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

**Order reserved on : 15.07.2022**

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**Order pronounced on : 04.08.2022**

+ **W.P.(C) 9625/2022 and CM APPLs. 28721/2022 (Stay), 30000/2022 (delay), 30001/2022 (impleadment), 30108/2022 (directions) and 30130/2022 (directions)**

URMILA & ORS.

..... Petitioners

Through: Mr. Trideep Pais, Senior Advocate with Ms.Vrinda Bhandari, Ms. Natasha Maheshwari and Mr. Sudakshina Prasad, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. .... Respondents

Through: Mr. Sanjay Jain, ASG with Ms.Prabhsahay Kaur, Ms.Kritika Gupta, Mr. Arkaj Kumar, Ms. Tanya Aggarwal and Mr. Nishank Tripathi, Advocates for DDA.

Mr. Anil Gera, Advocate.

Mr.Anuj Aggarwal, ASC, GNCTD with Ms.Ayushi Bansal, Advocate for R-3 & 4.

+ **W.P.(C) 9628/2022 and CM APPLs. 28730/2022 (interim relief), 30011/2022 (delay), 30471/2022 (impleadment) and 30472/2022 (stay)**

MANOJ GUPTA AND ORS

..... Petitioners

Through: Mr. Shiyas K.R., Mr. Jepi Y. Chisho  
and Mr. Kaoliangpou Kamei,  
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. .... Respondents

Through: Mr. Sanjay Jain, ASG with  
Ms.Prabhsahay Kaur, Ms.Kritika  
Gupta, Mr. Arkaj Kumar, Ms. Tanya  
Aggarwal and Mr. Nishank Tripathi,  
Advs. for DDA.

Mr. Rishi Kant Singh, Adv. for R-  
2/DUSIB.

Mr.Anuj Aggarwal, ASC, GNCTD  
with Ms.Ayushi Bansal, Advocate for  
R-3 & 4.

**CORAM:**

**HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

**SACHIN DATTA, J.**

**CM APPL.29999/2022 (vacation of stay) in W.P.(C) 9625/2022**

**CM APPL.30013/2022 (vacation of stay) in W.P.(C) 9628/2022**

1. These applications have been filed by respondent no. 1/Delhi Development Authority ('DDA'), seeking vacation of the order dated 28.06.2022 in the instant petitions, whereby status quo was directed to be maintained. The said order dated 28.06.2022, passed by this Court in W.P.(C) 9625/2022, reads as under:-

**"CM NO. 28721/2022**

1. A Writ Petition under Article 226 of Constitution of India has been filed for appropriate directions to protect the petitioners against the arbitrary and illegal demolition or eviction from Gyaspur Basti, Sarai Kale Khan, Nizamuddin East, South East Delhi, New Delhi.

2. It is submitted in the petition that the petitioners are the residents of two Gyaspur Basti clusters which are located on either side of the road in Sarai Kale Khan, Nizamuddin East, South East Delhi, New Delhi. The two clusters house 100 families and a total of over 459 residents are residing there. Settlement A on one side of the road is 100 meters away from Settlement B adjacent to the Kalindi Gaushala. It is asserted that on 18<sup>th</sup> June, 2022 about 15-16 persons professing to be the representative of Respondent No.1 Delhi Development Authority visited Gyaspur Basti cluster and orally informed the residents that they would be demolishing the Basti on 23rd June, 2022. Thereafter on 23rd June, 2022 15-20 representative of Respondent No.1 again visited Gyaspur Basti cluster equipped with 8-9 bulldozers and threatened to demolish the jhuggis immediately and went to demolish the farms adjacent to the jhuggis. On the representations and requests of the residents, respondent No.1 agreed to wait till 27th June, 2022 to conduct the demolition drive. The DDA's proposed action at the time when COVID-19 cases are rising on exponential basis and there is impending monsoon season in Delhi which could disproportionately affect and render the residents of this cluster homeless. No Notice of the demolition was ever served upon the petitioners.

