



2024 : DHC : 1742



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

% **Pronounced on: 29th February, 2024**

- + W.P.(C) 1585/2022 & CM APPL. 4515/2022
MOHAMMAD HAKIM AND ANR Petitioners
Through: Ms.Sumayya Khatoon, Advocate
versus
DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr.Rajiv Shukla, Ms.Shivani
Kapoor, Mr.Sahaj Karan Singh and
Mr.Sanjay Kumar, Advocates for
DDA
- + W.P.(C) 2514/2022
RAHUL KUMAR Petitioner
Through: Mr.Kamal Mehta, Advocate
(DHCLSC) along with petitioner in
person.
versus
DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms.Shobhana Takiar, Standing
Counsel for DDA with Mr.Kuljeet
Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

W.P.(C) 1585/2022

1. The instant batch of petitions involving a similar issue have been filed seeking following reliefs :

- a. Issue of a writ of certiorari quashing the letter dated 3rd July 2020(date of letter same in both the writ petitions) rejecting the claim of the petitioners for allotment of the



house in lieu of the petitioner's erstwhile occupation/possession/ residence at the first floor of the Jhuggis of the petitioner in Kathputli Colony Delhi.

b. Issue of writ of mandamus directing that the respondent shall allocate an alternative dwelling unit to the petitioners.

FACTUAL HISTORY

2. Kathputli Colony started emerging in the 1950s, as a cluster of makeshift tents in an open field on the outskirts of Delhi by a group of inerrant puppeteers from Rajasthan.

3. In the year 2010, the DDA (hereinafter “respondent”) conducted a survey and documents were submitted to its officials. Pursuant to which, the respondent commenced the re-development of the Kathputli Colony on a public private partnership basis.

4. In the year 2014, around 300 residents of the colony moved to transit camp at Anand Parbat, Delhi. The respondent formulated a policy on 2nd July 2014, to rehabilitate the Colony dwellers and fixed the date for cut-off as 1st January 2015. Moreover the respondent constituted bodies wherein the dwellers of the various Jhuggis can file their claim for rehabilitation as well as an Appellate Authority which shall hear the appeals and redress the grievances related to determination and relocation of jhuggi dwellers of Kathputli Colony.

5. Accordingly, the petitioners filed their claim seeking an alternative dwelling unit in lieu of their respective jhuggis.

**W.P.(C) 1585/2022 – FACTS OF PETITIONER NO.1**

6. Petitioner no.1 filed claim for rehabilitation which was rejected by the respondent Eligibility Determination Committee (hereinafter “EDC”) by citing reason that petitioner's jhuggi does not exist and published a list of 771 ineligible slum dwellers where petitioner no.1's name was mentioned at serial number 476.

7. Aggrieved by the aforesaid list, the petitioner no. 1 filed an appeal no. 61 of 2017| 04 of 2017 before the Appellate Authority, which was specifically constituted to hear the appeals and redress the grievances related to determination and relocation of JJ dwellers of Kathputli colony.

8. The Appellate Authority heard the matter and accordingly, the Appellate Authority passed an order dated 30th January 2019, stating that the petitioner fulfils the eligibility criteria as per the guidelines issued by the respondent, however, the EDC wrongly and illegally rejected his claim. Hence, it set aside the communication by EDC vide undated letter issued by the Nodal Officer and directed the respondent to make allotment in favour of the petitioner no. 1 with respect to his jhuggi numbered E-278, Kathputli Colony, New Delhi.

9. Pursuant to the order passed by the Appellate Authority, Nodal Officer of the respondent took suo-moto cognizance of the matter vide order dated 3rd July 2020 (hereinafter “impugned order”) and declared that the petitioner no.1 has failed to fulfil eligibility criteria as stated in DDA Rehabilitation and Relocation Policy, 2015 since the petitioner no.1's claim was for the first floor for which the separate Ration Card was not produced by the petitioner. The order of the Appellate Authority dated 30th January 2019 was set- aside by the Nodal Officer of the



respondent. Aggrieved by which the petitioner no.1 filed the instant petition.

10. Pursuant to the filing of the instant writ petition, the case of petitioner no.1 was re-examined and reviewed by respondent and it is found that his case was inadvertently recommended for 'non acceptance' by the Competent Authority due to mixing of his records with other 62 cases. Therefore, the respondent rectified its mistake by withdrawing the impugned letter and granting the relief as sought by the petitioner no. 1 by way of instant writ petition.

FACTS OF PETITIONER NO.2

11. The respondent published a list of 771 ineligible slum dwellers wherein petitioner no. 2 name was mentioned at Serial no. 116 hence, the petitioner no.2's claim was also rejected by the respondent's EDC by citing reason that petitioner no. 2's jhuggi does not exist.

12. Aggrieved by the aforesaid list, petitioner no. 2 filed an appeal bearing no. 40 of 2017 before the Appellate Authority and the said authority passed an order dated 17th August 2018, stating that the petitioner fulfils the eligibility criteria as per the guidelines issued by the respondent but the EDC wrongly and illegally rejected his claim.

13. Hence, the appeal was allowed by setting aside the aforesaid order communicated vide letter dated 1st November 2017 issued by the Nodal Officer. Accordingly, the respondent was directed to make allotment in favour of the petitioner no. 2 in respect of the first floor jhuggi No. E-81, Kathputli Colony.



14. The Nodal Officer of the respondent took *suo moto* cognizance of the matter, vide order dated 3rd July 2020 bearing Misc. no. /KPC/DDA/2141/2019/341 (impugned order) and declared that the petitioner no.2 has failed to fulfil DDA Rehabilitation and Relocation Policy, 2015 since his claim was for the first floor and he failed to produce separate Ration card, which is a mandatory document for making alternative allotment as per the policy guidelines. Hence, the order of the Appellate Authority dated 17th August 2018 was set- aside by the nodal officer of the respondent. Aggrieved by which the petitioner no.2 filed the instant petition.

W.P(C) 2514/2022

15. The petitioner's (hereinafter "petitioner no.3") claim was rejected by the respondent's EDC by citing reason that petitioner no. 3's jhuggi does not exist and the respondent then published a list of 771 ineligible slum dwellers wherein petitioner no. 3 name was also mentioned.

16. Aggrieved by the aforesaid list, petitioner no.3 filed an appeal bearing no. 1 of 2017 before the Appellate Authority and the said authority passed an order dated 19th July 2018, stating that the petitioner fulfils the eligibility criteria as per the guidelines issued by the respondent but the EDC wrongly and illegally rejected his claim. Accordingly, the respondent was directed to make allotment in favour of petitioner no. 3 in respect of first floor jhuggi No. B-643, Kathputli Colony.

17. The Nodal Officer of the respondent took *suo moto* cognizance of the matter, vide order dated 3rd July 2020 (impugned order) bearing Misc. no. /KPC/DDA/2141/2019/340 and stated that the petitioner no.3 has failed to fulfil DDA Rehabilitation and Relocation Policy 2015. As per



the aforesaid policy, a person claiming rehabilitation for the first floor of the jhuggi shall be eligible only if he/she is able to produce separate Ration card. The claim of the petitioner no. 3 for rehabilitation of the first floor was rejected since, he had failed to produce a separate Ration card, which is mandatory a document for making alternative allotment as per the policy guidelines. Hence, the order of the Appellate Authority 19th July 2018 was set- aside by the Nodal Officer of the respondent. Aggrieved by which the petitioner no.3 filed the instant petition.

PLEADINGS BEFORE THIS COURT

W.P.(C) 1585/2022

18. The instant writ petition has been filed by the petitioners on the following grounds:

“..DDA Nodal Officers do not have power to overrule or set aside the order of Quasi-judicial body

32.BECAUSE, there has been anomaly is the DDA rules and policies where the respondent has erred while rejecting the petitioner's claim for alternative allotment and disregarded the order passed by the competent appellate authority.

33.BECAUSE, the appellate authority passed an order accepting the petitioners claims of alternative allotment against their jhuggis.

34.BECAUSE, the appellate authority has been the appointed, designated authority, specifically constituted to hear appeals against orders and decision of the subordinate authority as per the DDA's policy.

35.BECAUSE, the appellate authority comprises of retired judges along with retired civil servants and experts nominated by the DDA, who accepted petitioners claims for allotment but the same was rejected by the Respondent



Nodal officer without probable cause or jurisdiction to have a say in the said matter.

