

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

Date of decision: 21st FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 71/2023 and CM APPL. 4514/2023**

MANOJ KUMAR AND ORS

..... Appellant

Through: Ms. Anupradha Singh, Advocate

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD AND ORS

..... Respondents

Through: Mr. Parvinder Chauhan, Advocate for Respondent/ DUSIB.

Mr. Mukesh Gupta, Standing Counsel with Mr. Raghav Gupta, Advocate for Respondent No.2.

Ms. Shobhana Takiar, Standing Counsel with Mr. Kuljit Singh, Advocate for Respondent/ DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. Aggrieved by the Order dated 19.10.2022 passed by the learned Single Judge in W.P. (C) 14781/2022 dismissing the writ petition, the Appellants have approached this Court by filing the instant LPA.

2. The Petitioners in the writ petition, i.e., the Appellants herein, had sought to challenge the action of the Respondents to evict them from Janta Colony, Naveen Shahdara, North East Delhi, Delhi-110032. A further direction to Respondents No.1 and 2 to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ Slum

Rehabilitation & Relocation Policy, 2015 was also prayed for. The Petitioners had also prayed for payment of compensation of Rs.1,00,000/- to each of the Petitioners for demolishing their houses without notice.

3. The facts in brief, leading to filing of the present appeal are as follows:-

- a) The Appellants herein belong to a backward community of Gadia Lohars have been residing on the subject land since 1992, after having relocated from Rajasthan to New Delhi, in search of better means of occupation to sustain themselves. The Appellants state that ever since relocating to the JJ Basti in Delhi, they have been engaged in occupations as blacksmiths and rickshaw pullers, and have submitted on record documents proving continuous residence since 1997.
- b) It is stated that on 20.09.2022, the NrDMC with the aid of the Delhi Police carried out a demolition drive on the subject land and removed the Appellants from their residences, rendering them bereft of shelter.
- c) It is also stated that the drive was carried out by the authorities without giving a notice in writing to the Appellants as is mandated by several judgments of this Court.
- d) It is stated that after the Appellants were removed from their residences, no efforts of rehabilitation were made by the Respondent authorities, leaving the Appellants to fend for themselves.
- e) Being aggrieved by the ensuing displacement from their residences after the demolition drive, the Appellants filed the writ petition. The Petitioners sought for stay of eviction of the Petitioners

(Appellants herein), from jhuggis located in Janta Colony, Naveen Shahadra, North East Delhi.

4. In the writ proceedings, the Petitioners therein contended that they have documents that demonstrates their residence prior to 2006, which is a requisite condition under Section 2(a)(i) of the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'the DUSIB Act'*) to be eligible for the benefit of rehabilitation under the Delhi Slum & JJ Rehabilitation & Relocation Policy, 2015 (*hereinafter referred to as '2015 Rehabilitation Policy'*). The Petitioner also submitted in the writ proceedings that since the Petitioners' jhuggis are located at a nearby distance from slum clusters/colonies listed against Serial Nos. 474 and 475 described as slum clusters located in Block G Gurudawra, Seelampur and; Chander Puri, Railway Lines Old, Seelampur, in the DUSIB List of 675 bastis, and, the Petitioners, therefore contended that the benefit of recognition as a Jhuggi Jhopri basti may by way of a notification under proviso to Section 2(g) be extended to them by addition of their jhuggis to the identified jhuggi clusters Nos. 474 and 475 in the DUSIB list, in order to be able to claim the benefit of rehabilitation under the 2015 Rehabilitation Policy.

5. The Learned Single Judge in dismissing the impugned Judgment noted that the correct interpretation of the phrase "nearby areas" in the proviso to Section 2(g) of the DUSIB Act for the purposes of attachment would be applicable only to jhuggis that is an extension of, or adjunct to, an identified JJ Basti, and it would be imperative to prove that the said cluster was so attached to the Basti, prior to the cut off date under Section 2(a)(i) of the 2015 Rehabilitation Policy which is prescribed to be existing before 01.01.2006. The contention of the Petitioners that as their jhuggis are located at a distance of 3 kms. from identified clusters at Serial Nos. 474 and 475 of

the DUSIB List, and would therefore qualify the criteria of being in a nearby area, i.e., at a distance of 3 km, was reflected as unsustainable. It was further held by the learned Single Judge that the Petitioners were unable to prove that their individual cluster had been in existence with the identified JJ Basti prior to the recognized date, i.e., before 01.01.2006 so as to qualify for extending the benefit of 2015 Rehabilitation Policy to the Appellants.

