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

+ W.P.(C) 8962/2017

HARDIYA DEVI & ANR Petitioners
Through: Ms Anupradha Singh, Advocate.

Versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS Respondents

Through: Mr Parvinder Chauhan and Mr Nitin
Jain, Advocates for DUSIB.
Ms Sapna Chauhan, Advocate for
DDA.
Mr Anil Dabas and Mr Parveen
Kumar, Advocates for-6.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.11.2018**

1. The petitioners have filed the present petition, *inter alia*, praying that the respondent no.1 (hereafter 'DUSIB') be directed to allot dwelling units to the petitioners. It is stated that petitioners were residents of a *Jhuggi* cluster located at Nehru Camp, Patparganj, Delhi, which was inhabited way back in 1982.
2. The principal grievance of the petitioners is that DUSIB has found them ineligible for being rehabilitated by allotment of alternative accommodation. This is principally for the reason that petitioner no.1 did not have a ration card at the material time and the name of petitioner no.2 did not feature in the voters list at the material time.

3. Insofar as the case of petitioner no.2 is concerned, it was examined by this Court that in an earlier writ petition filed by the petitioners (being ***W.P.(C) 1099 of 2017*** captioned “***Harida Devi and Anr. v. Delhi Urban Shelter Improvement Board and Ors.***”). Petitioner no.2 was arrayed as petitioner no.2 in that petition as well. The said petition was disposed of by an order dated 08.02.2017. Paragraph 10 and 11 of the said decision are relevant and are set out below:-

“10. It has been enquired from learned counsel for the petitioners if he is in a position to demonstrate that the name of the petitioner No.2 or his spouse finds mention in the Voter’s List for the years 2012, 2013, 2014 and 2015. He states that he is not in a position to produce any such document. In view of the above, this Court declines to interfere in the impugned order dated 25.01.2017.

11. At this stage, counsel for the petitioners submits that the petitioner No.2 may be granted a reasonable time to vacate the Jhuggi occupied by him.”

4. The learned counsel appearing for the petitioners submits that notwithstanding the aforesaid decision, the petitioners cannot be excluded from approaching this Court once again as a different view has been taken by this Court regarding the eligibility requirements in ***Udal and Ors. v. Delhi Urban Shelter Improvement Board and Ors.: W.P.(C) 5378/2017, decided on 01.08.2017***. The said contention is unmerited. Even if, it is accepted that a different view has been taken by this Court in another case, the benefit of the same cannot be availed by petitioner no.2 by filing a fresh proceeding. Moreover, the learned counsel appearing for DUSIB also disputes that the decision in ***Udal and Ors. (supra)*** can be considered as a precedent as it was expressly stated in that decision that it would not be

considered as one.

5. Insofar as petitioner no.1 is concerned, the petitioner was held to be ineligible and this was communicated to her by an in-eligibility letter dated 01.02.2017. The said letter also indicated that, if aggrieved, petitioner no.1 could file an appeal before the Appellate Authority within a period of 30 days of the receipt of the said letter. It is stated that the petitioner did file an appeal before the Appellate Authority. Whereas, the petitioner contends that the same was not disposed of, the counter affidavit filed on behalf of DUSIB indicates otherwise. Although, a copy of the order passed by the Appellate Authority has not been enclosed with the Counter Affidavit, it is affirmed that the Appellate Authority has rejected petitioner no.1's appeal. The learned counsel appearing for DUSIB further states that the order passed by the Appellate Authority is also appealable under Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010.

6. Notwithstanding any controversy whether the said order has been served on petitioner no.1 earlier, this Court considers it apposite to direct DUSIB to communicate the decision of the Appellate Authority to the petitioners through the learned counsel appearing on behalf of the petitioners within a period of two weeks from today. It is so directed.

7. Petitioner no.1 is at liberty to avail the alternate remedy as provided under the DUSIB Act. It is clarified that if petitioner no.1 files an appeal within a period of 30 days of receipt of the appellate order, the Appellate Authority (Lt. Governor of Delhi) shall consider the same uninfluenced by any question of delay.

8. The petition is disposed of with the aforesaid observations.
9. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

NOVEMBER 15, 2018
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