36.BECAUSE, the order passed by the respondent officer lacks reasonable, probable cause and is alien to the guidelines issued by the DDA.

37.BECAUSE, the respondent cannot defer the standard procedure all set up by itself for its various sister departments, may it be the DDA vice chairman, DDA Nodal officials, EDC, Administrative authority or the appellate authority, all of which falls within the ambit of 1 single statutory

structure, i.e. the DDA with regard to the terms and conditions of the

permissible working structure and moral ethic.

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Difficulty in making of new Ration Card

43.BECAUSE, forcing and rejecting claims of the slum dwellers who are living on the first floors is discriminatory and unjust. Because it is not in the hand of the slumdwellers. It is the government of NCT which has to issue ration card. Slum dwellers can only move application for making ration card and its all upto the government who has to issue ration card.

44.BECAUSE, government has all the data with regards to where are the slums? And making a new ration card is not an easy task for the slum dweller. For making one ration card the slum dwellers have to visit the ration card office N number of times. Most of the time ration card office reject the application even without giving any reason.”

19. The counter affidavit/reply to the instant writ petition has been filed by the respondent. The relevant extract of the said counter affidavit is as follows:

“A. Without prejudice, it is submitted that the case of petitioner no. is re-examined and reviewed after the filing of present writ petition and it is found that his case was inadvertently recommended for 'non acceptance' by the



Competent authority due to mixing of his case records with other 62 cases, and as such, to rectify its mistake, the petitioner no. 1 was communicated vide letter dated 28-04-22 withdrawing the impugned letter dated 03-07-2020. Copy of the said letter dated 28-04-22 is annexed here to as ANNEXURE R-1. Further it is worthwhile to point out that the petitioner no. 1 vide dated 24.06.2022 has deposited the amount of Rs. 25,000/- to DDA in acceptance to this proposal for alternative allotment. The copy of Acknowledgement dated 24.06.2022 is annexed as ANNEXURE R-2.

B. That regarding Petitioner no.2, admittedly, alternative allotment was already made in favour of the father of the Petitioner no. 2 for the jhuggi no. E-81 and where as he could not furnish the requisite documents to show his separate document for 1st floor of the jhuggi as required in terms of the policy, hence the competent authority differed with the order dated 17-08-18 of the Appellate authority, as its observations and findings were in conflict with the Clause (x) of Part-B of J.J Rehabilitation and Relocation Policy which read " If a different family , having separate ration card issued prior to 01-01-2015, which fulfills all the other eligibility criteria is living on upper floor, the same can be considered for allotment of a separate dwelling unit". As petitioner no.2 did not have a separate ration card for his separate 1st floor purported accomodation, he did not fulfill the eligibility criterion laid down in the extant policy. Thus order dated 17-08- 18 of Appellate authority was not accepted by the Competent authority and as such Order of competent authority was communicated by the nodal officer vide office order dt 03-07- 2020/..”

20. The petitioners filed rejoinder in response to the aforesaid counter affidavit. The relevant extract of the same are as follows:

“..With respect to the survey repoli of 2017, the DDA has made contradictory claims in case of the petitioner. DDA has got a survey conducted in 2017 and furnished an un-



dated survey report with two contradictory remarks in terms of the petitioner's jhuggi. Initially, petitioner no.2 claim was rejected by the EDC that petitioner does not have jhuggi. And now again respondent has brought new ground and rejected the petitioner no.2 claim by citing he was living on the first floor and for the first floor dweller, ration card is compulsory. On the issue of separate Ration Card it is submitted that the Appellant Authority has already dealt with the ration card issue and held in para 29 of its order "The Appellant/Claimant stated that he has applied for issuing separate Ration Card but the concerned authority has refused to issue a separate Ration Card in favour of the Appellant/Claimant pertaining to first floor of jhuggi no.81. This shows that the Appellant/Claimant could not get a separate Ration Card issued in his favour pertaining to first floor of jhuggi no E-81 because of policy of concerned Food Department and not due to any fault or inaction or lapse on part of the Appellant/Claimant...."

21. The written submissions have also been filed on behalf of the petitioner no. 2 and the respondent.

PLEADINGS IN W.P. (C) 2514/2022

22. The instant writ petition has been filed by the petitioner on the following grounds:

"9. The petitioner since than running from pillar to post & visited on numerous occasion to the DDA office but to no avails, the petitioner & his family also suffered during Covid pandemic both mentally, physically & financially & his source of income dried up. The petitioner is still languishing in the transit camp on account of the completely & totally illegal, wrongful & arbitrary action & inactions on pati of the DDA. The petitioner finding himself in a very difficult financial situation approached the Delhi High Court legal Aid committee which decided to grant the legal aid to the



petitioner therefore has been able to knock at the doors of justice against the illegalities meted out to him by the respondent DDA.”

23. The written submission has also been filed on behalf of the petitioners and the same is on record.

SUBMISSIONS

24. This Court has cumulatively recorded the submissions of the both the writ petitions.

(on behalf of the petitioners)

25. Learned counsel appearing on behalf of the petitioners submitted that the impugned orders suffers from error since it failed to consider the entire facts and circumstances of the dispute of the petitioners.

26. It is submitted that the respondent has erred while rejecting the petitioners' claim for alternative allotment and disregarded the order passed by the competent Authority. It is further submitted that the orders passed by the competent Appellate Authority was in accordance with the statutory mandates and was passed after consideration of all the facts as well as the evidence produced on record.

27. It is submitted that the Appellate Authority has been the appointed, designated authority, specifically constituted to hear appeals against orders and decision of the subordinate authority as per the respondent's policy.

28. It is submitted that the Appellate Authority comprises of retired judges along with retired civil servants and experts nominated by the respondent, who accepted petitioners' claims for allotment but the same



was rejected by the respondent Nodal Officer without probable cause or jurisdiction to have a say in the said matter.

29. It is submitted that the impugned orders passed by the respondent's Nodal Officer lacks reasonable, probable cause and is alien to the guidelines issued by the respondent itself.

30. It is further submitted that the as per the impugned orders passed by the respondent's Nodal Officer rejecting the petitioners' claim for allotment against their respective jhuggis is that the petitioners were living on the first floor and do not have ration card. It is contended that the aforesaid reasoning of the respondent is wrong as well as against the statutory provisions of law.

31. It is submitted that as per the rehabilitation policy of 2015, the respondent was duty bound to rehabilitate each eligible jhuggi dweller and despite such obligation casted on the respondent.

32. It is submitted that the respondent's Nodal Officer failed to take into consideration the fact that the slum dwellers can only move application for making Ration card and it's upon the discretion of the government to issue the same.

33. It is further submitted that petitioners have tried every post to pillar for issuance of Ration card but due to certain lapses on the part of the authority, they have not been issued the same.

34. It is contended that mere non- issuance of Ration card should not be used as a ground to disqualify the petitioners' claim for rehabilitation.

35. It is submitted that even the respondent as per its own earlier policy of 2014 stated that Ration card is not compulsory. However, in the year 2015, the respondent suddenly changed the eligibility criteria after



demolition of whole Kathputli Colony and wrongly mandated the requirement of a separate ration card for the first – floor dwellers of the Jhuggi. The respondent authority has breached trust and played fraud with Kathputli Colony slum dwellers.

36. It is submitted that the residents who lived on the upper floor of their jhuggis as a distinct ‘separate household’ and submitted separate claims would not be able to present a separate Ration card since they were not even informed that this would be added later as a requirement for rehabilitation eligibility.

37. It is further submitted that even if they applied to be considered as a “separate household”, they would have a Ration card issued only after the cut-off date of 1st January 2015. Therefore, an abrupt change in the policy requirement made by the respondent for which the residents were not notified, was unjust and harsh.

38. It is submitted that denying the petitioners’ basic right of rehabilitation in the present situation, where possession of a separate ration card is impossible, would be illegal and violative of petitioners’ Right to life.

39. It is submitted that the purpose of these policies is to ensure rehabilitation and relocation to economically weaker sections and would have to be interpreted in a broader and more beneficial manner rather than a narrow and pedantic manner as being done by the respondent in this case.

40. In view of the foregoing submissions, the counsels for the petitioners prayed that the instant batch of petitions may be allowed and the reliefs as claimed by the petitioners may be granted by this Court.



(on behalf of the respondent)

41. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petitions and submitted that at the outset the same are not maintainable, and are liable to be dismissed.