6. The Learned Single Judge further noted that the Petitioners are also unable to show that their cluster is included in the DUSIB's identified list of 675+72 clusters. This admitted fact, read with the judgment of this Hon'ble Court in Kasturba Nagar Residents Welfare Association v. Government of NCT of Delhi, **W.P. (C) 11945/2022**, wherein it was held that due inclusion of an individual cluster as being attached with a recognized JJ Basti is a determining factor for extending the benefits of rehabilitation to residents of bastis, as per the 2015 Rehabilitation Scheme, would render the Petitioners' grounds for seeking rehabilitation was held to be devoid of any merits by the learned Single Judge.

7. Heard Ms. Anupradha Singh, learned Counsel for the Appellants, Mr. Parvinder Chauhan, learned Counsel for DUSIB, Mr. Mukesh Gupta, learned Counsel for Respondent No.2, Ms. Shobhna Takiar, learned Standing Counsel for the DDA and perused the material on record.

8. Various parcels of land belonging to the Central Government/ State Governments/DDA/and other Municipal authorities were under encroachment, and there was no proper policy in existence for the purpose of rehabilitation of the said encroachers. This Court in Sudama Singh v. Government of Delhi, **2010 SCC OnLine Del 612**, gave directions to rehabilitate and relocate the persons residing in the various slums clusters in the Capital city to a suitable place by providing them alternative land with

ownership rights pursuant to demolition of their jhuggis. The Division Bench of this Court in Sudama Singh (supra) noticed that it was not uncommon for a Jhuggi Jhopri dweller to find a bulldozer at the doorstep, desperately trying to save whatever precious belongings and documents they have, and, therefore, the Division Bench emphasised that there should be a policy for relocation of the Jhuggi Jhopri dwellers.

9. In compliance with the order passed in Sudama Singh (supra), the Legislative Assembly of National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010 for the purpose of establishing DUSIB. Section 2(f) and Section 2(g) which defines the terms 'jhuggi' and 'jhuggi jhopri basti', have been reproduced as under:

“(f) “jhuggi” means a structure whether temporary or pucca, of whatever material made, with the following characteristics, namely:-

- (i) it is built for residential purpose;*
- (ii) its location is not in conformity with the land use of the Delhi Master Plan;*
- (iii) it is not duly authorized by the local authority having jurisdiction; and*
- (iv) it is included in a jhuggi jhopri basti declared as such by the Board, by notification;*

(g) “jhuggi jhopri basti” means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri basti in accordance with the following factors, namely:-

- (i) the group of jhuggis is unfit for human habitation;*
- (ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and*

(iii) it is inhabited at least by fifty households as existing on 31st March, 2002.

Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;”

10. Chapter III of the said Act deals with the functions of the Board. Section 9 of the Act gives power to DUSIB to conduct a survey of any JJ basti, with a view to ascertaining the number of residents thereof, the existing standard of health, sanitation and civic amenities, the availability of medical and educational facilities for the residents thereof. Section 10 of the Act gives power to the DUSIB to prepare a scheme for the removal and resettlement of JJ bastis. Section 11 of the Act directs the Board to prepare a scheme for improvement of any JJ basti which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving, and provision of dustbins, or sites for garbage collection, street lighting, etc. Section 12 of the Act directs the Board to prepare schemes for redevelopment of JJ bastis with the consent of the owner of the land on which the JJ basti is situated.

11. In terms of the DUSIB Act, a Policy was framed. Under the said Policy, DUSIB was to be the nodal agency for rehabilitation and relocation of Jhuggi Jhopri basti dwellers in respect of the lands belonging to the MCD and the Delhi Government and its Departments/Agencies. In case of JJ Colonies existing on lands belonging to the Central Government/Agencies, Railways, DDA, Land and Development (L&D) Office, the Delhi Cantonment Board, the New Delhi Municipal Council (NDMC) etc. the respective agency was to either carry out the relocation/rehabilitation

themselves, as per the policy of the Delhi Government, or could entrust the job to the DUSIB. Under the DUSIB Policy, JJ colonies which came up before 01.01.2006 could not be removed without providing for an alternate housing as well as the jhuggis which came up in such JJ Clusters before 01.01.2015 could not be demolished without providing alternate housing. It was also laid down in the policy that the Government was to ensure that no new jhuggi came up after 01.01.2015, and if any jhuggi did come up after this date, the same would immediately be removed without providing any alternate housing. Relevant portion of the DUSIB Policy reads as under:

"2....

