



3 months. Subsequent to the same the Respondent Ministry of Railways has issued Demolition Notices and has fixed the demolition drive for 11.09.2020 and 14.09.2020 in various slums in Delhi. That however, various policies of the Government of India and that of Government of NCT of Delhi providing for **prior rehabilitation/ relocation** of slums dwellers, **survey** of the affected population are neither being followed by the Respondent Railways nor have been brought to the notice of this Hon'ble Court. Moreover, as the jhuggi dwellers were not parties in the present Writ Petition before this Hon'ble Court, either directly or in representative capacity, their stance and the relevant documents could not be brought before this Hon'ble Court for its kind consideration.

1. That this Hon'ble Court vide Order dated 31.08.2020 has passed the following directions in this Writ Petition:

*“It is also pointed out in the affidavit filed on behalf of the Railways that there are predominant presence of jhuggies in Delhi along with 140 km route length of track in the region of NCT of Delhi where the railway tracks take off in different directions and also include a ring connecting the takeoff of all these routes. Out of this, about 70 km route length of track is affected by large jhuggie jhopri clusters existing in close vicinity of the tracks. These clusters sum up to a total of about 48000 nos of Jhuggies in the region adjacent to Railway tracks.*

*... There seems to be some political intervention against removal of such encroachments which are coming in the way. There are certain encroachments which are within the safety zone of the Railways.*

...

*We also direct all the stakeholders that a comprehensive plan for removal of jhuggies be made and executed in a phased manner. The encroachments which are there in the safety zones should be removed within a period of three months and no interference, political or otherwise, should be there and no Court shall grant any stay with respect to removal of the encroachments in the area in question. In case any interim order is granted with respect to encroachments, which have been made along with railway tracks, that shall not be effective.”*

2. That in context to the aforesaid Order dated 31.08.2020 the Applicants seeks to bring-forth the following important facts/issues before this Hon’ble Court:

**I. DENIAL OF NATURAL JUSTICE:**

- A. As per the own estimate of the Ministry of Railways, and also as recoded in the Order dated 31.08.2020 about 48,000 jhuggis will be affected, thereby meaning that more than 2,40,000 persons (48,000 x 5) living in the said jhuggis for many decades will be rendered homeless on account of the said demolition drive. It is imperative to note that, none of the said persons have either been heard directly or even in representative capacity by this Hon’ble Court and hence the Order dated 31.08.2020 is one of the gravest tragedy and non-observance of principles of Natural Justice.
- B. In view of the Constitution Bench Judgement of this Hon’ble Court in the matter of **Olga Tellis & Ors. vs Bombay Municipal Corporation 1986 AIR (SC) 180**, wherein this

Hon'ble Court has held that there can be no justification for denying an opportunity of hearing to slum dwellers living on pavements/ public properties, a hearing ought to have been given to slum dwellers, either directly or in representative capacity. The relevant paras of **Olga Tellis (supra)** are reproduced hereinbelow:

*Para 36. "persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life."*

*Para 46. "the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice."*

*Para 47. "The proposition that notice need not be given of a proposed action because, there can possibly be no answer to It, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be*

*seen to be done and confuses one for the other. The appearance of injustice is the denial of justice.”*

- C. That in view of the above judgment of the Constitution Bench of this Hon'ble Court there cannot be a departure from the rule of *Audi Altrem Partem*, especially when the Jhuggi dwellers have been living in the shanties for 30-40 years.
- D. The while passing the Order dated 31.08.2020, while this Hon'ble Court gave a detailed hearing to the Government agencies (Railways, Municipal Corporations etc.) who seek to dispossess the Slum Dwellers, however, this Hon'ble Court completely ignored the affected/ vulnerable population of slum dwellers by denying them an opportunity of being heard.
- E. The net effect of the directions passed in the Order dated 31.08.2020 is not only that the slum dwellers have been denied opportunity of hearing but also the Order itself is inhuman and against public policy as lacs of children, women and elderly currently residing in the large slum clusters alongside the railway tracks will be left without a roof on the streets. Hence, through this Application, the Applicants are seeking additional directions for Rehabilitation of the affected population prior to their displacement.