42. It is submitted that the case of petitioner no. 1 was re-examined and reviewed after filing of the present writ petition and it was found that his case was inadvertently recommended for 'non acceptance' by the Competent Authority due to mixing of his case records with other 62 cases, and as such, to rectify its mistake, the impugned letter dated 3rd July, 2020 was withdrawn and the same was communicated to the petitioner no. 1 vide communication dated 28th April 2022.

43. It is further submitted that the petitioner no. 1 on 24th June 2022 deposited amount of Rs.25,000/- with the respondent in acceptance of the proposal for alternative allotment. Therefore, with respect to the petitioner no. 1, the instant batch of writ petition may be rendered infructuous.

44. It is submitted that with regards to the petitioners no. 2 and 3, as per Clause (x) of Part-B of the DDA Rehabilitation and Relocation Policy, 2015, it is mandated that dwellers of the first floor of the jhuggis shall also be entitled for rehabilitation if they are able to furnish a separate Ration card as proof that they are a separate family unit.

45. It is further submitted that since the petitioners could not furnish a separate Ration card to prove that they are a separate family unit and not a part of the family living on the ground floor of their respective jhuggis, hence, they are not eligible to be granted an alternative allotment.



46. It is submitted that the orders of the Appellate Authority allowing the claims of the petitioners was not accepted by the Competent Authority of the respondent, therefore, the Nodal Officer of the respondent took suo moto cognizance of the situation and passed the impugned orders.

47. In view of the foregoing submissions, learned counsel for the respondent prayed that the instant batch of petitions are devoid of any merits and may be dismissed by this Court.

ANALYSIS AND FINDINGS

48. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record as well as duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

49. The petitioner no.1 has already been given relief as sought by the respondent therefore; this Court shall not delve into the adjudication of the case of the petitioner no. 1.

50. It is the case of the petitioners that they have been wrongly held ineligible by EDC for the purpose of rehabilitation on the ground that they do not possess the ration card. It is contended by the petitioners that the petitioners have all the other documents as mandated by the Rehabilitation Scheme before the cut – off and possession of ration card is not a mandatory condition.

51. It is further contended that the respondent has wrongly taken suo-motu cognizance of the matters and disallowed the claims of the



petitioners, disregarding the orders of the Appellate Authority which were passed after taking into account all the facts and evidences of the matters.

52. In rival submissions, the respondent submitted that the petitioners have not submitted a separate ration card for the purported 1st floor accommodation; hence they do not fulfil the eligibility criteria as laid down in the policy. Hence, the impugned orders passed by the Nodal Officers of the respondent does not suffer from any illegality.

53. Before advertng to adjudicating the instant petition(s), this Court shall first discuss the Appellate Authority's order, policy of rehabilitation as well as the impugned orders.

54. This Court will peruse the impugned order dated 3rd July 2020 passed by the respondent in the case of the petitioner no. 2. The aforesaid impugned order is reproduced herein below:

"..You had been informed by Eligibility Determination Committee in its order no. 40/2017 DATED 01/11/2017 that you were not found eligible under the DDA REHABILITATION AND RELOCATION POLICY,2015. So, your application was rejected because your jhuggi was not found.

You filed an appeal against the said order of Eligibility Determination Committee before Appellate authority. After making investigation, Appellate Authority by its order dated 17/08/18 set aside the order no. 40/2017 dated 01/11/2017 of Eligibility Determination Committee and admitted your appeal.

As per the RULES MENTIONED UNDER DDA REHABILITATION AND RELOCATION POLICY,2015, the order passed by Appellate Authority was placed before the Competent Authority and it was found out that you had not complied with the Terms and Conditions of DDA



*REHABILITATION AND RELOCATION POLICY,2015.
Your JHUGGI was on first floor, and according to the rules,
all the JHUGGI HOLDERS, whose JHUGGI is on first floor,
have to show Ration Card. Since you do not have a separate
ration card, your appeal for eligibility is rejected.*

*If you are not satisfied with this decision, you can file an
appeal against this decision in appropriate forum....”*

55. Now this Court will peruse the impugned order dated 3rd July 2020 passed by the respondent in the case of the petitioner no. 3. The aforesaid impugned order is reproduced herein below:

*“...The eligibility determination committee, through its
order no. 01/2017 passed vide dated 20/12/2017, informed
you that you were not found eligible under the DDA
Rehabilitation and Relocation Policy,2015. Therefore your
application was rejected as your slum was not found.*

*You have filed an appeal before the Appellate Authority
against the order of the Eligibility Determination
Committee. The Appellate Authority after inquiry vide its
order dated 19.07.2018 dismissed and set aside the order no.
01/2017 dated 20.12.2017 of the Eligibility Determination
Committee and allowed your appeal.*

*In accordance with the rules of the Delhi Development
Authority's Rehabilitation and Relocation Policy, 2015, The
orders passed by the Appellate Authority were produced
before the competent officer and it was found that you have
not fulfilled the conditions of the Rehabilitation and
Relocation Policy, 2015.*

*Your slum was on the first floor and according to the rules,
all the slum dwellers, whose slum is on the first level, will
have to present their separate ration card. Since you do not
have a separate ration card, your eligibility appeal is*



dismissed. If you do not agree with the decision, you can appeal against this order before the appropriate forum...”

56. Upon perusal of both the impugned orders, it is evident that the respondent's competent authority observed that since the jhuggis of the petitioners were on first floor, and as per the rules, all the jhuggi holders, whose jhuggi is on first floor, have to furnish Ration card. However, the petitioners do not have a separate Ration card, hence, the order passed by the Appellate Authority which held that the petitioners are eligible for rehabilitation has been passed in contravention of the Policy. Accordingly, the order passed by the Appellate Authority was set-aside.

57. The impugned order further states due to non- furnishing of Ration Card, the petitioners were not eligible as per DDA Rehabilitation and Relocation Policy, 2015.

58. In the case of the petitioner no. 2, the impugned order passed by the Nodal Officer of the respondent sets aside the Appellate Authority dated 17th August 2018. The relevant part of the Appellate Authority passed in the case of the petitioner no. 2 has been discussed herein below:

“1. This order disposes off the present appeal filed by the appellant/claimant against order dated 01.11.2017 passed by the Eligibility Determination Committee.

2. In brief, the present appellant/ claimant had made a Representation bearing Dy. No. 1184 Dated 17.07.2017 to the Competent Authority, thereby, alleging that he is residing in Jhuggi bearing No. E-81 in Kathputli Colony. A Notice by DDA was pasted in the Kathputli Colony on 31.05.2017 to inform the jhuggi dwellers about the survey to be conducted in the said basti. The appellant/ claimant submitted representation to the competent authority along with requisite documents, thereby, alleging that he fulfills



the eligibility criteria. However, the Eligibility Determination Committee rejected the claim of the present appellant/ claimant and the Nodal Officer, Kathputli Colony, duly communicated its order-dated 01.11.2017 to the present appellant/claimant. Aggrieved by the same, the present appeal has been filed by the present appellant/ claimant

3. In response to the notice, the Appellant/ Claimant has appeared in person. Whereas DDA is being represented by Ms. Shabnam Kundra.

4. The statement of the Appellant/ Claimant has been recorded on 23.07.2018 before us. He has also tendered documents, Annexure A to I, in support of his claim. DDA has also examined Suresh Kumar, AE (Retd.) and has also, tendered survey reports and video clippings in support of its stand.

5. Arguments advanced by the Appellant/ Claimant as well as Ms. Shabnam Kundra for DDA heard at great length and the documents submitted by both the parties are also minutely appraised.

6. The statement of Appellant/ Claimant, Saddam, has been recorded before us on 23.07.2018, wherein he deposed that his parents, Mohd. Nasir & Sakina, are having six sons, namely, Saddam (Appellant/Claimant), Hussain, Sadre Aalam, Shahid, Sadiq & Nazir and one daughter, namely, Tarnum, namely, Urmila & Sharmil. All except Saddam (Appellant/ Claimant) are unmarried.

7. The Appellant/ Claimant stated that the Jhuggi No. E-81 was double storeyed and it comprised of one room on the ground floor and one room on the first floor. A bamboo ladder was placed in the Gali for reaching to the first floor.

8. The Appellant/ Claimant further stated that his parents, Mohd. Nasir & Sakina, along with other unmarried children



were living on the ground floor of the Jhuggi and regarding that allotment has been in favour his father, Mohd. Nazir, and they have already shifted to the Transit Camp.

