



\$~2

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

+ **W.P.(C) 65/2025 & CM APPL. 191/2025**

SANJIDA KHATOON

.....Petitioner

Through: Ms. Renu, Ms. Kavita and Mr. Piyush
Kumar Singh, Advocates

versus

**MUNICIPAL COROPRATION OF DELHI
& ORS.**

.....Respondents

Through: Mr. Mukesh Gupta, Standing Counsel
for MCD with Ms. Sneha Roy, Ms.
Madhu Yadav & Ms. Gurleen Kaur
Sran, Advocates.
Ms. Ayushi Jain, Advocate for R-5
(Through *video-conferencing*)

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

30.04.2026

%

1. The present writ petition has been filed alleging that the respondent-MCD has wrongfully demolished the bathroom attached to the *jhuggi*, without following the principles of natural justice. Further, compensation is also sought for the damages caused on account of the demolition.
2. Earlier, a writ petition was filed on behalf of the private respondent no.5, being W.P. (C) 14347/2024, titled “***Jamuna v. Municipal Corporation of Delhi and Ors.***”, complaining against the unauthorised construction by the petitioner herein, stating that the said construction abuts and blocks the ingress and egress to her property. The said writ petition was disposed of *vide* order dated 9th October, 2024. Paragraphs no.4, 5, 6 and 7



of the said order are set out below:

“4. As far as the subject property outside the petitioner’s house is concerned, which is the only property mentioned in the prayer clause, Mr. Umang Tyagi, learned Additional Standing Counsel for the MCD, states that an inspection will be carried out by tomorrow, and if any unauthorised construction is found to be ongoing or has been raised, a show cause notice will be issued to the owners/occupants of these properties and further action will be taken, in accordance with law, after receipt of the reply to the show cause notice.

5. The petitioner has made a complaint to the Chief Vigilance Officer of MCD [Annexure P-5 to the writ petition against respondent No.4], the Chief Vigilance Officer is directed to look into the complaint in accordance with law.

6. The writ petition is disposed of in terms of the submissions of Mr. Tyagi, as recorded above and with liberty to the petitioner to approach the STF, in the event any remaining grievance with regard to the illegal construction in the area. This Court has not enquired into the allegations made in the writ petition or the allegations against the officers.

7. It is made clear that the directions in this order are without prejudice to the rights and contentions of the owners/occupants of the properties mentioned in the writ petition and also of the respondent No. 4. The MCD is directed to take action strictly, in accordance with law, and after complying with all statutory requirements.”

3. Pursuant to the aforesaid order, the respondent-MCD demolished the bathroom outside the *Jhuggi* of the petitioner on 12th December, 2024.

4. Aggrieved by the same, the present writ petition has been filed by the petitioner stating that the demolition exercise was conducted in violation of the directions passed by this Court in the order dated 9th October, 2024, inasmuch as no show cause notice was given to the petitioner.

5. Counter-affidavit has been filed on behalf of the respondent-MCD wherein it is stated that, as per the standard plan of the *Jhuggi*, no bathroom/toilet is allowed in the common area, which is exclusively to be used by the four (4) *Jhuggis*, whose gates open in the common area. In the present case, a bathroom was constructed right in front of the adjoining



Jhuggi and hence, obstructed the way. Photographs have been filed along with the counter-affidavit. It is further stated that there are community toilets/bathroom (*Jan Suvidha Kendra*), provided by DUSIB, for each block, which are to be used by all residents of the said block.

6. It is submitted on behalf of the respondent/MCD that where unauthorized construction has been created on a public place, there is no requirement to issue a show cause notice for removal of the same.

7. In ***In Re: Directions in the matter of demolition of structures***, 2024 INSC 866, the Supreme Court has laid down detailed guidelines to be followed before carrying out the demolition of unauthorised construction, which includes the issuance of show cause notice. However, in paragraph no.91 of the said judgment, it has clearly been stated that these directions would not be applicable if there is unauthorized structure in a public place, such as roads, streets, or footpaths. Paragraph no.91 of the said judgment is set out below:

“91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.”

8. In the judgment dated 14th July, 2009, passed by this Court, in W.P.(C) 699-712/2006 titled as ***“Asharfi Lal & Ors. v. Union of India & Ors.”***, the Court observed that MCD is well within its rights to remove *jhuggis* that are encroaching on the right of way/public land. And this is a part of their statutory duty. Paragraphs no.13, 14 and 15 of the said judgment are set out below:

“13. It is unquestionable that the respondent/MCD is under a statutory obligation to keep the public streets, drains and other public



places free from any encroachment and to remove obstructions and projections upon streets and other public places. Hence, not only the mandate of the statute, but the orders passed in Atma Ram Dogra (supra) on the same lines, required the respondent to take action in consonance with the law. Rather, records reveal that only when the respondents were prodded by the Court in the contempt proceedings initiated against them by the petitioners in CCP(C) No. 710-711/2006 Atma Ram Dogra (supra), did it undertake the demolition action and removed encroachment and projections on public land and right of way in Sawan Park Colony.

14. The action of the respondents while discharging their public duties including those of removal of jhuggi clusters on public land and right of way has to be examined from the angle of reasonableness of the said action, where larger public interest always overrides the interests of individuals. As any relocation entails an economic burden on the State, the executive is entitled to formulate the policy for relocation keeping in mind the finances/resources available to it. Reliance placed by the counsel for the respondent MCD on the following judgments only fortifies its stand that encroachers on public land are not entitled to any statutory notice, nor is any legal right conferred upon them to claim rehabilitation :

1. Okhla Factory Owners' Association (Regd.) & Anr. vs. The Govt. of NCT of Delhi & Ors., 108 (2003) DLT 517 (DB),
2. Wazirpur Bartan Nirmata Sangh vs. UOI & Ors., 103 (2003) DLT 654 (DB),
3. Friends Colony Residents Association vs. Lt. Governor of Delhi & Ors., 2004 VII AD (DELHI) 617,
4. Milk Producers Association, Orissa & Ors. vs. State of Orissa & Ors., (2006) 3 SCC 229,
5. Gaya Parshad & Ors. vs. NDMC & Anr., 127 (2006) DLT 123

15. The stand of the respondents in the present case that the jhuggies under occupation of the petitioners were not purely residential in nature but were being used for commercial purposes is not denied by the petitioners. Hence, they cannot be given the benefit of the relocation policy of the respondent. Furthermore, the petitioners were found to be



encroaching on the right of way. In such circumstances, the respondent is entitled to protect its own land and keep the right of way free from encroachment in terms of its obligations under the various provisions of the Act. This Court, therefore, cannot find any fault with the action of the respondents of undertaking the demolition action on 8.9.2005 and removal of encroachment on the right of way/public land. The said action was undertaken by the respondent MCD not only to give effect to the statutory obligations cast upon it, but to give effect to the specific orders passed in the case of Atma Ram Dogra (supra).”

9. In the present case, the material placed on record, including the photographs filed by the respondent-MCD, clearly indicates that the bathroom in question was constructed in the common area meant for shared access and passage, thereby constituting an encroachment on a public space. Consequently, the said construction would fall within the exception carved out in paragraph 91 of the aforesaid judgment in ***In Re: Directions in the matter of demolition of structures*** 2024 INSC 866.

10. In light of the aforesaid, it cannot be stated that the demolition action carried out by the respondent/ MCD was not in accordance with the law.

11. Consequently, I do not find merit in the present writ petition. The same is dismissed.

12. Pending application also stands disposed of.

AMIT BANSAL, J

APRIL 30, 2026

at