## **II. COVID- 19:**

- A. In March, 2020 the Central Government has already declared COVID-19 as a pandemic and announced a nation-wide

lockdown. Further, at present, India is globally the 2<sup>nd</sup> worst affected country in the world due the Coronavirus pandemic. In the said circumstances, it would be highly risky to demolish the hutments/ jhuggis of more than 2,50,000 (approx.) persons, without prior rehabilitation as they will be forced to move from place to place in search of shelter and livelihood. Needless, to say that even a small percentage of the displaced population if affected by COVID-19, then the same will prove to be a recipe for disaster in the current pandemic.

**III. NO COURT SHALL GRANT STAY:**

- A. That this Hon'ble Court has not only directed removal of about 48,000 jhuggis along-side the railways line (which according to the Applicants should be more than 1,00,000 and thereby affecting more than 5,00,000 persons), but this Hon'ble Court has also directed that no court will grant stay in the said process. The said direction amounts to grave obstruction in the Right to Access to Justice.
- B. That a direction of the Apex Court restricting the Fundamental Right to Access to Justice is not only a grave violation of Article 14 and 21 as the Jhuggi dwellers cannot be treated as secondary citizens to deny them the remedies available under law.

IV. RAILWAYS HAS CIRCUMVENTED THE JUDGEMENT OF DELHI HIGH COURT IN AJAY MAKEN VS. UNION OF INDIA 260 (2019) DLT 581:

- A. That the very issue pertaining to existence of *jhuggis* was a matter of *lis* between the Applicants and the Respondents (Ministry of Railways, Union of India, Government of NCT of Delhi etc.) before the Delhi High Court in the matter of **Ajay Maken Vs. Union of India & Ors.168 (2010) DLT 218** wherein the Division Bench of the High Court through a detailed judgement had held that *jhuggis* even along-side the Railways tracks can only be removed consequent to the rehabilitation/ relocation of the residents/ slum dwellers. Further, it also held that those living in the slums contribute to the social and economic life of a city by working as sanitation workers, garbage collectors, domestic help, rickshaw pullers, laborers and a wide range of service providers indispensable to a healthy urban life and hence they have the **Right to the City** or **Right to Housing**. However, while on one hand the Railways accepted the said Judgment and did not file an appeal against the same, it has now circumvented the High Court judgement by directly approaching this Hon'ble Court and without mentioning the law laid down in **Ajay Maken(supra)**. Hence, there is an urgent need to pass necessary directions that the law laid down by in **Ajay Maken (supra)**, cannot be ignored by the

Railways if they choose to carry out the demolition of jhuggis along-side the Railway tracks.

- B. Further, with the kind intervention of the Delhi High Court, all concerned agencies including the Railways, devised a common Protocol for removal of jhuggis in Delhi. The said Protocol which was approved by the High Court, provided for a detailed survey of the jhuggi dwellers sought to be removed and rehabilitation/ relocation as a condition precedent to removal of jhuggis. The Respondent Authorities deliberately did not bring-forth the provisions of the said protocol before this Hon'ble Court while securing the Order dated 31.08.2020. Hence, necessary directions ought to be passed by this Hon'ble Court directing the Railways to follow the Protocol devised by the Delhi High Court or it will defeat the entire exercise (of arriving at a common Protocol) which took about 4 years of repeated meetings between the Government of India, Railways, Government of NCT of Delhi, JJ residents, Civil Society organisations, Slum Boards etc.

V. **THE DELHI SLUM & JJ REHABILITATION AND RELOCATION POLICY, 2015**

- A. That along-side the Protocol (for removal of jhuggis), the Government of NCT of Delhi had also formulated the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015, which

categorically provides for the rehabilitation of JJ bastis before their demolition. As under Article 239AA of the Constitution, the Government of India is the Land Owning agency in Delhi, the said policy has also been approved by the Government of India through the Hon'ble Lt. Governor of Delhi.

- B. That the Respondent agencies deliberately did not inform this Hon'ble Court about the said policy, even though the said policy categorically provides that no JJ Basti will be demolished without providing alternate housing to the inhabitants.

**VI. NO STATUTORY PROVISIONS ENACTED FOR THE PROTECTION/ REHABILITATION OF THE SLUM DWELLERS REFERRED TO BY THE RESPONDENT AGENCIES**

- A. That apart from the aforementioned case laws, policies various other Statutory Provisions, Schemes of the Government which provide for alternate housing arrangements prior to removal of jhuggis. As the slum dwellers were not party to the present *lis*, this Hon'ble Court was deliberately kept in dark about the said provisions.
- B. That the Master Plan Delhi 2021, which is a statutory document provides for in-situ rehabilitation of slum dwellers wherever possible and relocation of slum dwellers in other

cases. That even the same was not brought before this Hon'ble Court.

