

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

Date of decision: 16th FEBRUARY, 2023

IN THE MATTER OF:

+ **W.P.(C) 10456/2021**

RAM BHAROSE

..... Petitioner

Through: Mr. M. K. Gahlaut and Mr. Varun
Jain, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ANR.

..... Respondents

Through: Mr. Parvinder Chauhan, Mr. Sushil
Dixit, Advocates for DUSIB

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for challenging Clause 1(iv) of Part B of the Delhi Slum & JJ. Rehabilitation and Relocation Policy, 2015 (*hereinafter referred to as 'the Policy'*), which stipulates that the name of the Jhuggi Jhopri (*hereinafter referred to as 'the JJ'*) dweller must appear in the joint survey conducted by the Delhi Urban Shelter Improvement Board (*hereinafter referred to as 'the DUSIB'*) and the Land Owning Agency, is violative of Article 14, 21, 38 & 39 of the Constitution of India and the same shall be declared as null and void. The Petitioner has also prayed for quashing the order dated 06.07.2021 passed by the DUSIB rejecting the representation of the Petitioner herein by which he had claimed for alternate accommodation in view of dispossession from Jhuggi No.25 situated in JJ Cluster, C-Block, Kirti Nagar, New Delhi.

2. It is stated that the Petitioner and his wife were residing at Jhuggi No.25 situated in JJ Cluster, C-Block, Kirti Nagar, New Delhi, and they were dispossessed in August 2012. The Petitioner, thereafter, approached this Court by filing a Writ Petition, being W.P.(C) No.3609/2021, claiming rehabilitation under the Policy. The said Writ Petition was dismissed by an Order dated 19.03.2021. The Petitioner, thereafter, filed a representation for allotment of an alternative accommodation in view of dispossession from Jhuggi No.25 situated in JJ Cluster, C-Block, Kirti Nagar, New Delhi, which was dismissed by the DUSIB *vide* Order dated 06.07.2021 on the ground that the Petitioner herein and his wife did not produce their Aadhar Card because of which the eligibility letter was not issued to them and their names did not appear in the joint survey conducted by the DUSIB and the Land Owning Agency which is a mandatory condition for a person to be entitled to rehabilitation.

3. The Petitioner has, therefore, challenged the Policy which mandates that the name of a JJ Dweller must appear in the survey conducted by the DUSIB and the Land Owning Agency.

4. Mr. M. K. Gahlaut, learned Counsel for the Petitioner, states that the said Clause is violative of Article 14 & 21 of the Constitution of India and is contrary to the object and purpose of the DUSIB Act which was brought in to ensure rehabilitation of a Jhuggi Dweller if he was sought to be evicted. Learned Counsel for the Petitioner places reliance on the Judgment of this Court in Ajay Maken & Ors v. Union of India & Ors., **2019 SCC OnLine Del 7618**, to contend that the Petitioner is entitled to rehabilitation.

5. *Per contra*, Mr. Parvinder Chauhan, learned Counsel for DUSIB, states that the present petition is an abuse of the process of law inasmuch as

the Petitioner had already approached this Court claiming rehabilitation and that petition had been dismissed. He states that the Petitioner has now chosen a novel way to ask for the same relief by filing the instant Petition challenging the Policy itself.

6. Heard Mr. M. K. Gahlaut, learned Counsel for the Petitioner, and Mr. Parvinder Chauhan, learned Counsel for DUSIB, and perused the material on record.

