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

+ W.P.(C) 5778/2016

SUSHEELA & ORS

..... Petitioners

Through Mr. Kamlesh Kumar Mishra and Mr.
Vishal Kalra, Advs.

versus

DELHI URBAN SHELTER IMPROVEMENT & ORS

..... Respondents

Through Mr. Mukesh Gupta, Standing
Counsel, Ms. Shashi Gupta and Mr.
Abhishek Sharma, Advs for SDMC
with Mr. Sanjay Hingorani (AE).
Mr. Dev P. Bhardwaj, CGSC and Mr.
Satya Prakash Singh, Adv for R-3.
Mr. Parvinder Chauhan, Standing
Counsel and Mr. Nitin Jain, Adv for
DUSIB.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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04.09.2017

Instant petition was filed in the year 2016 seeking reliefs, as
under:

- (I) For a writ of prohibition or any other appropriate writ, order or direction to the respondents restraining them from demolishing any of the homes of the persons residing in slum cluster called Viklank(g) Basti, Lodhi road Complex, near power Soochna Bhavan, Delhi (as mentioned in ANNEXURE P1).
- (II) For an order directing the respondents to disclose the ownership of the land on which slum cluster called Viklank Basti, Lodhi Road Complex, near power Soochna Bhavan, Delhi is situated, and to produce the

entire file showing the making of orders by the authorities for the demolition of the slums;

- (III) In case the houses are already demolished by the time this petition is heard by this Hon'ble Court for an order directing the concerned respondents to reconstruct the demolished houses at the cost of the concerned respondent and to pay compensation for the illegal demolition.
- (IV) For an order directing the concerned respondents to upgrade the slum cluster Viklant (g) Basti, Lodhi Road Complex, near power Sookhna Bhavan, Delhi in Situ and rehabilitate the 10 households therein in accordance with the decision of the Delhi High Court in Sudama Singh's case and the Pradhanmantri Awas Yojana.
- (V) Pass an order directing Respondents to cease any further evictions or harassment of residents that live in the abovementioned area until all appropriate rehabilitation has been provided.
- (VI) Pass an order restricting the officers/employees/agents of respondent No.2 & 4 from giving false threat to the residents of the abovementioned slum cluster.
- (VII) Pass any such directions or order which this Hon'ble court deems fit and proper in the facts and circumstances of the above mentioned case.

Instant petition proceeds on the premise that eight petitioners have been living in the slum cluster called Viklant(g) Basti since long and covered under the policy of 'Pradhanmantri Awas Yojna' for an alternative accommodation. Seven of the petitioners filed another petition being WP(C) 7433/2017 Susheela & Ors Vs. Public Works Department & Ors. The said writ petition has come to be disposed off by the Concurrent Bench of this Court on 25.08.2017, with the observations as follows:

- “6. The learned counsel for DUSIB has submitted that the petitioners are claiming to be part of the Jhuggi Jhopri (JJ) cluster which had been surveyed way back in 2009 and eligible residents of that cluster had been relocated. He states that the petitioners were not found to be eligible for

rehabilitation in terms of the rehabilitation scheme. The eligibility criteria set out in the scheme reads 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 (sic) prior to 01-01-2006. However, the cut-off date of residing in the jhuggi for becoming eligible for rehabilitation shall be 14.02.2015; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013).**
- (iii) The name of JJ dweller must appear in at least one of the voter lists of the year 2012; 2013; 2014 and 2015 (prior to 14.02.2015) and also in the year of survey, for the purpose of rehabilitation.**
- (iv) The name of the JJ dweller must appear in the joint bio-metric/Aadhar based survey conducted by the DUSIB and the Land Owning Agency;**
- (v) JJ dweller must possess any one of the 12 documents issued before 14.02.2015 as prescribed in the subsequent para;**
- (vi) Neither the JJ dweller nor any of his/her family member(s) should own any house/plot/flat, in full or in part, in Delhi. The JJ dweller should not have been allotted any residential house or plot or flat on license fee basis or on lease-hold basis or on free-hold basis in the NCT of Delhi by any of the Departments or Agencies of GNCTD or Govt. of India, either in his/her own name or in the name of any member of his family;**
- (vii) No dwelling unit shall be allotted if the jhuggi is used solely for commercial purpose;**
- (viii) In case, the jhuggi is being used for both residential and commercial purpose, the JJ dweller can be considered for allotment of one dwelling unit. In case, the ground floor of the jhuggi is being used for commercial purpose and other floors for residential purpose that will entitle the JJ dweller for one dwelling unit only;**
- (ix) If a different family (having separate Ration card issued prior to 14.02.2015) which fulfils all the other eligibility criteria is living on upper floor, the same will also be considered for allotment of a separate dwelling unit. (this is in supersession of the earlier notified guidelines of 2013).**
- (x) The ineligible JJ dwellers will be removed from the JJ Cluster at the time of its**

rehabilitation/relocation/clearance of JJ Basti.”