9. The Appellant/ Claimant further stated that he along with his wife Tabasum and two children, Habiba & Safina, was living on the first floor of Jhuggi No. E-81 but his claim was wrongly rejected by DDA. He has tendered documents, Annexure A to I, in support of his claim for allotment.

10. The factum regarding the allotment having made in favour of Mohd. Nasir in respect of ground floor of jhuggi bearing no. E-81 and he along with his family having already shifted to the Transit Camp is admitted on behalf of DDA in the course of arguments.

11. DDA has conducted two extensive surveys in Kathputli Colony. One was conducted in 2010-11 and another in July 2017. DDA has furnished the survey reports for 2010-11 and of July 2017 and also the Video Clippings prepared along with both the surveys. The Video Clippings were also run before us.

12. DDA has furnished the survey report of 2010-11, in which Jhuggi No. E-81 is recorded to be a double storied structure.

DDA has also furnished the Video Clippings prepared with survey of 2010-11, in which Jhuggi No. E-81 is clearly seen to be double storied structure Furthermore the roof of the room of the first floor is clearly seen to be made of Tin Sheets.

13. The survey report of 2010-11 as well as the Video Clippings of 2010-11 proves that Jhuggi No E-81 was a Pucca double storied structure and furthermore it comprised of the ground floor and one room on the first floor and also



that the roof of the room on the first floor was made of Tin Sheets and it was having brick walls.

14. DDA has also furnished the survey report of July, 2017 in which Pucca structure having an area of 6ft. x 9ft. on the first floor of Jhuggi No. E-81 of Appellant/ Claimant was found to exist at site. It is also mentioned therein that the structure on the first floor was having roof of Plastic Sheets. However, it is also pertinent to point out that the survey report of July 2017 is undated and it also does not bear signature of members of the Survey Team. It reflects adversely on the act and conduct of the members of survey team.

DDA has also furnished the Video Clippings prepared with survey of July 2017, in which the room on the first floor of Jhuggi No. E-81 is clearly seen to be Pucca room and is having brick walls and proper door/ gate and further a fan is seen hanging on the roof and the same is clearly also seen in the running condition.

15. The material placed on file by DDA shows that Jhuggi No. E-81 was a double-storied structure and the construction on the first floor is Pucca and very old construction.

16. The Appellant/ Claimant has also tendered photographs Annexure G to I, which were taken just before the structure was demolished and in all these photographs Jhuggi No. E-81 is clearly seen to be Pucca and double storied structure.

17. The statement of Suresh Kumar, Asstt. Engineer (Civil), (Retd.) has also been recorded before us on behalf of DDA on 23.07.2018, wherein he stated that five survey teams were constituted by DDA for conducting the survey in Kathputli Colony and one photographer was also assigned to each survey team. He was the member of three members survey team, which comprised of Hans Raj, F.L. and A.M. Khan, A.E.



18. Suresh Kumar stated that in July 2017, Jhuggi No. E-81 of Appellant/ Claimant, Saddam S/o Mohd. Nassir, was conducted by his survey team and the Video Clipping was also prepared. The survey team has found a Pucca structure of the area of 6 ft. x 9 ft. on the first floor of Jhuggi No. E-81 and it was having roof of Plastic Sheet and it was having brick walls and a proper gate/ door. The survey team had climbed the first floor of Jhuggi No. E-81 by using a bamboo ladder which was placed by Appellant/ Claimant in the Gali.

19. Suresh Kumar stated that he has seen the survey report, which was filled in by the survey team but the "date of visit is left blank" and it also "does not bear signatures of the member of the survey team". He tried to explain the lapses and stated that it might have been left due to mistake/ over sight.

Suresh Kumar stated further that two Video Clippings was prepared at the time of survey of 2010-11 & July 2017. The Video Clippings were played before him.

Suresh Kumar stated that in the video clippings the Jhuggi No. E-81 is clearly seen to be a double storey structure and it comprised of one room on the ground floor and one room on the first floor. In the Video Clippings of 2010-11, a roof of the first floor is seen to be of Tin Sheets. However, in the Video Clippings of July 2017, the roof is not seen but a ceiling fan is seen hanging from the roof and it is also seen to be in running condition

20. The survey report of 2010-11 and the Video Clippings prepared with survey of 2010-11 has proved beyond reasonable doubt that Jhuggi No. E-81 is an old and Pucca construction and it is double storied structure. It comprised of one room on the ground floor and one room on the first floor. Furthermore in the Video Clippings of 2010-11 the



team on the first floor is clearly seen to be having brick walls and its roof is of Tin sheets.

21. This accordingly shows that Jhuggi No. E-81 was double storied Pucca and old structure at the time of survey of 2010-11. The survey report of July 2017 also proves that survey team has found a Pucca structure having an area of 6ft. x 9ft. on the first floor of Jhuggi No. E-81. However, in survey report of July 2017 it is mentioned that the structure on the first floor was having a roof of plastic sheets. It is pertinent to point out that the survey report of July 2017 was undated and it also does not bear any signatures of the survey team Suresh Kumar, Asstt. Engineer (Retd.) has tried to explain these lapses by taking a lame excuses that it was due to mistake/ oversight. However it seems that the survey team was in great haste to complete the survey.

22. As pointed out above, in the Video Clippings of 2010-11, Jhuggi No. E-81 is clearly seen to be double storied structure and furthermore the room on the first floor is seen to be having brick walls and also having roof of Tin sheets. In the Video Clippings of July 2017, the roof is not seen but a ceiling fan is seen hanging from the roof and it is also seen to be in running condition. It is matter of common observance that ceiling fan cannot be hanged from the plastic sheets.

23. This shows that the survey team has wrongly mentioned in the survey report of July 2017 that the roof of room of the first floor of Jhuggi No. E-81 was made of Plastic sheets.

24. It is also pointed out that in the photographs, Annexure G to I, the roof of the first floor is clearly seen to be of Tin sheets. It is also pertinent to point out that in the Video Clippings prepared with the survey of 2010-11 and of July 2017 was also played when the statement of Suresh Kumar, Asstt. Engineer (Retd.) was recorded before us on 23.07.2018. This piece of evidence proves that the room of the first floor of Jhuggi No. E-81 was Pucca and old structure. It is



having brick walls and proper door/ gate. However, in the Video Clipping of July 2017, the roof is not seen because the Video was not properly made by covering the roof. But in this Video Clipping, a ceiling fan is clearly seen to be hanging from the roof of the room of the first floor and it is also clearly seen to be in a running condition. It is a matter of common observance that ceiling fan cannot be hanged from a plastic sheet. Accordingly, the statement of Suresh Kumar, AE (Retd.) as well as the survey report of July 2017 is liable to be ignored to the extent that "roof of room on the first floor was made of plastic sheets". But as mentioned above, there are ample cogent and relevant materials before us to show that the roof was made of tin sheets. Moreover, the room on the first floor of Jhuggi No. E- 81 is clearly seen in the Video Clipping of 2010-11 and of July 2017 as well as in the photographs, Annexure G to I to be an old and Pucca structure.

25. The claim of Appellant/ Claimant was rejected by Eligibility Determination Committee and its order was conveyed to the Appellant/ Claimant by the Nodal Officer vide letter dated 01.11.2017, wherein the reason for rejection is given to be "As per survey report Jhuggi does not exist at site". However, it is pointed out that the reasons given in the rejection letter dated 01.11.2017 is against the survey reports and video clippings placed on file by DDA itself and it is also against and contrary to the facts found by us to the extent that the room on the first floor of Jhuggi No. E-81 was an old and Pucca structure. Accordingly, the order of the rejection is not sustainable in the eyes of law.

26. The Appellant/ Claimant has tendered documents, Annexure A to I, in support of his claim for allotment.

The Voter ID card of Appellant/ Claimant is Annexure A, which has been issued on the address of Jhuggi No. E-81 on 20.10.2014, much prior to cut-off date of 01.01.2015.



The Aadhar Card of Appellant/ Claimant is Annexure B, which has also been issued on the address of Jhuggi No. E-81.

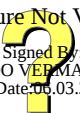
27. The Voter ID Card & Aadhar Card of Tabasum wife of Mohd. Saddam (Appellant/ Claimant) are, Annexure D & E, respectively and both have also been issued on the address of Jhuggi No. E-81.

The birth certificate of Safina Shadab daughter of Saddam (Appellant/ Claimant) is Annexure F and it has been issued on the address of Jhuggi No. E-81 on 15.01.2014, much prior to the cut-off date of 01.01.2015.