- C. The Rajiv Awas Yojna, later renamed as the Pradhan Mantri Awas Yojna (Housing for All) also aims towards slum free India by 2022 and for the said process the scheme also provides for either in-situ rehabilitation or relocation in exceptional cases.

#### LIST OF DATES AND EVENTS

DATE	PARTICULARS
1940s onwards	<p>Due to inadequate developed land on the one hand and continuous flow of migrants in search of employment opportunities on the other, various slums/ jhuggi-jhopri clusters came into existence in Delhi.</p> <p>The persons living in JJ clusters in jhuggis/slums majorly contribute to the social and economic life of a city, by catering to the basic amenities of an urban population. In the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life.</p>
10.07.1985	In <b>Olga Tellis &amp; Ors vs Bombay Municipal</b>

**Corporation 1986 AIR (SC) 180**, this Hon'ble Court held as follows:

*Para 36. "persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life."*

*Para 46. "the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice."*

*Para 47 "The proposition that notice need not be given of a proposed action because , there can possibly be no answer to It, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that*

	<p><i>justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice.”</i></p>
31.01.1990	<p><i>In M/s. Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520, this Hon’ble Court held as follows:</i></p> <p><i>"9. Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be assured of living in a well-built comfortable house but a</i></p>

	<p><i>reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation."</i></p>
11.10.1996	<p><b><i>In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (1997) 11 SCC 121, this Hon'ble Court held as follows:</i></b></p> <p><i>"Whether the Respondents are liable to ejection from the encroachments of pavements of the roads and whether the principle of natural justice, viz., audi alteram partem requires to be followed? If so, what is its scope and content? Whether the appellant is under an obligation to provide permanent residence to the hutment dwellers and, if so, what would be the parameters of the same?"</i></p> <p><i>"It would...be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and</i></p>

	<p><i>fruitful...It would be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the Constitutional objectives."</i></p>
01.04.2000	<p>The Delhi Government with the approval of Central Government finalized the <i>Rehabilitation and Improvement Scheme, 2000</i> for Jhuggi Clusters. The Policy for relocation of J.J. clusters w.e.f. 01.04.2000, inter-alia, provided that slums will be relocated only from project sites where specific requests have been received from the land owning agencies and no large scale removal should be resorted to without any specific use. A target of shifting 10,000 Jhuggies in 2000-2001 was laid down, which was to be reviewed each year in April by Delhi Government based on requests received from land owning agencies.</p>
07.02.2007	<p>The statutory Master Plan Delhi-2021 came into effect on 07.02.2007, which was authored by the Applicant as erstwhile Union Minister of State for Urban Development. It provided statutory relief to the Slum &amp; JJ Clusters. The MPD-2021 envisages three fold strategies to deal with rehabilitation or relocation of the existing squatter settlements/</p>

jhuggi dwellers. One of the strategies is relocation of the jhuggis dwellers if the land on which their jhuggis exist is required for a public purpose, in which case, the jhuggis dwellers should be relocated/ resettled and provided alternative accommodation. Paras 4.2.3 and 4.2.3.1 of MPD2021 under the heading “Housing for Urban Poor” read as under:

#### **“4.2.3 HOUSING FOR URBAN POOR**

*The category of urban poor for purpose of the Plan would mainly comprise the inhabitants of squatter settlements and informal service providers. Such services could include domestic help, hawkers and vendors, low paid workers in the industrial, commercial and trade/business sectors, etc. These include both existing population and future migrants. In terms of housing requirements of the city, this continues to be the single-biggest challenge and would require a mix of approaches and innovative solutions.*

##### **4.2.3.1 Rehabilitation/Relocation of Slum & JJ Clusters:**

*In so far as the existing squatter settlements are concerned, the present three-fold strategy of*

*relocation from areas required for public purpose, in-situ up-gradation at other sites to be selected on the basis of specific parameters and environmental up-gradation to basic minimum standards shall be allowed as an interim measure. Rest of the clusters, till they are covered by either of the first two components of the strategy, should be continued.*

...

*Broadly speaking this alternate approach should have the following components:*

*(i) Resettlement, whether in the form of in-situ up-gradation or relocation, should be based mainly on built up accommodation of around 25 sq.m with common areas and facilities, rather than on the model of horizontal plotted development.*

*(ii) The concept of land as a resource should be adopted to develop such accommodation with private sector participation and investment, to the extent possible.*

...

