

\$~23

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

% *Date of decision: November 01, 2022*

+ CONT.APP. (C) 22/2022 & CM APPL. 45906-45909/2022
SAROJINI NAGAR JHUGGI JHOPRI VIKAS SAMITI

..... Appellant

Through: Mr. Kamlesh Kumar Mishra and Mr.
Shubham Chauhan, Advocates

versus

SHRI SURESH KUMAR & ORS Respondents

Through: Mr. Arjun Mahajan, SPC, Ms. Neha
Rai, Ms. Monika Arora, Mr. Shivam
Raghuvanshi and Mr. Yash Tyagi,
Advocates for R-1, 5, 8 & 9
Mr. Parvinder Chauhan, Advocate for
R-3
Mr. G. G. Kashyap and Ms. Srishti
Aggarwal, Advocates for R-5
Ms. Ankita Sarangi, Advocate for R-7

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. The appellant vide the present appeal challenges the order dated 06.07.2022 whereby the learned Single Judge in CONT. CAS. (C) 400/2022 has dismissed the contempt petition of petitioner/appellant finding that the cluster in question is not a notified one and thus the action of the respondents in demolishing the clusters is not violative of orders passed by

this Court in *Ajay Maken & Ors. vs. Union of India & Ors.*,¹ albeit after expressing that it will be open to petitioners to file a writ petition before this Court, if not already filed, to establish their case as to the entitlement of benefits entailing from the judgment of this Court in *Ajay Maken (supra)*.

2. As per facts, appellant is an unregistered organisation of the resident slum dwellers of Sarojini Nagar residing in Jhuggis in and around Sarojini Nagar Government Housing Complex for decades who are catering as helps to all the residents therein.

3. Learned Single Judge, after taking due note of the directions given by a Division Bench of this Court in *Sunder Singh vs. Government of Delhi*²; the Delhi Slum Rehabilitation & Relocation Policy, 2015; the creation of the Delhi Urban Shelter Improvement Board³; the status of Jhuggi Jhopri⁴ colonies and the surrounding circumstances, including the judgment of this Court in *Ajay Maken (supra)*, took into consideration the notice dated 04.04.2022 issued by the Ministry of Housing and Urban Affairs, Land and Development Office, Nirman Bhawan, New Delhi to occupants of the appellant with respect to vacation of a Jhuggi at Sarojini Nagar.

4. Finding that the case of *Ajay Maken (supra)* dealt with a JJ cluster that was a part of the list of JJ clusters notified by DUSIB, however since the present JJ cluster, were not enlisted in the said list of clusters, therefore, learned Single Judge held them not entitled to the benefits of the DUSIB. Learned Single Judge also noted that in a similar case, *Vaishali (minor)*

¹ 2019 SCC OnLine Del 7618

² 2010 SCC OnLine Del 612

³ Hereinafter referred as “DUSIB”

⁴ Hereinafter referred as “JJ”

*through next friend & Ors. vs. Union of India & Ors.*⁵, filed by one of the Jhuggi dwellers seeking quashing of demolition notice, this Court vide judgment dated 11.04.2022 dismissed the said petition on the ground that the JJ cluster in question therein did not find mention in the list of clusters notified by DUSIB and, therefore, they were held not entitled to rehabilitation measures under the said DUSIB Policy. The said order has since been upheld by a Division Bench of this Court in *Vaishali (minor) through next friend & Ors. vs. Union of India & Ors.*⁶, however, the SLP thereagainst is still pending before the Hon'ble Supreme Court.