3. It is further submitted that the Basti was established about forty years ago and petitioners have documents to demonstrate their residence here at least since 1995 i.e. for more than 27 years. Most of the residents migrated to Delhi from interiors of Uttar Pradesh and 95% of the residents belong to Scheduled Caste (primarily Dhobi caste) or other backward class. They

*are daily wagers living below the poverty line and are primarily engaged in unskilled or semi-skilled informal labour and are otherwise vulnerable to COVID-19 and are now facing the prospect of illegal eviction and demolition of their houses.*

*4. A prayer is, therefore, made that the respondents particularly respondent No.1 be restrained from carrying out any eviction or demolition or from taking any coercive measures for harassing the petitioners who are the residents of Gyaspur Basti cluster marked as A & B on the Site Plan Ex.P1. It is further requested that respondent No.4 (Delhi Police) may be restrained from assisting Respondent No.1 to 3 in carrying out the demolition and the evictions. Further, Respondent No.3 Delhi Urban Shelter Improvement Board (DUSIB) be directed to conduct the survey of the jhuggis in Gyaspur Basti clusters in accordance with the directions issued by the Supreme Court in **Sudama Singh &Ors v. Government of Delhi &Ors**, (2010) 168 DLT (DB) and **Ajay Maken&Ors v. Union of India**, 2019 SCC OnLine Del 7618. Further, directions are sought to be given that respondents be directed to comply with the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 and Draft Protocol and provide for in situ upgradation/rehabilitation to the Petitioners.*

*5. Issue Notice.*

*6. Notice is accepted by the learned counsels for the respondents.*

*7. Learned counsel for the petitioners has vehemently argued that there are about 100 families residing in the two clusters existing in Sarai Kale Khan at least from 1995 which can be verified from the Aadhar Cards and Voter's Identity Cards and other documents which have been placed on record. It is further submitted that in terms of the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015, the DUSIB is required to conduct a survey and thereafter workout a rehabilitation or relocation*

*programme before carrying out the demolition. None of the procedures have been followed and this arbitrary and illegal action of the respondents would not only render the petitioners homeless and jobless, but would also be in violation of the Government policy and the directions given by the Supreme Court of India in **Ajay Maken&Ors v. Union of India (supra)**. It is further submitted that though partial demolition has been carried out yesterday i.e. on 27th June, 2022, but jhuggis of only petitioner No.1 and 4 have been demolished while the jhuggis of other 11 petitioners are still intact. Interim protection is, therefore, sought from such illegal demolition.*

*8. Lastly, an application CM No.28721/2022 under Article 226 of the Constitution of India has also been filed wherein it is submitted that the two applicants namely Urmila and Har Pyari, whose jhuggis have been demolished have been rendered homeless and have no place to reside and therefore, the directions may be issued to the respondents to provide for temporary residence of the two petitioners. It is also submitted that the displaced petitioners are not being permitted to take shelter in the night shelters which are being run by Respondent No.2 (Government of NCT of Delhi).*

*9. Learned counsel on behalf of **Respondent No.1 (DDA)** has vehemently argued that what have been termed as jhuggi clusters by the petitioners, are in fact, sporadic jhuggis which have come up in the area. They do not qualify as a Basti or cluster and therefore, the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 is not applicable. It is further submitted that the petitioners had been informed on 18th June, 2022 about the demolition drive, despite which no action has been taken till the filing of this petition on 24th June, 2022. It is argued that the judgments relied upon pertain to Jhuggi Basti/ clusters and are not applicable to the facts in hand and petitioners are not entitled to any protection. It is also submitted that the demolition drive is being carried out pursuant to the directions*

of the Hon'ble Supreme Court and National Green Tribunal in various areas.

