84 Lane, Press Road, Khyber Pass Mess, and Chnadrawal Civil Lines. The Chnadrawal Civil Lines is notified in the list of 675 *Jhuggi Jhopri Bastis*⁴ which had been identified by DUSIB. He states that the slum in question came into existence in 1990s and comprises of approximately 70 houses which includes several senior citizens, women and children who will be adversely effected if the eviction were to take place. He asserts that the Petitioners are entitled to rehabilitation under the DUSIB Policy, 2015, as the slum predates 2006, and the residents possess documentary proof from before 2015, thus meeting the eligibility criteria under the Policy. Accordingly, he argues that their right to housing of the slum dwellers must be safeguarded, as was upheld by this Court in *Ajay Maken v. Union of India*⁵ and *Sudama Singh & Others v. Government of Delhi & Anr.*⁶

¹ “the slum in question”

² “DUSIB”

³ “the DUSIB Policy, 2015”

⁴ “JJ Basti”

⁵ 2019:DHC:1616-DB

⁶ 2010:DHC:843-DB



3. Mr. Parvinder Chauhan, counsel for DUSIB, presents a two-fold contention on this issue. First, he submits that a perusal of Section 2(g) of the Delhi Urban Shelter Improvement Board Act, 2010,⁷ makes it clear that, in the absence of a notification from DUSIB, a group of *jhuggis* cannot be classified as a JJ Basti. Since the Petitioners have not been notified by DUSIB, they are not entitled to rehabilitation under the extant Policy. Second, he argues that the DUSIB Policy, 2015 mandates the fulfilment of two specific conditions for any claim of rehabilitation: (i) the JJ Basti in which the JJ Basti dwellers reside must have existed prior to 1st January, 2006, and (ii) each individual *jhuggi* within such a Basti must have been in existence prior to 1st January, 2015. In this case, neither of the conditions have been fulfilled. Further, he places reliance upon the judgments in ***Manoj Kumar v. Delhi Urban Shelter Improvement Board***⁸ and ***Kasturba Nagar Residents Welfare Association v. Government of NCT of Delhi***,⁹ to assert that the DUSIB Policy, 2015 does not allow for a fresh exercise or survey to be conducted to determine whether a cluster existed before the prescribed cut-off dates. Based on these submissions, he contends that the present petition ought to be rejected.

4. In response, Mr. Kabir submits that the slum in question fulfils the conditions laid down under Section 2(g) of the DUSIB Act. He argues that the judgments cited by the Respondents, namely ***Manoj Kumar v. Delhi Urban Shelter Improvement Board*** and ***Kasturba Nagar Residents Welfare Association v. Government of NCT of Delhi***, are not applicable to the present case, as they were based on the Proviso to Section 2(g) of the

⁷ “DUSIB Act”

⁸ W.P.(C) 14781/2022



DUSIB Act. Mr. Kabir further contends that these judgments have failed to consider Clause 6A(iii) of the Draft Protocol for Removal of Jhuggis and Bastis in Delhi 14th June, 2016,¹⁰ which specifically outlines the pre-survey procedures that DUSIB is required to undertake prior to the removal of *jhuggis* and JJ Bastis. This oversight, he argues, renders the decisions *per incuriam* with respect to the Draft Protocol. To support of this contention, Mr. Kabir places reliance on the decision in ***Municipal Corporation of Delhi v. Gurnam Kaur***.¹¹ Therefore, the Petitioners ought to be rehabilitated in terms of the DUSIB Policy, 2015 and the Delhi Urban Shelter Improvement Board Act, 2010,¹² in line with the judicial precedents of this Court.