The Appellant/ Claimant has also taken an electricity connection on the first floor and electricity bill is Annexure D.

28. The Appellant/ Claimant stated that he was living separately and independently on the first floor of Jhuggi No. E-81. He has also tendered Ration Card, Annexure C, which has been issued in favour of the parents of Appellant/ Claimant on the address of Jhuggi No. E-81 and in their Ration Card, the name of the Appellant/ Claimant is recorded as member of the family.

29 The Appellant/Claimant stated that he had applied for issuing separate Ration Card but the concerned authority has refused to issue a separate Ration Card in favour of the Appellant/ Claimant pertaining to first floor of Jhuggi No. E-81. This shows that the Appellant/ Claimant could not get a separate Ration Card issued in his favour pertaining to first floor of Jhuggi No. E-81 because of policy of concerned Food Department and not due to any default or inaction or lapse on part of the Appellant/ Claimant. Hence this explains as to why Appellant/ Claimant could not get the separate Ration Card issued in his favour in spite of the fact that he was living separately and independently on the first floor of





Jhuggi No. E-81 and not as member of the extended family of his parents. It is not out of context to point out that survey team in its report of July 2017 has not found that the Appellant/ Claimant was living on the first floor of Jhuggi No. E- 81 and as member of extended family of his parents. Had it been so it would have been specifically mentioned by the survey team. Hence we have no hesitation in holding that the Appellant/ Claimant was living separately and independently on the first floor of Jhuggi No. E-81.

30. The material placed before us has proved that Jhuggi No. E-81 was a double storied and Pucca structure, which comprised of one room on the ground floor and one room on the first floor and regarding the room on the ground floor allotment has been made in favour of Mohd. Nasir. The room on the first floor of Jhuggi No. E-81 was a Pucca and old structure and it was in existence even prior to 2010-11. The Appellant/ Claimant was living separately and independently in the room on the first floor of Jhuggi No. E-81 and he was also having documents, Annexure A to F, issued on the address of the said jhuggi much prior to the cut-off date of 01.01.2015. The Appellant/ Claimant fulfils the eligibility criteria for allotment as per the guidelines issued by DDA.

31. In view of our findings above, we have no hesitation in holding that on the cutoff date, i.e. 01.01.2015, the Appellant/ Claimant fulfills the eligibility criteria as per guidelines issued by DDA. But the Eligibility Determination Committee wrongly and illegally rejected his claim. Hence the present appeal stands allowed, hereby, setting aside the impugned order communicated vide letter dated 01.11.2017 issued by the Nodal Officer. DDA is hereby directed to make allotment in favour of Appellant/ Claimant in respect of first floor of Jhuggi No. E-81, Kathputli Colony.

32. Copy of this order be supplied to both the parties as per rules within three days from the date of passing of this order.



DDA is further directed to post this order on its website within one week from today in compliance of order dated 11.07.2018 passed by Hon'ble High Court of Delhi in WP (C) No. 6728/ 2018 and C.M. Appeal 25594/ 2018 titled "National Alliance of Peoples Movement & Others Vs. Delin Development Authority & Others The file be consigned to records after due compliance"

59. Upon perusal of the Appellate Authority's order, it can be ascertained that the case under consideration involves jhuggi no. E-81, described as a double-storied pucca structure, with the ground floor and first floor. The petitioner no. 2 resided independently in this structure, possessing all necessary documents issued at this address, well before the cut-off date of 1st January 2015.

60. The Appellate Authority further held that in 2010 – 11, a survey was conducted in which DDA recorded that the jhuggi bearing no. E-81 is a double storey jhuggi and the same was also recorded by way of video recording in 2010-11. Moreover, a survey conducted in the year 2017, published that the aforesaid first floor of the jhuggi is a pucca structure having an area of 6ft x 9ft and was made with brick walls and had tin sheets roof. Hence, the evidence presented establishes that the petitioner, along with his family, had been living independently in jhuggi no. E-81 before the specified cut-off date.

61. The petitioner no. 2 had applied for the Ration card but due to certain lapse or inaction of the part of the Food Department, the Ration card could not be issued.

62. The Appellate Authority opined that the Ration card could not be issued to the respondent since the petitioner no. 2 has already filed



application for issuance of the Ration card. Hence, there is no lapse on part of the petitioner no.2 in getting the Ration card issued. Accordingly, the Appellate Authority held that the petitioner no. 2 apart from holding a Ration card fulfilled all the other eligibility criteria as per guidelines issued by the respondent. Moreover, the petitioner no. 2 has the requisite documents as per the guidelines issued by DDA which have been issued much prior to the cut-off date, i.e., 1st January 2015.

63. In the case of the petitioner no.3, the impugned order passed by the Nodal Officer of the respondent sets aside the order dated 19th July 2018 passed by the Appellate Authority. The relevant part of the order of the Appellate Authority passed in the case of the petitioner no. 3 has been discussed herein below:

“1. This order disposes off the present Appeal filed by the appellant/claimant against order-dated (Date not mentioned) passed by the Eligibility Determination Committee.

2. In brief, the present appellant/ claimant had made a Representation bearing Dy. No. 319 Dated 11.07.2017 to the Competent Authority, thereby, alleging that he is residing in Jhuggi bearing No. B- 643 in Kathputli Colony. A Notice by DDA was pasted in the Kathputli Colony on 31.05.2017 to inform the jhuggi dwellers about the survey to be conducted in the said basti. The appellant/ claimant submitted representation to the competent authority along with requisite documents, thereby, alleging that he fulfills the eligibility criteria. However, the Eligibility Determination Committee rejected the claim of the present appellant/claimant and the Nodal Officer, Kathputli Colony, duly communicated its order-dated (Date not mentioned) to the present appellant/ claimant. Aggrieved by the same, the



present appeal has been filed by the present appellant/claimant.

3. In response to the notice, the Appellant/ Claimant has appeared in person. Whereas DDA is being represented by Ms. Shabnam Kundra.

4. The statement of the Appellant/ Claimant has been recorded on 20.06.2018 before us. He has also tendered documents, Annexure A to E, in support of his claim.

5. Arguments advanced by the Appellant/ Claimant as well as Ms. Shabnam Kundra for DDA heard at great length and the documents submitted by both the parties are also minutely appraised.

6. The statement of Appellant/ Claimant, Rahul has been recorded before us on 20.06.2018 wherein he deposed that his parents, Ram Nath & Munni, are having two sons, namely, Rahul (Appellant/ Claimant) & Roshan and two daughters, namely, Kiran & Rekha. All are married.

7. The Appellant/ Claimant further stated that Jhuggi No. B-643 was double storied and it comprised of one Pucca room on the ground floor and one Pucca room on the first floor. The jhuggi was having Pucca staircase for going to the first floor.

8. The Appellant/ Claimant further stated that his parents, Ram Nath & Munni, along with his younger brother, Roshan, were living on the ground floor and regarding that allotment has been made in favour of his mother, Munni and she along with the entire family has already shifted to the Transit Camp.

The Appellant/ Claimant further stated that his claim with respect to the room on the first floor was wrongly rejected by DDA. He has tendered documents Annexure A to E in support of his claim.



9. *The factum regarding the allotment having made in favour of Munni w/o Ram Nath in respect of the ground floor of said Jhuggi bearing No. B-643 and she along with her family has already shifted to the Transit Camp is admitted on behalf of DDA in the course of arguments.*

10. *DDA has conducted two extensive surveys in Kathputli Colony. One was conducted in 2010-11 and another in July 2017. DDA has furnished the survey reports for 2010-11 and of July 2017 and also the Video Clippings prepared along with both the surveys. The Video Clippings were also run before us.*

11. *DDA has furnished the survey report of 2010-11, in which the Jhuggi No. B-643 is recorded to be a Pucca structure.*

DDA has also furnished the three Video Clippings prepared with survey report of 2010-11, in which Jhuggi No. B-643 is clearly seen to be a Pucca structure.

12. *DDA has also furnished the survey report of July/August 2017 in which a temporary structure on the first floor of Jhuggi No. B-643 of Appellant/ Claimant was found to be in existence.*

DDA has also furnished the Video clippings prepared with survey report of July/August 2017, in which a room on the first floor of Jhuggi No. B-643 of Appellant/ Claimant is clearly seen. Furthermore, the room on the first floor is clearly seen to be a Pucca and an old structure. There is nothing to challenge the genuineness and veracity of the survey reports and the video clippings placed on file by DDA itself and these documents supports the claim of the Appellant/ Claimant.