*(vi) In cases of relocation, the sites should be*

	<p><i>identified with a view to develop relatively small clusters in a manner that they can be integrated with the overall planned development of the area, particularly keeping in view the availability of employment avenues in the vicinity. Very large resettlement sites could lead to a phenomenon of planned slums.</i></p> <p><i>(vii) Suitable arrangement for temporary transit accommodation for families to be rehabilitated should be made. This may preferably be near or at the same site and the utilization of these may be synchronised with the phases of implementation of the scheme of in-situ up-gradation.</i></p> <p><i>(viii) Community Based Organisations (CBOs) and Non-Governmental Organisations (NGOs) should be closely involved in the resettlement process.</i></p>
17.12.2009	<p>The Delhi High Court in the matter of <b>Sudama Singh &amp; Ors. Vs. Government of Delhi &amp; Anr. 168 (2010) DLT 218</b> considered the following</p>

issues:

- Whether the State Government's policy for relocation and rehabilitation excludes the persons living on Right of Way, although they are otherwise eligible for relocation / rehabilitation as per the Scheme?
- If there is any policy regarding the persons living on Right of Way then what could be the true import of such policy?
- Whether the manner in which the alleged policy is being implemented by the respondents is arbitrary, discriminatory and in violation of Articles 14 and 21 of the Constitution and various international covenants to which India is signatory?

In the above context, the Delhi High Court held as follows:

*“50. In our opinion, the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the “Right of Way” is completely contrary to the State’s policy which governs relocation and*

*rehabilitation of slum dwellers. State's policy for resettlement nowhere exempts persons, who are otherwise eligible for benefit of the said policy, merely on the ground that the land on which they are settled is required for "Right of Way". The respondents" have failed to produce any such policy which provides for exclusion of the slum dwellers on the ground that they are living on "Right of Way".*

*When the petitioners set up their jhuggies several decades ago there was no road. It may be that in some layout plan the land was meant for a road but when they started living there, they could not anticipate that the land will be required in future for a road or for the expansion of an existing road.*

*As long as they were not on an existing road, they cannot be denied the benefit of rehabilitation/relocation. The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their jhuggies without ensuring their relocation would amount to gross violation of their Fundamental Rights.*

"55. We find no difficulty in the context of the present case, and in the light of the jurisprudence developed by our Supreme Court and the High Court in the cases referred to earlier, to require the respondents to engage meaningfully with those who are sought to be evicted. It must be remembered that the MPD2021 clearly identifies the relocation of slum dwellers as one of the priorities for the government. Spaces have been earmarked for housing of the economically weaker sections. The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction. 56. The respondents in these cases were unable to place records to show that any systematic survey had been undertaken of the jhuggi clusters where the petitioners and others resided. There appears to be no protocol developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of

	<i>livelihood, earning, access to education for the children, access to health facilities, access to public transportation etc.”</i>
2011	Parliament of India enacted the ‘National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011’. The said Act provided that Status Quo shall be maintained as on 01.01.2006 for all JJ Clusters which have come up before 01.01.2006. Further, all enforcements including any judgment, decree or order of any court shall be kept in abeyance.
2013	The Applicant herein as then Hon’ble Union Minister for Housing & Urban Poverty Alleviation initiated the process for clearance of the Cabinet Committee on Economic Affairs for converting the ‘Rajiv Awas Yojna’ (housing for poor & slum dwellers) from pilot project to mission mode. Accordingly, the said clearance was given and policy was implemented as a mission of the Government of India.
31.07.2013	The decision in <i>Sudama Singh (supra)</i> was carried in appeal to the Supreme Court by the Government of NCT of Delhi by way of an SLP (Civil) No. 445-446/2012. However, the same was dismissed

	<p>as withdrawn and the following order was passed:</p> <p style="text-align: center;"><i>"Learned counsel for the petitioners seeks permission to withdraw the special leave petitions. Permission is granted. Consequently, the special leave petitions are dismissed as withdrawn."</i></p>
2015	<p>The Government of India re-launched the erstwhile <i>Rajiv Awas Yojna</i> as <i>Pradhan Manrti Awas Yojna</i>. The said scheme also provide for rehabilitation of existing slum dwellers in order to bring them into the formal urban settlement.</p>
14.12.2015	<p>The Applicant herein, filed a Public Interest Litigation (<b>Ajay Maken Vs. Union of India {260 (2019) DLT 581}</b>) before the Delhi High Court, challenging the large-scale demolition of the jhuggi-jhopri cluster located at cement siding, Shakur Basti, near Shakur Basti railway station (adjacent to Punjabi Bagh), New Delhi.</p> <p>The said demolition action was carried out on 12.12.2015, whereby more than 10,000 persons (including women, children and elderly) who were living in the said slums since many decades, were rendered homeless.</p>