10. Learned counsel **on behalf of DUSIB** has submitted that as per the Notifications taken out by DUSIB from time to time, the alleged jhuggi clusters in respect of which Writ Petition has been filed do not qualify as clusters/basti and are not covered by Delhi Urban Shelter Improvement Board Act, 2010. The petitioners being encroachers are not entitled to any protection.

11. Submissions heard.

12. The primary ground on which the protection from arbitrary demolition and dispossession has been sought by the petitioners is that no prior survey has been conducted by DUSIB in terms of the decisions of this court in **Ajay Maken&Ors v. Union of India (supra)**. In the said judgments it has been observed that in recognition of the constitutional right of the citizens of this country to shelter, the courts once approached by such persons complaining about forced eviction should not be viewed as encroachers and illegal occupants of land, whether public or private, but must require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies and without compliance of the requisite procedures, would be contrary to law.

13. The documents filed by the petitioners prima facie show that they are occupying the premises since 1995. Considering the long possession of the parties and their assertions that it is a jhuggi cluster having more than 100 jhuggis, the respondents are directed to maintain status quo till 11th July 2022.

14. In the application CM No.28721/2022, it is stated that the two applicants whose jhuggis have been demolished and have been rendered homeless, may be provided temporary shelter especially because of the impending monsoon. In the light of the submissions made, Respondent No.3 Delhi Urban Shelter

*Improvement Board (DUSIB) may consider providing temporary protection in the Night Shelter nearest to the jhuggi area, till the next date of hearing i.e. 11th July, 2022.*

*15. The reply be filed by the respondents within five days and the rejoinder thereto, if any, within five days thereafter.”*

2. I have heard Mr. Sanjay Jain, learned Additional Solicitor General, appearing on behalf of the applicant/DDA, Mr. Trideep Pais, learned senior counsel appearing on behalf of the petitioners in W.P.(C) 9625/2022 and Mr. Shiyas K.R., learned counsel appearing on behalf of the petitioners in W.P.(C) 9628/2022.

3. Broadly, the following submissions have been made by Mr. Sanjay Jain, learned Additional Solicitor General appearing on behalf of DDA:-

(i) It is submitted that although the petitioners have sought to make out a case of existence of two clusters of *jhuggis* marked at points ‘A’ and ‘B’ on the site map annexed alongwith the writ petition W.P.(C) 9625/2022 as Annexure P-1, located on either side of the road labelled “R”, the addresses in the address proofs submitted by the petitioners are not of the location of the said Sites A and B.

(ii) It is also pointed out that the Google Earth images/maps filed with the petition and the rejoinder are contrary to each other.

(iii) It is further submitted that the Google Earth Satellite Images of the aforementioned sites ‘A’ and ‘B’ of the years 2004, 2006 and 2022 show that

the addresses mentioned in the identity documents, relied upon by the petitioners, correspond to entirely different locations than sites 'A' and 'B'.

(iv) It is further contended that Google Earth images of the alleged sites 'A' and 'B' of the years 2004, 2006 and 2022 make it abundantly clear that no cluster existed on the site prior to the cut-off date of 01.01.2006 as specified in Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015. Thus, the petitioners have falsely claimed to be residing at the alleged sites 'A' and 'B' since 1995, on the basis of which the said interim order dated 28.06.2022 was granted in their favour.

(v) It is submitted that the alleged *jhuggi jhopri bastis*/clusters are not in the list of 675 notified *jhuggi jhopri bastis*/clusters released by Delhi Urban Shelter Improvement Board (hereinafter referred to as 'DUSIB'), wherein, *jhuggi jhopri* dwellers are entitled to rehabilitation as per Delhi Urban Shelter Improvement Board Act, 2010 (hereinafter referred to as 'DUSIB Act, 2010') and the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 (hereinafter referred to as '2015 Policy'). It is pointed out that Clause 2(a)(i) of the 2015 Policy itself clearly specifies that only those *jhuggi jhopri bastis*/clusters which have come up prior to 01.01.2006 shall not be removed/demolished without providing alternative housing. The contention is that since the alleged *jhuggi jhopri* settlements did not come up prior to 01.01.2006 (i.e. the cut-off date), therefore, it does not make the petitioners eligible for rehabilitation under the 2015 Policy. It is further contended that the alleged clusters/settlements marked at points 'A' and 'B' in Annexure P-1

of the writ petition W.P.(C) 9625/2022, do not fall within the definition of “*jhuggi jhopri basti*” as contemplated under Section 2(g) of the DUSIB Act, 2010. It is also contended that Clusters A and B are at a significant distance from each other and the petitioner is wrongly attempting to combine two entirely distinct and separate settlements.