13. However the claim of the Appellant/ Claim was rejected by the Eligibility Determination Committee (EDC) and its order was communicated to the Appellant/ Claimant by the Nodal Officer vide un-dated letter, in which reason for rejection is given "No separate family".

The perusal of the undated letter issued by the Nodal Officer does not make any sense as the matter "No separate family" seems to be out of context. However the fact remains that the existence of the Pucca and old structure on the first floor of Jhuggi No. B- 643 is not disputed. However it seems that the claim was rejected on the ground that he was not living independently and separately in the Jhuggi in question.

14. It is pertinent to point out that in the survey report of July/ August 2017, a temporary structure on the said jhuggi was found to be in existence at site. Nothing is mentioned in the survey report that the Appellant was living as member of the extended family of his parents. Hence the reason "No separate family" given in the undated letter of Nodal Officer is without any basis.

15. Furthermore, in the survey report of July/August 2017, survey team has categorically mentioned that a temporary structure on the first floor of Jhuggi No. B- 643 belonging to Appellant/ Claimant was found to be in existence at site.

16. Had it been a new structure then survey team would have specifically mentioned the same in its survey report. This shows that temporary structure found on the first floor was an old structure. The claim of Appellant/ Claimant cannot be rejected simply because that the structure on the first floor was found to be temporary in nature. But as mentioned above the claim of Appellant/ Claim was rejected simply on the ground that the Appellant/ Claimant was not found to be living separately. No facts were recorded by the survey team to the effect that the Appellant/ Claimant was not living separately and independently in living on the first floor of



Jhuggi No. B-643 but he was living there as member of the extended family with his parents. Hence as mentioned above the reasons mentioned in the undated letter issued by the Nodal Officer is based on conjectures and surmises and is without any basis.

17. Furthermore, the survey report of 2010-11 as well as of July/ August 2017 and also the Video Clippings prepared with both the surveys has proved beyond reasonable doubts that the structure on the first floor of Jhuggi No. B-643 was an old structure and it was in existence at the time of survey of 2010-11. Furthermore, the Pucca staircase is found to be in existing thereby reaching to the first floor of Jhuggi No. B- 643. Moreover, the survey reports as well as Video Clippings clearly shows that the structure on the first floor of Jhuggi No. B-643 was a permanent structure but the survey team in its report of July/ August 2017 by mistake or by over sight has mentioned that the structure was temporary in nature. As mentioned above, the material placed before us clearly shows that the structure on the first floor is found to be an old structure and also permanent in nature.

18. The Appellant has also tendered documents Annexure A to E in support of his claim.

The Voter ID of Appellant/ Claimant is Annexure A and it has been issued on the address of Jhuggi No. B-643 on 15.11.2013 much prior to the cutoff date of 01.01.2015.

The Aadhar Card of Appellant/ Claimant is Annexure B, which was also issued on the address of Jhuggi No. B-643 on 23.01.2012, much prior to the cutoff date of 01.01.2015.

The Appellant has also tender Annexure D, a copy of the Saving Bank of Vijaya Bank, thereby proving that bank account in the name of Appellant/ Claimant was opened on 26.12.2013 on the address of Jhuggi No. B-643, much prior



to the cutoff date of 01.01.2015. The electricity bill is Annexure E.

19. The Appellant/ Claimant has also tendered the Ration Card, Annexure C. It is pointed out that the Ration Card is joint ration card of the family of Ram Nath & Munni in which the name of Appellant/ Claimant Rahul and his younger brother, Roshan, is recorded.

20. The Appellant/ Claimant has explained about the inclusion of his name in the joint Ration Card. The Appellant/ Claimant in his statement recorded before us on 20.06.2018 has stated that he has applied for issuance of separate Ration Card but the same was declined by the concerned Rationing Authorities and accordingly the separate Ration Card was not issued in his favour inspite of the fact that he was living separately and independently.

This shows that the Ration Card was issued in the name of his parents but he had applied for issuance of a fresh Ration Card in his favour with regard to first floor of Jhuggi in question but the Rationing Authority had declined to issue a fresh Ration Card. Hence the statement of Appellant/ Claimant explains the reasons of not issuing of separate Ration Card in his individual name pertaining to the first floor of Jhuggi in question even though he was living separately and independently.

21. The material placed before us shows that the Appellant /Claimant was living on the first floor of Jhuggi No. B-643 separately and independently. The documents, Annexure A to E, supports his claim. However, on flimsy, unfounded and untenable grounds his claim has been rejected. As mentioned above, the reasons for rejection "No separate family" given in the undated letter of Nodal Officer is without any basis and accordingly the same cannot be sustained in the eyes of law. Furthermore, the rejection was communicated to the Appellant/ Claimant by the Nodal Officer vide undated letter



placed on file. The circumstance under which undated letter has been issued has not been satisfactorily explained by DDA. This shows that the Eligibility Determination Committee/ Nodal Officer has acted in undue haste and in a mechanical fashion and had rejected the claim of Appellant/ Claimant without application of mind. Thus accordingly the rejection order is not sustainable in the eyes of law.

22. The material placed before us accordingly shows that Jhuggi No B-643 was a double storied and Pucca structure and it comprised of one room on each floor. Regarding the ground floor allotment has been made in favour of Munni w/o Ram Nath. The Appellant/ Claimant was living on the first floor of Jhuggi No. B-643 but his claim was rejected by DDA.

23. The material placed before us shows that the Appellant/ Claimant was living separately and independently on the first floor of Jhuggi in question. The documents, Annexure A to E, have been issued on the address of Jhuggi in question and accordingly supports his claim.

24. It is worthwhile to point out that the survey reports of 2010-11 and of July 2017 as well as the Video Clippings prepared with both the surveys have proved beyond reasonable doubt that Jhuggi No. B-643 was a double storied structure and the parents of Appellant/Claimant along with his brother Roshan were living on the ground floor, whereas the Appellant/ Claimant is proved to be living on the first floor of the said Jhuggi. However the claim of Appellant/ Claimant was rejected by Eligibility Determination Committee and its order was communicated to the Appellant/ Claimant by the Nodal Officer vide undated order, in which the reason for rejection is given to be "No separate family".

25. The bare perusal of the undated rejection order shows that it is contrary to the survey reports of 2010-11 and of



July 2017 as well as Video Clippings furnished by DDA pertaining to survey of 2010 & July 2017. As mentioned above, the genuineness and veracity of the survey reports and the Video clippings of 2010-11 and July 2017 are not disputed.

The material placed before us shows that the Appellant/ Claimant was living on the first floor of Jhuggi No. B-643 separately and independently and not as member of the extended family of his parents, Ram Nath & Munni. The documents, Annexure A to E, also support the claim of Appellant / Claimant. Hence the reason given is contrary to the facts found to exist at site.

26. The material placed before us shows that the Appellant/ Claimant was living separately and independently on the first floor Jhuggi No. B-643. He had Voter ID Card and other documents on the address of the jhuggi in question, which were issued much prior to the cutoff date i.e. 01.01.2015.

The Appellant/ Claimant is eligible as per the guidelines issued by DDA. But the claim of Appellant/ Claimant was rejected by the Eligibility Determination Committee (EDC) and the Rejection Order was communicated to him by the Nodal Officer. However, we have no hesitation in holding that the Nodal Officer as well as Eligibility Determination Committee has issued orders in a mechanical fashion and without application of mind and accordingly the same are not sustainable in the eyes of law.

27. In view of our findings above, we have no hesitation in holding that on the cutoff date, i.e. 01.01.2015, the Appellant/ Claimant fulfills the eligibility criteria as per guidelines issued by DDA. But the Eligibility Determination Committee wrongly and illegally rejected his claim. Hence the present appeal stands allowed, hereby, setting aside the impugned order communicated vide undated letter issued by



the Nodal Officer. DDA is hereby directed to make allotment in favour of Appellant/ Claimant in respect of the first floor of Jhuggi No. B-643, Kathputli Colony.

28. Copy of this order be supplied to both the parties as per rules and the file be consigned to record after due compliance.”

64. Upon perusal of the appellate authority's order, it is evident that petitioner no. 3 was living on the first floor of jhuggi no. B- 643 and the same consist of a pucca room. The petitioner no.3 has submitted various documents in support his claim.