22.12.2015	<p>The Delhi High Court in the matter of <b>Ajay Maken Vs. Union of India</b> (<i>supra</i>) 260 (2019) <i>DLT 581</i>, directed the Delhi Urban Shelter Improvement Board - DUSIB (the Slum Department) along-with all concerned land owning agencies in Delhi (Railways, DDA, MCD etc.) to prepare a ‘<b>common protocol</b>’ to decide the manner/ procedure for removal of slums in Delhi.</p>
14.06.2016	<p>The Government of NCT of Delhi implemented the Delhi Slum &amp; JJ Rehabilitation and Relocation Policy, 2015. The said policy provided for proper survey of slum dwellers and rehabilitation/ relocation prior to removal/ demolition of jhuggis.</p> <p>Further, as per the directions of the High Court in <i>Ajay Maken (supra)</i>, the DUSIB formulated the ‘Draft Protocol’ in consultation with all the stakeholders, including the Railways and the Ministry of Urban Development. The protocol also provided that that the removal of Jhuggis and JJ Bastis in Delhi will be as per the provisions of the “Delhi Slum &amp; JJ Rehabilitation &amp; Relocation Policy, 2015” (hereinafter referred to as “the 2015 Policy”).</p> <p>Further, inter-alia, the 2015 Policy and the Protocol</p>

	<p>also provided that all Jhuggi-Jhopri bastis in Delhi that came into existence prior to 01.01.2006 and Jhuggis which came into existence in such bastis before 01.01.2015 shall not be demolished without providing alternative housing.</p> <p>Copy of the Delhi Slum &amp; JJ Rehabilitation and Relocation Policy, 2015 is attached hereto and marked as <b>ANNEXURE A-1(Pg. 44 to 55)</b>.</p> <p>Copy of the Protocol (for removal of Jhuggis in Delhi) is attached hereto and marked as <b>ANNEXURE A-2(Pg. 56 to 65)</b>.</p>
18.03.2019	<p>The Delhi High Court rendered a detailed judgement <i>Ajay Maken (Supra)</i>. It approved the ‘Protocol’ devolved by all the agencies jointly, including the railways. Further, the High Court also specifically dealt with the slum dwellers residing on Railway land. The Court held as follows:</p> <p><i>“138. The above submissions proceed on the basis that Railways is an entity separate from that of the Central Government, whereas it is not. The Railways is another Ministry of the Central Government. Two Ministries of the Central</i></p>

	<p><i>Government cannot talk in two different voices. The MoUD has categorically informed this Court that it has no objection to the 2015 Policy notified by the LG (who incidentally also functions under the administrative control of the Central Government) or the Draft Protocol.”</i></p> <p>Copy of the Judgment rendered by the Delhi High Court in the matter of <b>Ajay Maken Vs. Union of India &amp; Ors. 260 (2019) DLT 581</b> is attached hereto and marked as <b>ANNEXURE A-3(Pg. 66 to 169)</b>.</p>
March 2020	The Central Government declared COVID-19 as a Pandemic for the whole country and announced a nationwide lockdown.
31.08.2020	This Hon’ble Court in W.P.(C) No. 13029/1985, in complete ignorance of the abovementioned Statutes, Policies and Judgments, has ordered the outright removal of over 48,000 jhuggis along railway tracks in Delhi.
06.09.2020	The spread of COVID-19 cases in India on an international level surpassed Brazil, with an average of more than 90,000 cases per day, thereby becoming the 2 <sup>nd</sup> worst COVID-19 hit country in the world.

