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

Date of Decision: 15th March, 2023

+ **W.P.(C) 11871/2022 and CM APPL. 35471/2022**

RANDHEER AND ORS.

..... Petitioners

Through: Mr. Bibhuti Bhushan Mishra & Mr. Kailash Kumar, Advs. for Mr. Kamlesh Kumar Mishra, Adv. (M: 9999517030)

versus

COMMISSIONER OF POLICE AND ORS.

..... Respondents

Through: Ms. Prabhsahay Kaur, Ms Kritika Gupta, Mr Arkaj Jain, Advocates for R-1 (M-8826331177).

Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Ayushi Bansal, Adv. & Sanyam Suri, Adv. for R-1 to 4. (M: 9650174240)

Mr. Mohit Bhardwaj, Adv. for R-4 & 5. (M: 9811117701)

Mr. Subhash Tanwar, CGSC with Mr. Ashish Choudhary, Advocate for R-6 (M-9810207782).

Mr. Parvinder Chauhan, Ms. Aakriti Garg, Advocates for DUSIB.

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+ **CONT.CAS(C) 730/2022 & CM APPL. 31018/2022**

RANDHEER AND ORS.

..... Petitioner

Through: Mr. Bibhuti Bhushan Mishra & Mr. Kailash Kumar, Advs. for Mr. Kamlesh Kumar Mishra, Adv.

versus

MANISH KUMAR GUPTA AND ORS

..... Respondents

Through: Ms. Manika Tripathy (Standing Counsel for DDA), Ms. Kritika Gupta, Mr. Manish Vashist, Mr.

Shubham Hasija, Mr. Varun
Bhatnagar, Mr. Chirantan Saha, Advs.
(M: 9811831835)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

W.P.(C) 11871/2022 and CM APPL. 35471/2022 (Interim relief)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the occupants of jhuggies at T-Huts, Moolchand Basti-1, Rajghat, New Delhi- 110002 (*'said premises'*). They have filed this petition seeking rehabilitation and a stay on the demolition of their jhuggis till the pendency of the present writ petition.
3. Vide order dated 17th August, 2022, the court had recorded that the Petitioners had concealed material facts in this Petition. This included concealment of the relevant fact that the fathers of the eighteen Petitioners had instituted litigation in respect of the same property right up to the Supreme Court and lost.
4. Thereafter, vide order dated 11th November, 2022, the court had directed to issue bailable warrants against all the petitioners and ordered all the Petitioners to appear before the Court on the next date of hearing. The order dated 11th November, 2022 is as under:

"1. On 17 August 2022, the Court had by a detailed order noted and come to conclude that the petitioners had clearly concealed material facts. It was in that backdrop that they were called upon to show cause why proceedings in criminal contempt be not drawn. Pursuant to the aforesaid order, a reply has been filed on behalf of the petitioner by their counsels.

2. Learned counsel appearing for the petitioners contends that the aforesaid reply is supported by the affidavit of the

petitioner. However, a copy of that affidavit which has been placed would show that it is not notarized at all. It is thus manifest that the petitioners have failed to comply with the directions issued on 17 August 2022. The Court is further constrained to note that the said reply far from expressing any regret continues to raise contentions pertaining to the merits of the claim even though the same had been duly noticed and rejected by the Court earlier.

*3. Additionally, Ms. Kaur, learned counsel appearing for the Authority, has drawn the attention of the Court to the institution of contempt case being CONT.CAS(C) No. 730 / 2022 [**Randheer and Ors. vs. Manish Kumar Gupta And Ors.**] by the petitioners in July 2022. In the aforesaid contempt petition, the petitioners have, in essence, sought identical reliefs. Also an early hearing application appears to have been moved and pressed on 22 August 2022 and which was also granted. The Court notes that even before the Contempt Court the petition was taken up on 22 August 2022. The petitioners did not disclose the passing of the order dated 17 August 2022 in those proceedings either.*

4. Consequently, bailable warrants shall be issued against all the petitioners who shall appear before the Court on 13.01.2023 and show cause why charges be not framed against them for having committed willful and deliberate criminal contempt of the Court.