7. Material on record shows that the Petitioner had filed W.P.(C) No. 3609/2021 claiming that he was dispossessed from Jhuggi No.25 situated in JJ Cluster, C-Block, Kirti Nagar, New Delhi, in August 2012. He had sought for an alternative accommodation in the said petition. Further, in the said Petition it was stated that after being dispossessed, the Petitioner is now living in a tenanted accommodation at WZ-44, Basai Darapur, Moti Nagar, Near Tyagi Dharamshala, New Delhi-110015. The said Writ Petition was dismissed by the learned Single Judge *vide* Order dated 19.03.2021 on the ground of delay and laches. The learned Single placed reliance on the judgment dated 01.09.2015, passed by this Court in **WP.(C) 7889/2011**, titled as Dayachand v. Union of India, wherein this Court had held that rehabilitation has a sense and element of urgency attached thereto and, if it is found that the persons who have been dispossessed have not acted with promptitude and have settled themselves elsewhere with their own resources, then those persons cannot belatedly attempt to capitalise from the allotment. Paragraph No.10 of Dayachand (supra) as quoted by the learned Single Judge in the judgment dated 19.03.2021 reads as under:

“10. Rehabilitation has a sense and element of urgency attached thereto; the whole purpose thereof being to immediately provide alternative accommodation to

persons who are dispossessed from their houses, though unauthorizedly made over public land. If it is to be found that the person so dispossessed has not acted with promptitude and has settled himself elsewhere with his own resources, then that person cannot belatedly attempt to capitalise from the allotment. A distinction has to be carved out between a rehabilitative allotment and an allotment made in pursuance to some housing scheme. The petitioner had not made any investment in any immovable property, for him to say that he is entitled to the benefit thereof at any time. Rather, it may be noticed that even if the petitioner had made such an investment, his right to enforcement thereof would have become barred by time after such long lapse of time.”

8. The Judgment passed by the Single Judge in Dayachand (supra) was taken up in appeal in **LPA No.271/2016** titled as Dayachand v. Union of India & Ors., wherein the Division Bench of this Court, *vide* Order dated 22.12.2016, upheld the reasoning given by the learned Single Judge that the Petitioners therein did not pursue the matter diligently and regularly, whereas in cases of rehabilitation the person so dispossessed has to act with promptitude and cannot belatedly attempt to capitalise from the allotment. The learned Single Judge, after relying on both the judgments, has dismissed W.P.(C) No. 3609/2021 *vide* Order dated 19.03.2021, by observing as under:

“7. Admittedly, the Petitioner has made a representation only in December, 2020. After being dispossessed in 2012, no claim for rehabilitation was made by the Petitioner. At this point, this Court is of the opinion that the orders in Dayachand (supra) would be fully applicable. However, considering the fact that the Petitioner has made a representation, as on 27th December, 2020, the authorities, i.e.,

Respondents No. 1 to 4 are free to consider the same, expeditiously, in accordance with law”

9. There is nothing on record to show that the Judgment dated 19.03.2021 has been challenged by the Petitioner herein by filing an appeal and, therefore, the matter has attained finality. As rightly contended by the learned Counsel for the DUSIB, the instant petition is nothing but a second attempt by the Petitioner to claim rehabilitation.

10. It is well settled that a person cannot approach a Writ Court repeatedly claiming the same relief by making changes in the prayer clause. The Apex Court in State of U.P. v. Labh Chand, (1993) 2 SCC 495, has observed as under:

“20. When a Judge of Single-Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another Single-Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. Second writ petition cannot be so entertained not because the learned Single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned Single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned Single Judge or a Division Bench of the same court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for

consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the court refusing to entertain a writ petition. It is why, the rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject-matter respecting which the first writ petition of the same person was dismissed by the same court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of courts.

21. Hence, we are of the view that this reason which supports the first ground urged in support of the appeal, to wit, that the learned Single Judge ought not have entertained a second writ petition in respect of the order of compulsory retirement of the respondent, when a Division Bench of the same court had refused to entertain a writ petition of the same respondent filed respecting the same subject-matter for non-availing of the alternate remedy before the forum of U.P. Public Services Tribunal, is also a valid reason.”