(a)...

(i) *Who is eligible for rehabilitation or relocation*

Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed (as per National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such Jhuggi Jhopri Bastis before 01.01.2015 shall not be demolished without providing alternate housing; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013).

(ii) *No new jhuggis to be allowed in Delhi*

Government of National Capital Territory of Delhi shall ensure that no new jhuggi comes up after 01.01.2015. If any jhuggi comes up after this date, the same shall immediately be removed without providing them any alternate housing."

12. It is pertinent to mention here that the present area in question is not included in the list of Jhuggi Jhopri clusters which had been identified by the DUSIB for the extension of rehabilitation policy of 2015.

13. It is the contention of learned Counsel for the Petitioner that these clusters are located in the vicinity of the Jhuggi Jhopri clusters which had been identified by the DUSIB, and, therefore, are entitled to the benefit of rehabilitation scheme. The learned Single Judge did not accept this argument and this Court is in agreement with the order of the learned Single Judge.

14. The present Jhuggi Jhopri clusters are about 3 kms. away from the established Jhuggi Jhopri clusters. This Court is unable to accept the statement of the Appellants made on affidavit that these clusters existed prior to 2015. It is for the Appellant to establish the fact that these clusters existed prior to 2015 by filing an appropriate petition before the competent court, lead evidence; both oral and documentary, to establish the facts. A writ petition under Article 226/227 of the Constitution of India is not the appropriate forum to establish the disputed questions of fact because it is categorical contention of the Appellants that these clusters were not in existence when the survey to identify those clusters which were entitled to the benefits was conducted by the DUSIB.

15. This Court *vide* Order dated 11.04.2022 passed in **W.P.(C) 5941/2022** titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors., while dealing with the case of certain jhuggi dwellers of Sarojini Nagar seeking quashing of demolition notice issued to them, which also did not form part of the JJ clusters identified by the DUSIB, has held that since the JJ cluster in question therein did not find mention in the list of clusters which are entitled to the benefit of the DUSIB Policy, they are not entitled for rehabilitation measures under the said Policy. Relevant portions of the said judgment read as under:

"This Court notes that the obligation to formulate a scheme for rehabilitation and relocation stands extended to clusters which stand duly notified in

Section 3. In fact the Act itself while defining the expression jhuggis, jhopris and bastis provides that it would cover clusters of jhuggis which the Board may by notification declare as such. Undisputedly, no such notification has been issued insofar as this cluster is concerned."

"It becomes pertinent to note that the petitioners had also placed reliance on clause 2.6 of a Memorandum of Understanding stated to have been executed between the Ministry of Urban Development and NBCC. Clause 2.6 stipulates that the Land and Development Office of the Union respondents would take steps and action for relocation and rehabilitation of jhuggi clusters if any existing in these colonies. Mr. Dhanda on instructions apprises the Court that there appears to be an evident and inadvertent mistake in the drawing up of clause 2.6 since it was never the intent of the Union to frame a scheme for rehabilitation or relocation in respect of jhuggis which are not notified under the provisions of the Act.

It becomes relevant to note that despite repeated queries, learned counsel for the petitioner was unable to draw the attention of the Court to any observation made or appearing in either Sudama Singh or Ajay Maken, which may be read as placing the respondents under a statutory duty to frame a scheme for rehabilitation and relocation in respect of a cluster which is not notified for the aforesaid purposes under the Act. The Court has not been shown any statutory provision which may be read or construed as placing an obligation upon either respondent No.1 or respondent no.2 to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act. The petitioners do not appear to have taken any steps for requiring DUSIB or the first respondent to extend coverage of the Act to this cluster."