	<p>Delhi is one of the worst affected cities in India with more than 3000 COVID-19 cases being recorded everyday.</p> <p>The Ministry of Railways and Government of NCT of Delhi have already initiated the process of identifying and removal of the slums along the Railway Lines. Hence, if the said action is continued it is likely to affect lakhs of persons and render them homeless amidst COVID-19.</p> <p>Copy of the News published in Times of India dated 06.09.2020 is attached hereto and marked as <b>ANNEXURE A-4(Pg. 170 to 172).</b></p>
07.09.2020	<p>That vide Notice dated 07.09.2020 (Annexure A-5) the respondent Ministry of Railways has directed thousands of jhuggi dwellers in Bahadurrah area to remove their <i>jhuggis</i>, huts, shops, cattle etc. located on Railway lands. It is pertinent to mention that the said notice has been issued for removal of all persons, structures existing on Railway land, irrespective of the fact whether such <i>jhuggis</i>, shops, cattle etc. are located in the 15 mtr. Safety zone or not. Moreover, the said notice calls for immediate eviction of thousands of persons by 14.09.2020 without prior rehabilitation of the said persons and as result of the said action, thousands</p>

	<p>of persons will be thrown on the road without any roof over their heads.</p> <p>A true typed translated copy of the Demolition Notice dated 07.09.2020 issued by the Respondent Railways is annexed herewith and marked as <b>ANNEXURE A-5. (Pg. 173)</b></p>
NIL	<p>That vide Notice dated <i>nil</i> (Annexure A-6) pasted in the <i>jhuggi</i> area where Applicant No. 2 is residing has again informed more than 15,000 persons residing in the <i>jhuggis</i> of Shakur Basti to evict the said area or else demolition will be carried out irrespective on 11.09.2020. As evident from the notice, the Respondent Railways has not made any prior rehabilitation/ relocation arrangements for the said persons.</p> <p>A true typed translated copy of the Demolition Notice dated <i>nil</i> issued by the Respondent Railways is annexed herewith and marked as <b>ANNEXURE A-6. (Pg. 174)</b></p>

3. The Applicant, therefore submits that this Hon'ble Court may kindly consider the present Application and pass appropriate directions on the following grounds:
  - A. BECAUSE while passing the Order dated 31.08.2020 qua removal of *jhuggis* no opportunity of hearing was given to

the actual affected habitants of the *jhuggis* or any section thereof, though it involves intricate Questions of Law, Constitutional Morality, interpretation of Article 21, and other wide ranging factors.

- B. BECAUSE the well-recognized understanding of the real import of the rule of hearing is that justice must not only be done but must manifestly be seen to be done. The appearance of injustice is the denial of justice.
- C. BECAUSE the at the time of passing the Order dated 31.08.2020 while no slum dwellers or a section of it was present before this Hon'ble Court, at the same time the Respondent Agencies who desire to demolish the hutments/*jhuggis* of the slum dwellers were heard at length. Moreover, taking advantage of the said Order, the Repondent agencies have already initiated the process of demolition drive in the slums.
- D. BECAUSE the residents of the *jhuggis* cannot be considered 'Secondary Citizens' and the removal of the *jhuggis* will render these residents homeless thereby violating their human rights as well as the Fundamental Rights as guaranteed under the Constitution of India.
- E. BECAUSE the Order dated 31.08.2020 amounts to denial of access to justice to the affected parties as this Hon'ble Court has directed that no Court will grant stay in the process of

removal. The said direction is in the face of the fundamental right of access to justice.

- F. BECAUSE this Hon'ble Court is the custodian of the Constitutional rights of the citizens of India and hence the *jhuggi* dwellers cannot be deprived of their right of access to justice at the hands of the Apex Court. Especially in view of the fact that marginalised sections of the society neither have the resources nor the support to stand for their rights.
- G. BECAUSE the Order dated 31.08.2020 ought to be clarified as it suffers from illegality on the face of the record as it directs the removal of *jhuggis* within 3 months, without making any provisions for rehabilitation/ relocation for the *jhuggi* dwellers which is arbitrary and discriminatory in the eyes of law and is in violation of the government policies guiding rehabilitation/ relocation/ removal of slums in Delhi.
- H. Because while the Railways admits that the said demolition drive will affect about 48,000 *jhuggis*, however, the actual number of *jhuggis* to be affected by the said demolition drive would be more than 1,00,000 and hence if the Order dated if not clarified to the effect that it is necessary to rehabilitate the affected population prior to the removal/ demolition, it will render more than 5 lakh people in Delhi homeless and hapless.