65. Moreover, the respondent has conducted two surveys in 2011 and 2017 which clearly establish the contention of the petitioner no. 3 that as per the former survey of 2011 the first floor of the aforesaid jhuggi was in existence and the latter survey of 2017 states that the first floor of the aforesaid Jhuggi is a temporary structure. However, as per the video of 2017, the room on the first floor was shown and the same looked like a pucca and old structure.

66. The Appellate Authority further states that the Nodal Officer of the respondent vide an undated letter rejected the claim of the petitioner no. 3 for rehabilitation stating the reason that there is “no separation”, in this regard the Appellate Authority opines that the aforesaid reason for rejection is out of context.

67. Moreover, the petitioner no. 3 tendered various documents such as Voter Id, Aadhar Card as well as copy of Savings Bank of Vijaya Bank and the aforesaid documents were issued before the cut- off date i.e., 1st January 2015.



68. The petitioner no. 3 has tendered a joint ration card and stated that he had applied for issuance of a separate ration card but said request was rejected, despite the fact that he was living independently.

69. The Appellate Authority opined that the Ration Card could not be issued since the petitioner no. 3 has already filed application for issuance of the Ration Card. Hence, there is no lapses on part of the petitioner no.3 in getting Ration Card issued. Accordingly, the Appellate Authority held that apart from holding a Ration card, the petitioner no. 3 fulfilled all the other eligibility criteria as per guidelines issued by the respondent. Moreover, the petitioner no. 3 has the requisite documents as per the guidelines issued by DDA and the same have been issued much prior to the cut-off date, i.e., 1st January 2015.

70. The Policy as per which the respondent adjudicates the eligibility of a claimant to rehabilitation is Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B). The relevant portion of the aforesaid policy has been reproduced herein below:

*“DELHI URBAN SHELTER IMPROVEMENT BOARD
GOVT. OF NCT OF DELHI
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 cutoff 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 dwellers 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 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

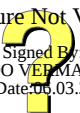


is in supersession of the earlier notified guidelines of 2013).

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

2. As envisaged in Para 1 (vi) above, the JJ dweller must possess any one of the following documents issued before 01.01.2015 to become eligible for the purpose of allotment of Dwelling Unit :

- (i) Passport;*
- (ii) Ration Card with photograph;*
- (iii) Electricity bill;*
- (iv) Driving License;*
- (v) Identity Card/ Smart Card with photograph issued by State/ Central Government and/ or its Autonomous Bodies/ Agencies like PSU/ Local Bodies (except EPIC);*
- (vi) Pass book issued by Public Sector Banks/ Post Office with photograph;*
- (vii) SC/ST/OBC Certificate issued by the Competent Authority;*
- (viii) Pension document with photograph such as Ex-serviceman's Pension Book, Pension Payment Order, Ex-serviceman widow/dependent certificate, old age pension order or widow pension order;*
- (ix) Freedom Fighter Identity Card with photograph;*
- (x) Certificate of physically handicapped with photograph issued by the Competent Authority;*
- (xi) Health Insurance Scheme Smart card with photograph (Ministry of Labour scheme);*
- (xii) Identity card with photograph issued in the name of the descendants) of the slum dweller from a Government school or Certificate with photograph issued by the Principal of a Government School mentioning therein that the descendants) of the JJ dweller is/was the student of the school."*





71. The Delhi Urban Shelter Improvement Board, under the Government of NCT of Delhi, administers the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B). The policy delineates eligibility criteria for the allotment of alternative dwelling units to rehabilitate and relocate Jhuggi Jhopri dwellers. To qualify for the same, the Jhuggi Jhopri dwellers must be Indian citizens aged 18 or above, residing in a basti established before 1st January 2006, with a cutoff date for residency eligibility of 1st January 2015. Additionally, their names must appear in voter lists from 2012 to 2015 and in a joint survey conducted by DUSIB and the Land-Ownning Agency.

72. It is mandated that there is verification in terms of biometric authentication via Aadhar Card or other mechanisms, along with possession of one of 12 specified documents issued before January 1, 2015. The specified documents for eligibility encompass passports, ration cards with photographs, electricity bills, driving licenses, identity cards issued by government bodies, passbooks from public sector banks or post offices, and various certificates such as SC/ST/OBC, pension, freedom fighter, physically handicapped, and health insurance scheme cards. Identity cards issued by government schools or certificates attested by school principals for descendants of JJ dwellers are also acceptable.

73. It is further stipulated that the applicants should not own property in Delhi or have been allocated residential units by Government of National Capital of Delhi or the Government of India. Moreover, the commercial use of a jhuggi precludes dwelling unit allocation, while mixed residential-commercial use entitles dwellers to one unit. Ineligible



JJ dwellers face eviction during rehabilitation, relocation, or basti clearance.

74. It is pertinent to note that the policy specifically states that if different families reside on separate floors with separate ration cards issued before 1st January 2015, each family may be considered for a dwelling unit.

75. Before considering the matter before this Court, it is imperative to delve into the historical backdrop of Kathputli Colony, which emerged organically in the 1950s as a haven for itinerant puppeteers from Rajasthan. This Colony was a melting pot of diverse artistic talents, burgeoned into the world's largest community of street performers and artists, whose contributions resonated globally. By 2017, the colony, spanning 5.2 hectares, accommodated over 4000 families.

76. The genesis of the present dispute traces back to 2010, when the respondent embarked upon the redevelopment of Kathputli Colony through a Public-Private Partnership arrangement. The contract, entrusted to M/s Raheja Developers, entailed the construction of 2800 flats for residents in exchange for a portion of the land to be utilized for private commercial and residential projects.

77. The plight of petitioner no. 2 and 3 is that these individuals seek redressal for the rejection of their claims by the respondent EDC. Their jhuggis were declared non-existent by the EDC, as evidenced in the published list of 771 ineligible slum dwellers.

78. In response to this rejection, the petitioners pursued appeal before the Appellate Authority, the designated forum for addressing grievances related to determination and relocation of Kathputli Colony residents. The



Appellate Authority in both the matters conducted a comprehensive examination of the issues, particularly focusing on the discrepancy between the rejection letter and the survey reports and video clippings presented by the respondent.

79. The Appellate Authority, meticulously analyzed the evidence, highlighting lapses in the survey report, including the absence of a date and signatures. The orders observed that the rejection was contrary to the facts found during the appellate proceedings, specifically noting the pucca structure on the first floor of respective jhuggi. Consequently, the Appellate Authority declared the rejection by the EDC as unsustainable in the eyes of the law, thereby setting aside the impugned order communicated by the Nodal Officer in both the cases.

80. However, the saga continued as the Nodal Officer took *suo moto* cognizance through an order dated 3rd July 2020, and declared that petitioners failed to fulfill DDA Rehabilitation and Relocation policy 2015. The rationale provided cited the petitioners' claim for the first floor and the absence of a separate Ration Card, elements contested by the Appellate Authority in its previous order.

81. In this backdrop, this Court deems it apposite to discuss the concept of Ration card and the aim of issuing the same.

82. The term "Ration Card" has been defined in Section 2 (16) of National Food Security Act, 2013 as a document issued under an order or authority of the State Government for the purchase of essential commodities from the fair price shops under the Targeted Public Distribution System.



83. Hence, as per the definition of the Ration Card, the intent of issuing the same is that it aims to distribute the essential food items by way of the fair price shops. Therefore, it does not amount to become an identity proof of residence for any Ration Card holder.

84. Moreover, this Court shall now peruse the Para 4(6) of Gazette notification No. G.S.R. 213(E) dated 20th March 2015 issued by the Ministry of Consumer Affairs, Food and Public Distribution which disallows the use of ration card as a document of identity or proof of residence. The relevant extract has been reproduced herein below:

“4. Ration Cards.-

XXX

(6) Ration card shall not be used as a document of identity or proof of residence.”

85. Hence, ration card is issued exclusively for obtaining essential commodities from shops under the public distribution system and cannot be considered as proof of address or residence. Moreover, there is no mechanism setup by the authority issuing Ration Cards to ensure that the holder of the ration card is staying at the address mentioned in the ration card.

86. The aim of the ration card is to ensure that the citizens of this country are provided foodgrains at a reasonable price. Hence, it is not reliable source of proof of address since the scope is limited to distribution of food items by way of Public Distribution System.