5. A perusal of the previous order dated 13th January, 2023 shows that material facts have been clearly concealed by the Petitioners in this matter.

The said order reads:

“7. Upon a query from the Court as to whether the Petitioners disclosed the earlier litigations under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, Mr. Mishra points out to this Court paragraph 5 of the petition, which reads as under:

“5. The present petition is limited to the rights of the petitioners as slum dweller in their respective jhuggies and the petitioners in the present case are not claiming

the right on the land as may be available to them in different statutes for the long duration for which they have been holding the land.”

8. It appears from the above deliberation that the factum of public premises litigation having been unsuccessful, was in the knowledge of the Counsel, who drafted and filed the present petition.

9. It is also noticed that most of the Petitioners are either daily wagers or workers working in the informal sector.

10. Ms. Prabhsahay Kaur, Id. Counsel for the Delhi Development Authority (DDA) points out paragraph 1A of the petition, which reads as under:

“1A. That the petitioners have not filed any petition seeking similar relief as prayed in the present petition in this Hon’ble court or any other court.”

11. Accordingly, since the Petitioners have appeared before the Court today, their presence is exempted for the next hearing. If and when the Court directs, they shall again be present before the Court. The consequences of non-disclosure shall, however, be considered on the next date of hearing. Considering the fact that the identical contempt petition, Contempt Case No. 730/2022 titled ‘Randheer and Ors. vs. Manish Kumar Gupta And Ors.’ has been filed for the same reliefs, it is deemed appropriate that the said contempt petition is also called with the present writ petition, subject to orders of the Hon’ble the Chief Justice.

12. By the next date of hearing, the DUSIB shall place on record a specific affidavit as to whether the Petitioners are entitled for rehabilitation or not. The said affidavit shall also specify the current policy of DUSIB for rehabilitation.

13. Considering the harsh winter, the jhuggis are not being permitted to be demolished for the time being.

14. The Sub-Inspector (SI) of the concerned area is present in Court today and confirms that the warrants have been executed. Considering the discussion above, for the time being the warrants issued on the last date against the Petitioners are kept in abeyance till further orders of this Court”.

6. Therefore, as per the above order, the only ground on which the Court had not permitted demolition of the jhuggis was due to harsh winter, which was prevalent at the said time.

7. Ld. Counsel for the Petitioners rely on the order dated 9th January 2023 passed by the National Green Tribunal ('NGT') in O.A 21/2023 titled '**Ashwani Yadav v. Govt. of NCT of Delhi**' wherein a High Level Committee (HLC) to be headed by Lieutenant Governor was constituted. Further, vide order dated 27th January 2023, the Office of Chief Secretary, GNCTD constituted the HLC headed by the Lieutenant Governor pursuant to the directions of the NGT vide order dated 9th January 2023.

8. Considering the above orders and the fact that the Petitioners, who were occupying the jhuggis in the Rajghat area, which is adjacent to the Yamuna River, it is directed that the DUSIB/DDA/other authorities shall proceed further with the demolition of the jhuggis. It is made clear that no further indulgence shall be granted to the Petitioners or any of the relatives of the occupiers, who may try to re-occupy the said premises, and strict action in accordance with law, is permitted to be taken by the Police authorities and the DDA/DUSIB with the cooperation of the Police authorities. The DCP of the concerned area shall render all assistance to the DDA/DUSIB, and other authorities to remove the jhuggis or any other unauthorised/illegal constructions from the said premises.

9. Further, the Supreme Court vide order dated 10th January 2022 in SLP(C) No. 410/2022 titled '**Badri Prasad & Ors v. DDA**' dismissed the SLP and has in effect permitted the demolition for vacation of these plains. Considering that the Petitioners are occupying the Yamuna River plains, each of the Petitioners shall vacate their respective premises within three

days. Upon failure to vacate or upon any obstruction being caused to the demolition and removal action by the DDA/other authorities, the bailable warrants shall also be liable to be enforced against them. If the Petitioner do not vacate within the time prescribed, apart from facing the demolition action as directed, they would be liable to deposit a sum of Rs.50,000/- with DUSIB within a period of 2 weeks from today.