- I. BECAUSE the Respondent Railways in the garb of the Order dated 31.08.2020 is demolishing all slums on railway land in Delhi, irrespective of whether such jhuggis are within the safety zone or not. The same is evident from the notices issued by the Railways. Hence, casualty of the present demolition drive is far greater than 48,000 jhuggis as mentioned in the Order dated 31.08.2020 and more than 5,00,000 slum dwellers in Delhi are likely to be displaced without prior rehabilitation/ relocation/ survey.
- J. BECAUSE the matter in which the direction for removal of jhuggis has been passed, is matter pertaining to environmental issues in and around the National Capital, whereas the Respondent Railways secured an Order for removal of large scale jhuggis in Delhi, without there being any *lis* to issue of removal of jhuggis.
- K. BECAUSE the Order dated 31.08.2020 if not clarified, is likely to affect the outspread of COVID-19 pandemic in Delhi as lacs of persons who are currently residing in Jhuggis will be forcibly evicted and will be compelled to roam around the streets of Delhi in search of shelter and livelihood.
- L. BECAUSE the operation of the Order dated 31.08.2020 will not only affect the slum dwellers but will also affect the general public in Delhi as there is a high chance of spread of

the contagious COVID-19 when lacs of slum dwellers will be forced to take refuge on the streets.

- M. BECAUSE the Order dated 31.08.2020 has been secured by the Respondent Railways by circumventing the detailed Judgement governing the process of removal of jhuggis on Railway land as rendered by the Division Bench of the Delhi High Court in **Ajay Maken Vs Union of India 260 (2019) DLT 581**.
- N. BECAUSE the Ministry of Railways has already accepted the Judgment of the Delhi High Court in the matter of **Ajay Maken (supra)** as no appeal was filed against the same. Further the said Judgement clearly provides for rehabilitation of the affected population and a survey prior to removal of jhuggis in Delhi, including those on Railway Land.
- O. BECAUSE in view of the Delhi High Court Judgement in **Ajay Maken (supra)** and the provision of the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (the 2015 Policy), the slum dwellers living in the jhuggi jhopri clusters along the Railway lines cannot be thrown on the road without prior rehabilitation.
- P. BECAUSE the said *jhuggis* cannot be removed as per the 2015 Policy as the policy clearly states that the JJ bastis that had come up before 1st January 2006 shall not be removed in

terms of the National Capital Territory of Delhi Laws (Special Provisions) Act 2011.

- Q. BECAUSE the key elements of the 2015 Policy such as conducting a detailed survey prior to eviction; drawing up a rehabilitation plan in consultation with the dwellers in the JJ bastis and jhuggis; ensuring that prior to eviction the dwellers are already rehabilitated strictly applies to all *bastis* and *jhuggis* across the NCT of Delhi and forced eviction of *jhuggi* dwellers without compliance with the key elements of the 2015 Policy will be contrary to the law as per the decisions of this Hon'ble Court.
- R. BECAUSE if the *jhuggi* dwellers are removed without prior rehabilitation the same would amount to gross violation of the Article 21 of the Constitution of India which guarantees that "no person shall be deprived of his life and liberty except according to procedure established by law", and the law/policy governing this subject provides for prior relocation/rehabilitation, before the *jhuggis* are removed/ demolished.
- S. BECAUSE the *jhuggi* dwellers do not possess any other alternative place to live in Delhi as neither do they own any land nor they can afford any rented accommodation in Delhi and that all of them had shifted to Delhi in order to earn their livelihood as there is no work opportunity in their respective native villages and now, the demolition of their *jhuggies* with

no hope for any resettlement will leave them without any shelter and livelihood.

- T. BECAUSE the Respondents failed to highlight the fact that the High Court in **Ajay Maken** (*supra*) has held that the inhabitants of the *jhuggis/ JJ Clusters* possess the '**Right to The City**' (RTTC) which under international law is recognised as an integral part of the right to adequate housing.
- U. BECAUSE 'Right To The City' (RTTC) has been acknowledged by the 'New Urban Agenda' which was unanimously adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador on 20<sup>th</sup> October, 2016 and later in December 2016, during the 68th plenary session of the 71st General Assembly endorsed by all the United Nations Member States.
- V. BECAUSE this Hon'ble Court has failed to consider that even in international law the inhabitants of the *jhuggis* have the right to adequate housing and the right against forced evictions by virtue of International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, ratified by India in 1976. The provisions of the ICESCR have also been noticed in some of the early decisions of this Hon'ble Court on the right to shelter. The Article 11 (1) of ICESCR, which is immediately relevant for the present purposes, reads as under:

*"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."*

W. BECAUSE the Order dated 31.08.2020 has failed to consider the Committee on Economic, Social and Cultural Rights (CESCR)'s view in General Comment No. 4 on the 'Right to Adequate Housing' which was adopted at the Sixth Session of the CESCR on 13th December, 1991, which is a body of experts formed by the Economic and Social Council to assist it in the consideration of the reports submitted by the State parties, with respect to the substantive and procedural aspects of the ICESCR. Paragraph 7 of General Comment No. 4 expresses the view of the CESCR and notes that:

*"The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to*

*take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing."*

- X. BECAUSE the inhabitants of *jhuggis* contribute to the social and economic life of a city by working as sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life thereby suffering indignities and travelling long distances and that prioritising the housing needs of such population should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution.
- Y. BECAUSE this Hon'ble Court in **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981) 6 SCC 608** while interpreting Article 21 has held that:

*"(8)...the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and*

*also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."*

- Z. BECAUSE this Hon'ble Court in **Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545** acknowledged the right to shelter as forming the part of the Right to Life under Article 21 of the Constitution of India.
- AA. BECAUSE order dated 31.08.2020 does not addresses the concern that removing the inhabitants from their *jhuggis* will deprive them from their Right To Livelihood and consequently deprivation of life and this Hon'ble Court in **Olga Tellis v. Bombay Municipal Corporation(1985) 3 SCC 545** has held that right to life also includes the right to livelihood and that depriving a person of his right to livelihood will be depriving him of his life as what makes life liveable, must be deemed to be an integral component of the right to life.
- BB. BECAUSE the right to shelter and the right to livelihood are closely interlinked and cannot be separated into different compartments, as both inextricably form part of life itself and that any attempt of deprivation of either right to shelter or right to livelihood, would mandate compliance with basic principles of natural justice i.e. providing a hearing to those sought to be evicted forcibly.

CC. BECAUSE this Hon'ble Court in *Sudama Singh & Ors. vs. Deepak Mohan Spolia & Ors.* (2018) 14 SCC 756 has upheld Delhi High Court's judgment in *Sudama Singh & Others vs. Government of Delhi & Anr* (2010) 168 DLT 218 wherein the High Court held that:

*59. This Court would like to emphasise that the context of the MPD, Jhuggi dwellers are not to be treated as "secondary" citizens. They are entitled to no less an access to basic survival needs as any other citizen. It is the State's constitutional and statutory obligation to ensure that if the Jhuggi dweller is forcibly evicted and relocated, such Jhuggi dweller is not worse off. The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such Jhuggi dweller.*

*64. It is declared that:*

*(i) The decision of the respondents holding that the petitioners are on the "Right of Way" and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.*

*(ii) In terms of the extant policy for relocation of Jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the petitioners will be considered for relocation.*

*(iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021 subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a "meaningful" manner, as indicated in this judgment.*

*(iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the Jhuggis, are available at the site of relocation.*

DD. BECAUSE this Hon'ble Court in **Chameli Singh V. State of U.P., (1996) 2 SCC 549** considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. This Hon'ble Court noted that:

*"(8) In any organized society, right to live as a human being is not ensured by meeting only the animal need of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions, which inhibit his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights."*

4. Therefore, in view of the above-mentioned facts and circumstances, it is respectfully submitted that the Applicants have a good prima facie case and balance of convenience lies in favour of the Applicants.
5. If the relief sought is not allowed grave irreparable injury will be suffered by the Applicants.
6. That the Applicants has not filed any other similar Applications either before this Court or any other Court of Law.

**PRAYER**

It is therefore most respectfully prayed that this Hon'ble Court be graciously pleased to:-

- a) Direct Respondent Authorities (including the Ministry of Railways, Government of NCT of Delhi, DUSIB) to rehabilitate the Slum Dwellers prior to eviction/ demolition of their jhuggis;
- b) Direct Respondent Authorities (including the Ministry of Railways, Government of NCT of Delhi, DUSIB) to follow the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 and the Protocol (for removal of Jhuggis) in letter and spirit;
- c) Pass any other or such further order as be deemed fit in facts and circumstances of the preset case.

**AND FOR THIS ACT OF KINDNESS THE HUMBLE APPLICANTS SHALL AS IN DUTY BOUND EVER PRAY.**

**FILED BY:**

**NITIN SALUJA  
ADVOCATE FOR APPLICANT**

**DRAWN BY: AMAN PANWAR**

**PLACE: NEW DELHI**

**FILED ON:10.09.2020**