Analysis and Findings

5. The Court has considered the afore-noted contentions. It is an undisputed fact that the Khyber Pass Mess Basti is not a notified JJ Basti as defined under Section 2(g) of the DUSIB Act. Section 2(g) of the DUSIB Act reads as under:

“2. In this Act, unless the context otherwise requires, -

xx.....xx.....xx

(g) “jhuggi jhopri Basti” means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri Basti in accordance with the following factors, namely:-

- (i) the group of jhuggis is unfit for human habitation;*
- (ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any*

⁹ W.P.(C) 11945/2022

¹⁰ “the Draft Protocol”

¹¹ (1989) 1 SCC 101

¹² “DUSIB Act”



*combination of these factors, is detrimental to safety, health or hygiene; and
(iii) it is inhabited at least by fifty households as existing on 31st March, 2006:*

Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri Basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri Basti;”

6. A bare reading of Section 2(g) evidences that DUSIB has to declare a group of *jhuggis* as JJ Basti by way of a notification. One of the conditions to be fulfilled by such a Basti is that it must be inhabited at least by 50 households, as existing on 1st January, 2006. Section 9 of the DUSIB Act empowers DUSIB to make a survey of any JJ Basti. Section 10 of the DUSIB Act provides for preparation of a scheme for removal of any JJ Basti and for rehabilitation of the residents thereof. Section 12 of the DUSIB Act provides for the redevelopment of the JJ Basti.

7. Once a JJ Basti is notified by DUSIB, it becomes eligible for rehabilitation or reallocation under the DUSIB Policy, 2015. This also finds mention in the DUSIB Policy, 2015 which clearly mandates that only those JJ Bastis which came into existence before 1st January, 2006, are eligible for rehabilitation or reallocation. In the present case, Mr. Chauhan, counsel for DUSIB, has unequivocally stated that the list of 675 clusters prepared by DUSIB is final, and includes only those Bastis that were verified to be in existence before the cut-off date. Since the Petitioners' Basti was not in existence as of 1st January, 2006, it was not notified under the DUSIB Act.

8. The Court takes into account that the Petitioners have not challenged their exclusion from the list of identified clusters at any point prior to filing the present writ petition. The record clearly reflects that the list of clusters



included for the extension of benefits under the DUSIB Policy, 2015 was publicly available. The Petitioners have not claimed that they were unaware of their exclusion from this list. If the Court were to entertain such a challenge at this stage, it would set a precedent for an unending series of claims, undermining the finality of the process and defeating the very purpose of the DUSIB Act and the DUSIB Policy, 2015.

9. Additionally, the Petitioners have relied upon the Clause 6A(iii) of the Draft Protocol to claim rehabilitation. For ease of reference, the said provision is extracted below:

“6. STEPS TO BE FOLLOWED PRIOR TO REMOVAL OF JHUGGIS AND JJ BASTIS

A. PRE-SURVEY STEPS

- (i) xx ... xx ... xx
- (ii) xx ... xx ... xx
- (iii) *The proposal will be examined by DUSIB regarding the date of existence of JJ Basti i.e. whether the same was in existence prior to 01.01.2006. If the JJ Basti was in existence prior to 01.01.2006, then the DUSIB will notify the said Basti under section 2(g) of the DUSIB Act, if not notified earlier and the proposal will be placed before the Board (DUSIB) for in-principle approval for removal of the Jhuggis and JJ Basti.*
- (iv) xx ... xx ... xx
- (v) xx ... xx ... xx”

10. The Petitioners have contended that the decisions in ***Manoj Kumar*** and ***Kasturba Nagar Residents Welfare Association*** are *per incuriam* for not considering Clause 6A(iii) of the Draft Protocol. However, a review of the Draft Protocol shows that it was formulated pursuant to the Court’s directions in ***Ajay Maken***, and applies only to clusters notified by DUSIB. While the decisions may not explicitly reference Clause 6A(iii), they nonetheless conclude that no fresh surveys can be conducted after 2015.



Thus, the argument that these judgments are *per incuriam* is untenable as the Court, in both cases, has already addressed and rejected this issue.