7. I have heard the learned counsel for the parties.
8. It appears that since the petitioners were part of the JJ cluster which had been removed and the eligible residents had been relocated, therefore, it is also apparent that the petitioners have set up their jhuggis at the current location only recently.
9. The petitioners have also filed a writ petition bearing no.5778/2016 seeking similar relief as sought in the present petition and, although the same is pending, no interim relief has been granted therein. In the said petition, the South Delhi Municipal Corporation had filed an affidavit, inter alia, affirming as under:-
 - “ 4. That in this regard, it is most respectfully submitted that the JJ Cluster namely Laprocyc Camp (Viklank Camp) Kushak Nallah, JJ Cluster, in the vicinity of Jawahar Lal Nehru Stadium were removed/shifted for facilitation of development work relating to Common Wealth Gates (sic) 2010, after proper verification under the directions of the Chief Secretariat Government of Delhi. Before the removal of the JJ Cluster proper survey was conducted and as per the survey report none of the Jhuggi dweller is found eligible for re-location as per policy. The said Jhuggi cluster was removed in the year 2009. Photocopy of the letter dated 06.01.2009 of Deputy Commissioner, Slum is hereby attached as Annexure-A.
 5. That a letter dated 19.06.2015 was received from Police Station Lodhi Colony therein it was stated that about 10-15 temporary Jhuggies were prepared by some Women at back side Silver Oak Park near Barapullah Nallah Gate No.9, Jawahar Lal Nehru Stadium Lodhi Colony about 15-20 days back. Copy of request letter is (sic.) this regard attached herewith as Annexure-B.
 6. That in pursuance to the said report of the SHO encroachment removal action were fixed for 25.06.2016, 30.06.2015, 06.08.2015 and 01.09.2015 but action could not be materialized due to non-availability of Police Force. However, again action was fixed for 19.11.2015 under the jurisdiction of Police Station, Lodhi Colony and during action all the Jhuggies existed at the site were removed and a letter was also sent to the SHO to keep watch and ward over the site. Photographs in this regard is attached herewith as Annexure-C (Colly).
 7. That the impugned site was inspected on 02.11.2016 and

during inspection it has been noticed that the encroachment has been resurfaced. There are about 19 Temporary Juggies at Bank of Kushak Nallah and under the Elevated Road of Barapulla Nallah. As such the same is actionable and shall be removed without any prior notice as per the provisions of DMC Act, 1957. Photographs of site are attached herewith as Annexure-D (Colly).”

10. The addresses of the petitioners stated in the memo of parties is also of the site in question. The address of petitioner nos. 2, 4, 5 and 7 is "T Huts, Lodhi Colony, New Delhi", while the address of other petitioners is shown as Viklank Basti near JLN Stadium.
11. The learned counsel for the respondents had also drawn the attention of this Court to the Aadhar Card of Nikhil who is the son of petitioner no.1 and is aged twelve years. The said Aadhar Card indicates that the address of Nikhil is House no.924, Pocket-11, Sector-A/6, Punarwas Colony, Narela, Delhi-110040. This would also clearly indicate that the petitioners have not been in occupation of the land in question for any significant period of time.
12. Mr Naushad Ahmed Khan, the learned counsel for PWD has also handed over photographs of the site taken on 07.09.2015 which indicates that there were no dwelling units on that date.
13. It is apparent from the material which is placed on record that jhuggis occupied by the petitioners have been put up recently. Clearly, the respondents would be entitled to prevent any encroachment and take necessary action in respect of such encroachment. This is not a case where there is an established JJ cluster which requires to be rehabilitated as per the policy but plainly, the occupation appears to be a fresh encroachment and the respondents are duty bound to prevent such encroachment on public land.

Today, it is conceded to on behalf of the petitioners that the hutments or the other constructions at the site stand demolished/removed. Ld. counsel for the petitioner on his part, submits that the petitioners are still at the site, which is refuted to on behalf of the respondents. Be that as it may, with the action of

demolition/removal that has already been taken place and the observations that have already come to be made as regards the status of the petitioners at the site by the concurrent Bench of this Court, nothing survives in the instant petition and the same is disposed off accordingly.

A. K. CHAWLA, J

SEPTEMBER 04, 2017

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