16. The said Judgment has been upheld by a Division Bench of this Court in **LPA 271/2022** titled as Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors. Relevant portions of the said Order read as under:

"5. As noted hereinabove, the learned Single Judge dismissed the petition, observing that the petitioners/appellants have been unable to show that their jhuggi cluster was notified under the Act, nor were they able to show any statutory provision which may be read or construed as placing an obligation upon-either respondent no.1, or respondent no.2, to adopt rehabilitative measures in respect of unauthorised clusters which may otherwise not be notified under the Act.

6. The learned senior counsel for the appellants has placed reliance on the judgment of this Court in Ajay Maken (supra). He submits that this Court had observed that one reason for the failure to notify slums was that a notified slum would have to be dealt with only in accordance with the Slum Areas (Improvement and Clearance) Act, 1956 in terms of in-situ rehabilitation, which clearly was not the priority of the State. The Court further held that not only the jhuggi jhopri (hereinafter referred to as „JJ?) cluster and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB are required to be dealt with in terms of the decision in Sudama Singh (supra), but every jhuggi dweller, anywhere in the National Capital Territory of Delhi (hereinafter referred to as „NCTD?), has to be dealt with in terms of the said decision. No slum dweller in the NCTD-in one area, can be treated differently from that in another.

7. Further referring to the order dated 11.12.2017 issued with the approval of the Lieutenant Governor of the NCTD, notifying the Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015

(hereinafter referred to as the „Policy“), he submits that DUSIB is only to act as a nodal agency for relocation/rehabilitation of the JJ bastis. Any of the JJ bastis which have come up before 01.01.2006, cannot be removed without providing them alternative housing.

*8. The learned senior counsel for the petitioner has further drawn our attention to the „Draft Protocol for Removal of Jhuggis and JJ Bastis in Delhi“ (hereinafter referred to as the „Draft Protocol“), to submit that, in compliance with the judgment of this Court in *Ajay Maken* (supra), the Draft Protocol was framed, clearly providing for a survey to be conducted to determine the existence of JJ basti prior to 01.01.2006 and to determine the eligibility of JJ dwellers for rehabilitation as per the Policy. He submits that in the present case, no such survey has been conducted by the respondent no.1 and/or the respondent no.2 and, therefore, the action of removal of the jhuggis of the appellants is illegal and cannot be allowed.*

9. On the other hand, the learned counsels for the respondent nos. 1 and 2 submit that the jhuggi cluster, where the jhuggis of the appellants are situated, was not in existence as on 01.01.2006. They submit that pursuant to a survey carried out in 2016, a list of 675 JJ cluster that were in existence as on 01.01.2006, was notified under the provisions of the Act. They submit that, therefore, the appellants are not entitled to rehabilitation and/or any protection from this Court.

10. We have considered the submissions made by the learned counsels for the parties. Section 2(g) of the Act defines „Jhuggi Jhopri basti“ as under:

“(g) “jhuggi jhopri basti” means any group of jhuggis which the Board may, by notification,

declare as a jhuggi jhopri basti in accordance with the following factors, namely:-

(i) the group of jhuggis is unfit for human habitation;

(ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and

(iii) it is inhabited at least by fifty households as existing on 1st January, 2006: Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;" (Emphasis supplied)

11. A reading of the above provision would clearly show that DUSIB has to declare a group of jhuggis as "Jhuggi jhopri basti" by way of notification. One of the conditions to be fulfilled by such a group of jhuggis is that it must be inhabited, at least by fifty households, as existing on 01.01.2006. Section 9 of the Act empowers the DUSIB to make a survey of any jhuggi basti. Section 10 of the Act provides for preparation of a scheme for removal of any JJ basti and for resettlement of the residents thereof. Section 12 of the Act provides for the re-development of the JJ basti. The above provisions are applicable only with respect to "Jhuggi Jhopri basti", that is, inter-alia a group of fifty households as existing 01.01.2006 and duly declared by DUSIB as such by way of a Notification.

12. As noted by the learned Single Judge, the appellants have been unable to produce any such notification under Section 2(g) of the Act. Even in appeal, no such Notification has been produced by the

appellants. The appellants are, therefore, not entitled to any protection under the Act.

