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

+ **W.P.(C) 7433/2017**

SUSHEELA & ORS

..... Petitioners

Through: Mr Kamlesh Kumar Mishra and Mr
Vishal Kalra, Advocates.

versus

PUBLIC WORKS DEPARTMENT & ORS Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC
and Mr T. P. Singh, Advocate for R-
1.

Mr Gautam Narayan, ASC (Civil),
GNCTD with Mr Naushad Ahmed
Khan, ASC (Civil), GNCTD for PWD
and SHO with Mr Ajay Kumar,
Executive Engineer, PWD and SI
Prakash Chand.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.08.2017

CM Nos.30665/2017 & 30666/2017

1. For the reasons stated in the applications, the same are allowed.
2. The applications are disposed of.

W.P.(C) 7433/2017 & CM No.30664/2017

3. The petitioners have filed the present petition, *inter alia*, praying for an order restraining the respondents from demolishing the dwelling units of the persons residing in the slum cluster referred to as Viklank (g) Basti located at Lodhi Road Complex, Near Power Soochna Bhavan, Delhi and giving effect to the notice dated 21.08.2017 issued by the Executive

Engineer, PWD.

4. Mr Gautam Narayan, the learned counsel for the respondents states that the petitioners are not part of the Viklank (g) Basti as claimed by them but had set up *jhuggis* - 18 to 19 in number - adjacent to Kushak Nala below Barapullah. He states that pursuant to the notice dated 21.08.2017, the said encroachment on public land has been removed.

5. Mr Mishra, the learned counsel for the petitioners states that the entire process of removal of the *jhuggis* in question is without authority of law as Delhi Urban Shelter Improvement Board (DUSIB) was not consulted in this process. He submits that PWD could not have taken any action without prior consultation with and participation of DUSIB and without making adequate arrangements for relocation of the petitioners.

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 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 Laproc 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 re-surfaced. 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.

14. In view of the above, no relief can be granted to the petitioners in this petition. The petition and the pending application are, accordingly, dismissed.

VIBHU BAKHRU, J

AUGUST 25, 2017/MK