11. Similarly, in State of T.N. v. Amala Annai Higher Secondary School, (2009) 9 SCC 386, the Apex Court has observed as under:

“9. In our view, the judgment of the Division Bench affirming the order of the Single Judge cannot be

sustained for more than one reason. In the first place, the management of the School had already filed a writ petition in 1997 praying therein that the State Government and its functionaries be directed to consider their representation dated 20-1-1997 for the grant of one post of Junior Assistant and in furtherance thereto, the State Government, after hearing the school, rejected the representation on 3-7-1998 indicating the following reasons:

“At the time of sanction of posts GOMs No. 50 Education dated 20-1-1995 as per the norms issued in GOMs No. 340/Education dated 1-4-1992 the strength of your school during 1990-1991 was below 300. The orders in GOMs No. 340 are clear. It says that there is no compulsion to give non-teaching staff as and when the school increases the strength. Therefore your request for sanction of one post of Junior Assistant is not feasible of compliance.”

The management of the School did not challenge the aforesaid decision of the State Government and therefore, it was not open to the School to file another writ petition for the same relief i.e. for direction to the State Government to sanction one post of Junior Assistant to the School from Academic Year 1991-1992.

10. The controversy stood concluded in the earlier round of litigation and the decision of the State Government dated 3-7-1998 having not been challenged, the second writ petition could not have been entertained by the High Court. Merely because few subsequent representations were made by the management to the State Government reiterating the request for sanction of post of Junior Assistant, no new cause of action for filing second writ petition can be said to have arisen. In the facts and circumstances of

the case, the second writ petition by the management of the School for the same relief is nothing but an abuse of the process of the court.”

12. In K.S.B. Ali v. State of A.P., (2018) 11 SCC 277, the Apex Court has observed as under:

“39. In the first place, it is to be noticed that as far as Mr Ali is concerned, his Writ Petition No. 10084 of 2006 which was filed in the High Court after passing of the order dated 13-12-2007 in K.S.B. Ali v. State of A.P. [K.S.B. Ali v. State of A.P., SLP (C) No. 23392 of 2007, order dated 13-12-2007 (SC), wherein it was directed: “Heard the petitioner's counsel and learned counsel/ASG for the contesting respondent HUDA, State of A.P. and other contesting respondents. The petitioner herein has sought permission to withdraw WP No. 14439 of 2006 filed before the High Court of A.P. from which Writ Appeal No. 887 of 2006 has arisen. The contesting respondents have no objection for withdrawal of the writ petition filed by the petitioner with liberty to take appropriate remedy. Permission sought is granted. The impugned judgment [K.S.B. Ali v. State of A.P., 2007 SCC OnLine AP 765] as well as the judgment [K.S.B. Ali v. State of A.P., WP No. 14439 of 2006, order dated 14-7-2006 (AP)] passed by the learned Single Judge are set aside. The Writ Petition No. 14439 of 2006 is dismissed as withdrawn. The issues raised are left open. The special leave petition is disposed of accordingly.”] by this Court, was not maintainable. This Court, by the said order, had permitted him to withdraw his Writ Petition No. 14434 of 2006 and “to take appropriate remedy”. Obviously, the remedy could not be in the form of another writ petition on the same facts and grounds which were pleaded earlier. The High Court has rightly held [State of A.P. v. Malik Sultana, 2012 SCC OnLine AP 858 : (2013) 2 ALD 177] that having given up his pursuit of public law remedy in earlier

abandoned proceedings, filing of the fresh writ petition or pursuing pending Writ Petition No. 10084 of 2006 would constitute an abuse of the process of the Court.”

13. In light of the above, the present petition is nothing but an abuse of the process of law. After 10 years of dispossession from Jhuggi No.25 situated in JJ Cluster, C-Block, Kirti Nagar, New Delhi, the Petitioner is now trying to take advantage of the Order dated 06.07.2021 by which his representation claiming benefit of the Policy for providing alternate accommodation in view of his dispossession from the said Jhuggi has been rejected and one of the grounds for rejecting his claim was Clause 1 (iv) of Part B of the Policy. Clause 1 of Part B of the Policy which lays down the eligibility criteria for allotment of alternative dwelling units to rehabilitate and relocate JJ dwellers reads as under:

“Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B)

1. The eligibility criteria for allotment of 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);*
- (iii) The name of JJ dweller must appear in at least one of the voter lists of the years 2012, 2013, 2014 and 2015 (prior to 01-*

- 01-2015) and also in the year of survey, for the purpose of rehabilitation;
- (iv) ***The name of the JJ dweller must appear in the joint survey conducted by the DUSIB and the Land Owning Agency;***
- (v) *The JJ dweller(s) will be subjected to bio-metric authentication by Aadhar Card or bio-metric identification by other mechanism;*
- (vi) *JJ dweller must possess any one of the 12 documents issued before 01-01-2015 as prescribed in the subsequent para;*
- (vii) *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 Passport; Ration Card with photograph; 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;*
- (viii) *No dwelling unit shall be allotted if the jhuggi is used solely for commercial purpose;*
- (ix) *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;*
- (x) *If a different family, having separate Ration card issued prior to 01-01-2015, 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).

- (xi) *The ineligible JJ dwellers will be removed from the JJ Cluster at the time of its rehabilitation/ relocation/ clearance of JJ Basti.” (emphasis supplied)*

14. Apart from the eligibility criteria, the jhuggi dweller must also possess any one of the following documents, issued before 01.01.2015, to become eligible for the purpose of allotment of a dwelling unit:

“Passport;

Ration Card with photograph;

Electricity bill;

Driving License;

Identity Card/ Smart Card with photograph issued by State/ Central Government and/ or its Autonomous Bodies/ Agencies like PSU/ Local Bodies (except EPIC);

Pass book issued by Public Sector Banks/ Post Office with photograph;

SC/ST/OBC Certificate issued by the Competent Authority.;

Pension document with photograph such serviceman's Pension Book, Pension Payment Order, Ex-serviceman widow/dependent certificate, old age pension order or widow pension order;

Freedom Fighter Identity Card with photograph;

Certificate of physically handicapped with photograph issued by the Competent Authority;

Health Insurance Scheme Smart card with photograph (Ministry of Labour scheme);

Identity card with photograph issued in the name of the descendant(s) of the slum dweller from a Government school or Certificate with photograph issued by the Principal of a Government School mentioning therein that the descendant(s) of the JJ dweller is/was the student of the school.”

15. Requirements have been enumerated in the Policy to ensure that only persons who are entitled to rehabilitation are given the benefits of the Policy. As rightly pointed out in the Counter Affidavit, it is not uncommon that many persons who stay in JJ Clusters shift to other Clusters in search of better opportunities or because they have found employment elsewhere and even after shifting they continue to retain the documents, which were issued to them on the previous address. Such a person, who shifts from his original place, cannot be held to be entitled to rehabilitation. The documents alone, therefore, cannot be the sole criteria for making such a person eligible for rehabilitation under the Policy. Other than citing judgments, the Petitioner has not been able to substantiate as to how Clause 1(iv) of Part B of the Policy is violative of Article 14 & 21 of the Constitution of India. Merely relying on certain citations alone is not sufficient to demonstrate that the said Clause is violative of Articles 14 & 21 of the Constitution of India. The said Clause has been brought in to ensure that only genuine persons get the benefit of the Policy and it cannot be found faulted.

16. The reasoning given in the order dated 06.07.2021 is that the Petitioner herein and his wife have not produced their Aadhar Card because

of which the eligibility letter was not issued to them and they did not reside at the given address when the joint survey was conducted by the DUSIB and the Land Owning Agency. Both the conditions are mandatory for entitlement to rehabilitation. These requirements cannot be faulted as they are in consonance with the eligibility condition laid down by the Policy and the condition imposed by DUSIB cannot be said to be arbitrary and violative of Articles 14 and 21 or the Constitution of India.

17. In view of the above, the present petition is nothing but an abuse of the process of law.

18. Accordingly, the instant Writ Petition is dismissed along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2023

Rahul