13. As far as the Policy is concerned, the Policy stipulates “eligibility for rehabilitation or relocation” only for those JJ basti, which have come up before 01.01.2006. Therefore, for seeking benefit of the said Policy, it was incumbent on the appellants to show that their JJ basti was in existence since before 01.01.2006. Though the learned senior counsel for the appellants sought to place reliance on a list of families allegedly residing in the said cluster of jhuggis, and submits that many therein have been residing much prior to the cut-off date of 01.01.2006, we find that the addresses mentioned in the said list vary between different blocks of Sarojini Nagar. They, therefore, cannot, at least prima facie, be stated to be forming part of one JJ basti, entitling them to the benefit of the Policy.

14. The learned senior counsel for the appellant, placing reliance on the proviso of Section 2(g) of the Act, contends that the Board, that is, the DUSIB, may attach any jhuggi or jhuggis scattered in the nearby areas to any JJ basti, and such jhuggi or jhuggis shall be deemed to be part of such JJ basti. He contends that, therefore, even if these jhuggis were scattered in different areas of Sarojini Nagar, they would form part of one cluster. We are unable to agree with the said submission. The proviso itself states that it is for the Board to take such decision. It is not the case of the appellants that any such decision has been taken by the Board in the present case for the jhuggis at Sarojini Nagar. The appellants cannot, therefore, take the benefit of the Proviso to Section 2(g) of the Act to stake a claim of rehabilitation.

15. As far as the reliance of the appellants on the Draft Protocol is concerned, the same again applies only to a JJ basti in existence prior to 01.01.2006, and the manner in which such determination is to be made. In

the present case, the categorical stand of the respondent nos. 1 and 2 is that such a determination was made in the case of the appellants, and the cluster of jhuggis at Sarojini Nagar was not found in existence as on 01.01.2006, and therefore, not notified under the Act. In case the appellants are to dispute the above, it would be a disputed question of fact, which in any case, cannot be determined in a writ jurisdiction. Therefore, the Draft Protocol also cannot come to the aid of the appellants.

16. As far as the reliance of the appellants on the judgments of this Court in Sudama Singh (supra) and Ajay Maken (supra) is concerned, we are again unable to accept the same. In the referred judgments, this Court was not dealing with the position where the respondents were disputing the existence of the JJ cluster as on 01.01.2006. Therefore, the said judgments would have no application to the facts of the present case."

17. The said Judgment has been challenged in the Supreme Court by filing a Special Leave Petition. However, the Apex Court has not stayed the judgment of the Division Bench. The Apex Court has entertained the petition only to find a solution as to how the human problem can be resolved.

18. This Court in Shakarapur Slum Union v. DDA & Ors., **2022 SCC OnLine Del 2336**, after dealing with the Judgments passed in Ajay Maken v. Union of India, **(2019) 260 DLT 581 (DB)** & Sudama Singh (supra) has observed as under:-

"37. This Court while dealing with Ajay Maken (supra) and Sudama Singh (supra) never gave any licence to any person to encroach upon Government property. However, this Court is dealing with a human problem and right to shelter has been described as right which has to be protected by Courts, especially for those who

will have no place to go with their family and belongings if they are faced with mid-night demolitions. In order to ameliorate the human problem, this Court in Sudama Singh (supra) had directed that the State Government must formulate a comprehensive protocol to ensure that persons who have encroached upon Government lands are not rendered shelter-less and, therefore, a rehabilitation policy has to be brought out to rehabilitate those persons. It was in pursuance of that judgment that DUSIB was made the nodal agency for rehabilitation of the persons living in JJ clusters. Parameters were laid down as to who would be entitled to the benefit of the DUSIB Policy. The judgment of this Court in Ajay Maken (supra) cannot be interpreted to mean clusters not identified by the DUSIB would be entitled to rehabilitation.

38. However, at the same time, this Court cannot be ignorant of the observations made in paragraph No.60 of Sudama Singh (supra) that it is not uncommon to find a Jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the Jhuggi dweller resided at that place. The action of DDA in removing a person, whom they claim to be an encroacher, overnight from his residence, also cannot be accepted. The DDA has to act in consultation with the DUSIB before embarking upon any such venture and persons cannot be evicted with a bulldozer at their door step early in the morning or late in the evening, without any notice, rendering them completely shelter-less. A reasonable period has to be given to such persons and temporary location has to be provided to them before embarking on any demolition activities."