11. In ***Manoj Kumar***, the Court specifically dealt with a request for a fresh survey based on the proximity of *jhuggis* to a recognized JJ Basti and, relying on ***Kasturba Nagar Residents Welfare***, observed that the list of notified clusters was final once published, leaving no room for reopening or fresh surveys. The Court was clear that allowing such a request would undermine the established legal framework. Furthermore, the Court reaffirmed in ***Kasturba Nagar Residents Welfare*** that the DUSIB Policy, 2015 does not extend benefits to clusters not identified before 1st January, 2006, a distinction upheld by the Division Bench in LPA No. 71/2023 on 21st February 2023, where the Court observed:

“21. The mandatory condition that has to be fulfilled for eligibility to claim rehabilitation as per Section 2(a)(i) of the 2015 Rehabilitation Policy is that a JJ Basti must be in existence prior to the cut off date i.e. on 01.01.2006, and an individual jhuggi in any such Basti must have been in existence before 01.01.2015. The issue as to whether the conditions are fulfilled by each member of the cluster is to be proved by leading evidence in appropriate proceedings and cannot be demonstrated by affidavits in a writ petition. These are all disputed questions of facts applicable to each jhuggi dweller to be proved separately in a suit.

22. In the opinion of this Court, the learned Single Judge in the order challenged by way of the present appeal in dealing with the aforesaid question, has correctly held that the benefit of rehabilitation to dwellers of JJ Bastis would not extend to the Appellants herein, as their cluster does not find mention in the list of 675+82 clusters published by the DUSIB. A perusal of section 2(g) of the DUSIB Act would show that in the absence of a DUSIB notification, a group of jhuggis cannot be treated as a JJ Basti. The proviso to Section 2(g) would apply only to individual, or groups of jhuggis, only when due recognition has already been accorded to a JJ Basti which is in turn always subject to fulfilment of all the criteria in the section.

23. The directions in Ajay Maken (supra) would apply only to those clusters which have been included in the DUSIB list. This finding has previously been affirmed by a Division Bench of this Hon’ble Court in Vaishali



Through Next Friend and Others v. Union of India and Others, 2022 SCC OnLine Del 2086.

24. *It is the case of the Appellants that the benefit of rehabilitation may be extended to them by attachment to a recognized cluster as per proviso to Section 2(g) of the DUSIB Act, through an issuance of notification. On a perusal of the proviso to Section 2(g), what emerges is that it is ultimately up to the DUSIB, being the appointed nodal agency for the implementation of the 2015 Rehabilitation Policy, to duly declare a group of jhuggis as being part of a JJ Basti by way of a notification, so that the benefits of rehabilitation may extend to the residents of an individual or a group of jhuggis, not considered part of a recognized cluster. The first cluster of jhuggis is at a distance of 3 kms. from the identified cluster and, therefore, cannot be said to be a part of an identified cluster. The learned Single Judge has therefore correctly denied the benefit of rehabilitation to the Appellant dwellers, seeing as there has been no notification issued by the DUSIB under proviso to Section 2(g) with respect to the Appellants' cluster of jhuggis, and held that the Appellants cannot seek the protection of directions laid down in Ajay Maken (supra). It is pertinent also to note that neither in the writ proceedings nor in the present appeal have the Appellants produced any material to prove inhabitation in their cluster by at least fifty households, as existing on 31.03.2002, which is another criteria for qualifying for declaration as a JJ Basti for the purposes of issuance of a notification under Section 2(g) under DUSIB Act, and the consequent benefits of rehabilitation accruing out of such declaration."*

12. Additionally, in ***Vaishali Through Next Friend and Others v. Union of India and Ors.***,¹³ the Court reaffirmed its stance by rejecting requests for fresh surveys or reassessments based on speculative grounds.

13. In line with this position, this Court sees no reason to deviate from the established principles and reiterates that the list of eligible clusters notified by DUSIB is final.

14. In light of the foregoing, in the opinion of the Court, since the Petitioners were never notified as the part of 675 + 82 Bastis by DUSIB, which have been accorded recognition for the purpose of DUSIB Policy,

¹³ LPA No. 271/2022 decided on 19th April, 2022.



2015, the Court finds no ground to grant the reliefs prayed for.

15. In view of the above, the petition, along with the pending applications, is dismissed.

SANJEEV NARULA, J

SEPTEMBER 23, 2024

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