5. Learned Single Judge, while considering the short question as to whether the proposed action of demolition by respondents would invite contempt action for wilful violation of order dated 18.03.2019 passed in *Ajay Maken (supra)* held it not to be so. Relying upon various judgments i.e., *Ashok Paper Kamgar Union vs. Dharam Godha*⁷, *Anil Ratan Sarkar vs. Hirak Ghosh*⁸, *Dinesh Kumar Gupta vs. United India Insurance Co. Ltd.*⁹ and *Jhaireswar Prasad Paul vs. Tarak Nath Ganguly*¹⁰, learned Single Judge observed that scant regard must be shown towards the order of the Court to establish wilful disobedience so as to make out a civil contempt under *Section 2(b)* of the Contempt of Courts Act, 1971¹¹. Further it was also held that if such wilful disobedience is observed, then the Court must take cognizance of it as such contempt undermines the dignity of the Court and outrages the majesty of law. The contempt jurisdiction is exercised to

⁵ Writ Petition (Civil) 5941/2022 dated 11.04.2022-Delhi High Court

⁶ Latter Patent Appeal 271/2022 dated 19.04.2022-Delhi High Court [DB]

⁷ (2003) 11 SCC 1

⁸ AIR 2002 SC 1405

⁹ (2010) 12 SCC 770

¹⁰ (2002) 5 SCC 352

prevent the administration of justice from being maligned and there must be no unjustifiable interference in the said administration of justice.

6. Further it was observed that it is a settled principle of law that whence two interpretations are possible, no contempt proceeding is maintainable in view of what is held by this Court in *Vaishali (supra)* W.P. upheld in *Vaishali (supra)* L.P.A., that judgment in *Ajay Maken (supra)* would be applicable only to those clusters which have been notified by the DUSIB and its policy.

7. Alas, as the position had not changed, there was no occasion for anyone, much less the respondents to be held guilty of contempt, as has been rightly held by the learned Single Judge. There were no circumstances giving rise to any suspicion of holding the respondents guilty of any offence. In essence, the respondents have not been held guilty of contempt and have certainly not been punished for the same. In such a case, no appeal under *Section 19* of the Act shall lie. Such an order rejecting a petition for contempt in such circumstances is not open to challenge and as an appeal under *Section 19* of the Act only lies when the Court has exercised its power to have held a contemnor guilty of contempt or when such contemnor has been punished and not when such power has not been exercised by the Court. In other words, denial of an order not holding a contemnor guilty or punishing a contemnor, is not appealable under *Section 19* of the Act .

8. In view thereof, for an appeal to be maintainable under *Section 19* of the Act there has to be a definite finding against a contemnor, or else there cannot be any right to appeal under *Section 19* of the Act. The law of

¹¹ Hereinafter referred as “Act”

contempt is very clear. A plain reading of the Act reveals that the provision of appeal is extremely limited and according to us 'regulated'. The availability and maintainability of an appeal under *Section 19* of the Act is dependent upon a contemnor being guilty or being punished under the act and in no other case. The present case is not of that kind.

9. It is an established concept of law that a contempt is only between the alleged Contemner and the Court. Appellant by setting into motion the machinery of the Court for issuance of contempt has failed to bring to notice anything which constitutes contempt by respondents, therefore no act of contempt has been committed by them. As such the learned Single Judge had rightly held that the contempt petition was not maintainable and dismissed the same. So much so, the learned Single Judge has rightly expressed that it will be open to petitioners to file a writ petition before this Court, if not already filed, to establish their case as to entitlement to benefits of the judgment of this Court in *Ajay Maken (supra)*.

10. In fact, upon asking learned counsel for appellant during the course of hearing today, we have been told that various JJ dwellers, who are a part of the appellant organization in the instant appeal along with Jhuggi Jhopri Vikas Samiti, Netaji Nagar have already filed as many as 10 writ petitions, if not more before this Court. Not only that, some JJ dwellers therein have also obtained favourable orders in their favour.

11. Also, we are in complete consonance with the order of the learned Single Judge, who, according to us, has rightly held that the action of the respondents in demolishing the Clusters is not violative of the orders of this Court in *Ajay Maken (supra)*.

Neutral Citation Number 2022/DHC/004674

12. The appellant has been unable to join the dots, either in facts or in law to maintain the present appeal. Accordingly, taking a holistic view, we have no hesitation in holding that the present appeal thus, fails and is dismissed.

13. There will be no order as to costs.

**(SURESH KUMAR KAIT)
JUDGE**

**(SAURABH BANERJEE)
JUDGE**

NOVEMBER 1, 2022/rr