19. This Court in Kasturba Nagar Residents Welfare Association v. Government of NCT of Delhi, W.P. (C) 11945/2022 after placing reliance

on the Judgments of this Court in Vaishali (supra) & Shakarapur Slum Union (supra) has once again reiterated that if a cluster does not form a part of the clusters identified by the DUSIB are not entitled to the benefit of the 2015 Rehabilitation Policy. The Judgment in Kasturba Nagar Residents (supra) has been relied on by the learned Single Judge in the impugned Judgment.

20. The contention of the learned Counsel for the Appellant that issuance of notification under Section 2(g) of the Delhi Urban Shelter Improvement Board Act, 2010 is not a mandatory condition for claiming rehabilitation benefits under the contours of the 2015 Rehabilitation Policy cannot be accepted in view of the pronouncements of this Court in Vaishali (supra), Shakarapur Slum Union (supra) & Kasturba Nagar Residents (supra).

21. The mandatory condition that has to be fulfilled for eligibility to claim rehabilitation as per Section 2(a)(i) of the 2015 Rehabilitation Policy is that a JJ basti must be in existence prior to the cut off date i.e. on 01.01.2006, and an individual jhuggi in any such basti must have been in existence before 01.01.2015. The issue as to whether the conditions are fulfilled by each member of the cluster is to be proved by leading evidence in appropriate proceedings and cannot be demonstrated by affidavits in a writ petition. These are all disputed questions of facts applicable to each jhuggi dweller to be proved separately in a suit.

22. In the opinion of this Court, the learned Single Judge in the order challenged by way of the present appeal in dealing with the aforesaid question, has correctly held that the benefit of rehabilitation to dwellers of JJ Bastis would not extend to the Appellants herein, as their cluster does not find mention in the list of 675+82 clusters published by the DUSIB. A perusal of section 2(g) of the DUSIB Act would show that in the absence of a DUSIB notification, a group of jhuggis cannot be treated as a JJ Basti. The

proviso to Section 2(g) would apply only to individual, or groups of jhuggis, only when due recognition has already been accorded to a JJ Basti which is in turn always subject to fulfilment of all the criteria in the section.

23. The directions in Ajay Maken (supra) would apply only to those clusters which have been included in the DUSIB list. This finding has previously been affirmed by a Division Bench of this Hon'ble Court in Vaishali Through Next Friend and Others v. Union of India and Others, 2022 SCC OnLine Del 2086.

24. It is the case of the Appellants that the benefit of rehabilitation may be extended to them by attachment to a recognized cluster as per proviso to Section 2(g) of the DUSIB Act, through an issuance of notification. On a perusal of the proviso to Section 2(g), what emerges is that it is ultimately up to the DUSIB, being the appointed nodal agency for the implementation of the 2015 Rehabilitation Policy, to duly declare a group of jhuggis as being part of a JJ Basti by way of a notification, so that the benefits of rehabilitation may extend to the residents of an individual or a group of jhuggis, not considered part of a recognized cluster. The first cluster of jhuggis is at a distance of 3 kms. from the identified cluster and, therefore, cannot be said to be a part of an identified cluster. The learned Single Judge has therefore correctly denied the benefit of rehabilitation to the Appellant dwellers, seeing as there has been no notification issued by the DUSIB under proviso to Section 2(g) with respect to the Appellants' cluster of jhuggis, and held that the Appellants cannot seek the protection of directions laid down in Ajay Maken (supra). It is pertinent also to note that neither in the writ proceedings nor in the present appeal have the Appellants produced any material to prove inhabitation in their cluster by at least fifty households, as existing on 31.03.2002, which is another criteria for qualifying for

declaration as a JJ Basti for the purposes of issuance of a notification under Section 2(g) under DUSIB Act, and the consequent benefits of rehabilitation accruing out of such declaration.

25. The Appellants cannot, in light of what has been discussed above, and as a matter of right, seek for issuance of directions to the DUSIB for issuance of a notification for the sake of extending rehabilitation benefits under the 2015 Rehabilitation Scheme.

26. In light of the aforesaid, we find no reason to interfere with the well reasoned order of the learned Single Judge impugned by way of the present appeal. In view of the above, we find no merit in the present appeal. The same stands dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 21, 2023

hsk/ss