10. Ld. Counsel for the Petitioners also urged that the occupants of the said premises may be considered for rehabilitation by DUSIB. Insofar as the rehabilitation is concerned, the said area, as per DUSIB, is not in the list of notified clusters, which are respectively, 675 and 82 in number. Accordingly, no rehabilitation can be granted to the Petitioners in respect of the said premises.

11. Some of the Petitioners are also present in Court. Ld. counsel for the Petitioners assures the Court that the Petitioners would vacate their premises immediately within 3 days.

12. The petition and the application are disposed of.

**CONT.CAS(C) 730/2022 & CM APPL. 31018/2022 (for stay of eviction),
CM Appl. 36199/2022 (impleadment)**

13. The present contempt petition is filed based upon the judgment of the Id. Division Bench of this Court in *Ajay Maken v. Union of India* [W.P.(C) 11616/2015, decision dated 18th March 2019]. There are also applications being filed for the stay of eviction and impleadment.

14. The above judgment has been considered in other similar cases namely, *Jayanti Devi v. Govt. of NCT of Delhi* [W.P.(C) 1654/2023, decision dated 10th February 2023] and *Shakarpur Slum Union v. DDA*,

[W.P.(C) 6779/2021, decision dated 2nd August, 2022].

15. In **Jayanti Devi (supra)**, this Court held that until and unless the jhuggi clusters are duly notified as per the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 (*hereinafter 'DUSIB policy'*), stay on demolition would not be feasible. The order is as follows:

"5. Ld. counsel for the Respondents, including ld. Counsel for DUSIB, have entered appearance. Mr. Chauhan, ld. Counsel for the DUSIB, upon a specific query from the Court as to whether the JJ cluster at Bhairon Marg is a notified cluster under the Policy or not, states that the Petitioner's jhuggi cluster does not belong to notified clusters, which are 675 and 82 in number.

6. Mr. Chauhan, ld. Counsel, also relies upon the recent order passed by this Court in W.P.(C) 1386/2023 titled Kash Ram v. Public Works Department, GNCTD where the Court had directed demolition of jhuggis in the Dhaula Kuan area, subject to certain conditions.

7. Heard. It is now the settled position in law that until and unless the jhuggi clusters are duly notified, stay on demolition would not be feasible."

16. In **Jayanti Devi (supra)**, the Court relied on the judgment rendered in **Shakarpur Slum Union (supra)**. Therein, the Court held as under:

"37. This Court while dealing with Ajay Maken (supra) and Sudama Singh (supra) never gave any licence to any person to encroach upon Government property. However, this Court is dealing with a human problem and right to shelter has been described as right which has to be protected by Courts especially for those who will have no place to go with their family and belongings if they are faced with mid-night demolitions. In order to ameliorate the human problem, this Court in Sudama Singh (supra) had directed that the State Government must formulate a comprehensive protocol to ensure that persons who have encroached upon Government lands are not rendered shelter-less and, therefore, a

rehabilitation policy has to be brought out to rehabilitate those persons. It was in pursuance of that judgment that DUSIB was made the nodal agency for rehabilitation of the persons living in JJ clusters. Parameters were laid down as to who would be entitled to the benefit of the DUSIB Policy. The judgment of this Court in Ajay Maken (supra) cannot be interpreted to mean clusters not identified by the DUSIB would be entitled to rehabilitation.

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42. Resultantly, the instant writ petition is disposed of with a direction to the DDA to carry out further demolition only in consultation with the DUSIB. The DDA is further directed to give sufficient time to the dwellers to make alternate arrangements or, alternatively, steps should be taken to accommodate the dwellers in the shelters provided by the DUSIB for three months so that the persons, whose jhuggis are being demolished, are able to find some alternate accommodation. Pending applications, if any, also stand disposed of."

17. In view of the said judgments, the allegation of contempt is not made out, as only the notified clusters as per DUSIB policy shall be entitled to rehabilitation. The petition seeking contempt action is accordingly rejected.

18. Applications for stay of eviction and impleadment are disposed of in the light of above findings.

19. Both the petitions are disposed of with all pending applications.

**PRATHIBA M. SINGH
JUDGE**

MARCH 15, 2023

dk/dn

(corrected and released on 17th March, 2023)