87. Therefore, the respondent has wrongly put reliance on the ration card as proof of address since it did not take into consideration the



aforesaid discussed gazette notification, definition of ration card as well as the intent behind issuance of the same.

88. Furthermore, in the instant petition the petitioners contended that they have applied for Ration Cards, however, they have not been issued the same by the Competent Authority. In this regard, the Court shall discuss the order of the Coordinate Bench of this Court in writ petition bearing no. *Shanti Devi vs Union of India*¹ wherein the petitioner applied for the ration card in the year 2013 (8 years before), however, she was not issued the same for the last 8 years, despite giving several representations. The afore discussed order has been reproduced herein below:

“1. The petitioner, who claims to be falling within the category of persons Below Poverty Line (BPL)” has approached this Court with the grievance that despite repeated representations made by her, she has not been issued a ration card for the last eight years.

2. On the last date, Mr. Narayan, learned counsel for respondent nos.2 to 4 was granted time to obtain instructions. Today, he submits that no ration card could be issued to the petitioner as the limit for issuance of 72 lakh ration cards set by respondent no. 1, based on the Census of 2011, already stands exhausted and therefore, the respondents nos.2 to 4 cannot be faulted for not having issued a ration card to the petitioner.”

89. In view of the aforesaid order, it is pertinent to note that ration cards have a State-wise ceiling of number of eligible households for which the ration card can be issued by various States. Since, Delhi's limit for issuance of Ration Card has already been exhausted, therefore, even if

¹ WP (C) 11413/2021 dated 25th October 2021 (Delhi High Court)



a person is eligible to be issued Ration Card, he/ she shall not be issued the same.

90. Hence, in light of the aforesaid submissions by the learned counsel for the Delhi Government in the aforesaid writ petition, this Court is of the considered view that the contention of the petitioners in the instant batch of petitions regarding non- issuance of Ration Card holds water.

91. Keeping in mind the aforesaid circumstances, this Court is of the view that mere non-issuance of a Ration Card cannot be a ground for denial of the alternative allotment to the petitioners. The respondent should have introspected into the issue and accordingly, should have taken step to alleviate issues faced by the poor dwellers of the Kathputali Colony.

92. The mandatory requirement of separate ration card is very arbitrary since it cannot be used as an address proof as directed by way of the aforesaid Gazette Notification. Moreover, it is responsibility of the respondent that they should have introspected into the intent and motive behind issuing of the Ration Card which is distribution of food through Public Distribution System.

93. Therefore, the requirement of a Ration Card as mandatory document to be produced before the respondent as a proof to claim that first floor of the Jhuggi is a separate dwelling unit is arbitrary and illegal. The respondent should have exercised due caution and care before adhering to such a requirement. It should take a fair and realistic view of the circumstances before it.

94. The respondent should introspect on the fact that how much harassment and pain must have been caused to the petitioners due to such



arbitrary requirements. The afore discussed actions of the respondent is in clear violation of the petitioners' right to shelter as enshrined under Article 21 of the Constitution of India and reiterated by the Division Bench of this Court in the judgment of ***Udal v. Delhi Urban Shelter Improvement Board and Ors***² as follows:

“15. It is trite that the right to housing is an essential part of Right to Life and a fundamental right ensured by Article 21 of the Constitution of India. It has also been held that the right to life is not right to merely an animal existence but an entitlement to reasonable accommodation (Ref.: (1996) 2 SCC 549, Chameli Singh v. State of U.P. and (1990) 1 SCC 520, Shantistar Builders v. Narayan Khimalal Totame). The contours of this right were further expanded by a pronouncement of the Supreme Court reported at (1997) 11 SCC 121, Ahmadabad Municipal Corporation v. Nawab Khan Gulab Khan wherein the court held that when slum dwellers have been residing at a place for some time, it became the duty of the government to make schemes for housing these jhuggi dwellers. Relying on the principles laid down in these judgments, this court in 168 (2010) DLT 298, Sudama Singh v. Government of Delhi has relied upon the provisions of the Delhi Master Plan and emphasized in-situ rehabilitation of the slum dwellers.

16. Judicial notice can be taken of the fact that the National Capital Territory of Delhi attracts people, especially poor people, from all over the country who come to the city in search of work and must reside reasonably near to their place of work. In recognition of the responsibility to house the poor in a permanent humane manner, the Government of NCT of Delhi announced “Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015”. Under Clause 2(a), Delhi Urban Shelter Improvement Board (‘DUSIB’ hereafter) was appointed as the nodal agency for implementation of the policy.”

² 2017 SCC OnLine Del 9715



95. Accordingly, this Court is also of the view that the petitioners' right to housing shall be kept at the highest pedestal. It is one of the safeguards provided in our Constitution and the legacy has been carried forward by the writ Court by way of various judicial precedents which reiterates the same.

96. In the instant petitions, the impugned orders passed by the Nodal Officer proceeded to set aside the Appellate Authority's order, raising questions regarding the authority's jurisdiction over *quasi-judicial* matters already adjudicated upon by the appellate authority. This aforesaid act of the Nodal officer of the respondent underscores the need for a judicious examination of the competing claims, the weight of evidence presented, and the propriety of actions taken by authorities. Accordingly, the impugned orders passed in both the writ petition are set-aside.

97. The decision of the appellate authority is upheld which held that the petitioners are in possession of other documents as stipulated by Clause 2 of the Policy as well as the aforesaid documents are issued before the cut-off date, hence, the petitioners are entitled for an alternative dwelling unit and their claims shall be admitted by the respondent.

98. Accordingly, this Court holds that the impugned orders passed by the Nodal Officer of the respondent are liable to be set-aside.

CONCLUSION

99. The afore-discussed actions of the respondent, ostensibly operating within the framework of legality, struck at the heart of justice, undermining the very principles upon which the judicial system



purportedly stands. Subsequent to the petitioners' challenge of the initial rejection, the issuance of a second letter of rejection by the respondent compounded the petitioners' anguish. This second rejection purportedly cited new reasons for denial, yet failed to withstand scrutiny in light of legal precedents previously established by the writ Courts and of particular note was the justification provided by the respondent for the second rejection, namely, the purported non-filing of a ration card by the petitioner. Such a justification, given the petitioner's provision of alternative legal proofs of identity consistent with statutory requirements and prior judicial interpretation, underscored the arbitrary nature of the respondent's actions.

100. The petitioner's distress, exacerbated by the respondent's actions, exemplified the inherent flaws within the legal system, which too often favours the powerful over the marginalized. The respondent's actions, shielded by the veneer of legality, served to perpetuate systemic injustices, leaving the petitioners vulnerable.

101. The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B) as per Clause (1)(x) has wrongly mandated that for rehabilitation of the dwellers of the first floor of the jhuggis there shall be a compulsory separate ration card issued in the name of the dwellers of the first floor of the jhuggis especially in the light of the paragraph no. 4(6) of Gazette Notification No. G.S.R. 213(E) dated 20th March 2015 issued by the Ministry of Consumer Affairs, Food and Public Distribution which disallows the use of ration card as a document of identity or proof of residence. Moreover, the intent of issuance of Ration Card is distribution of essential food items by Public Distribution System and



hence, it does not intent on being used as an identity proof or an address proof.

102. Hence, the Delhi Slum& JJ Rehabilitation and Relocation Policy, 2015 (PART-B) has wrongly made it compulsory that the first floor dwellers of the Jhuggis shall have a separate Ration Card.

103. This Court is of the view that the respondent shall consider other documents issued before the cut-off date i.e., 1st January 2015 as enlisted in Clause 2 of The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B) which are as follows: Passport, 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 as Ex-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 descendants) of the slum dweller from a Government school or Certificate with photograph issued by the Principal of a Government School mentioning therein that the descendants) of the JJ dweller is/was the student of the school.

104. In view of the aforesaid discussion, the impugned orders dated 3rd July 2020 in both writ petitions are quashed by this Court by way of



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exercising its jurisdiction vested under Article 226 of the Constitution of India. Accordingly, the instant petitions are allowed.

105. This Court directs the respondent to allocate an alternative dwelling unit in favor of the petitioners subject to the condition that the petitioners produce the documents as enunciated in Clause 2 of The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (PART-B) issued before the cut-off i.e., 1st January 2015, the deposit of amount as stipulated by the respondent as well as any other requirement as mandated by the respondent.

106. Accordingly, the instant petitions alongwith pending applications, if any, are disposed of.

107. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 29, 2024
SV/DB/AV