(vi) Lastly, it is submitted that the petitioners have concealed that their alleged *bastis*/clusters are located squarely on the Yamuna floodplains, and that they are carrying out commercial and agricultural activities, rearing livestock and polluting the Yamuna River. It is strenuously contended that being located on the floodplains, the said *bastis*/clusters pose a threat to life, more particularly in the monsoon season. It is further contended that the interim stay granted by this Court on 28.06.2022 is thwarting public projects and timely rejuvenation and restoration of the river Yamuna, and the same is also in contravention of the orders passed by National Green Tribunal (NGT) in a series of judgments.

4. *Per contra*, learned senior counsel appearing on behalf of the petitioners/non-applicants has strongly refuted the aforesaid contentions. Learned senior counsel for the petitioners in W.P.(C) 9625/2022 and learned counsel for the petitioners in W.P.(C) 9628/2022 have emphasized that the settlements ‘A’ and ‘B’, as depicted in the aforementioned Annexure P-1 of the writ petition are not far apart, and that they are in fact close together, connected by road and share community resources. It is further submitted that the fact that the two clusters are approximately 100 meters apart, does not

prevent them from being treated as a *jhuggi jhopri basti* under the DUSIB Act, 2010. It is further submitted that the absence of Gyaspur *basti* clusters from the list of 675 *jhuggi jhopri bastis* notified by DUSIB on 04.01.2017 and from the 82 additional *jhuggis* added by DUSIB to the list on 03.10.2019 is of no significance, inasmuch as, the addition of that *basti*/cluster to the list of notified *jhuggi jhopri bastis* is not an immutable exercise and that it is DUSIB's responsibility to engage in a fact finding exercise, and to determine whether petitioners are eligible for rehabilitation and relocation. In this regard, petitioners have relied upon the decisions of this Court in ***Sudama Singh and Others Vs. Government of Delhi and Anr.***, (2010) 168 DLT 218 (DB) and ***Ajay Maken and Others Vs. Union of India and Others***, (2019) 260 DLT 581 (DB).

5. Counsel for the petitioners further submitted that *basti* clusters in the present case are eligible for rehabilitation under the 2015 Policy, inasmuch as, Clause 2(a)(i) of the 2015 Policy contemplates that *jhuggi jhopri bastis* which have come up before 01.01.2006 shall not be removed without providing them alternative housing. Further, the policy also provides that *jhuggis* which have come up in such *jhuggi jhopri bastis* before 01.01.2015 shall not be demolished without providing alternative housing. It is strenuously urged that the petitioners have been residing in the concerned Gyaspur *basti* clusters prior to 01.01.2006; attention has also been drawn to certain identity documents filed by the petitioners to show that the same are prior to 01.01.2006.

6. Learned counsel for the petitioners have strongly refuted the Google maps sought to be relied upon by the respondent no.1/DDA. They have also urged that NGT orders do not permit eviction/demolition *dehors* the procedure contemplated in the 2015 Policy and the Draft Protocol for removal of *jhuggis* and *JJ Bastis* in Delhi (hereinafter referred to as '2016 Protocol'). Finally, the petitioners have sought to emphasize that the right to shelter forms a part of right to life as enshrined under Article 21 of the Constitution of India and has relied upon the judgment in the case of ***Olga Tellis and Ors. Vs. Bombay Municipal Corporation and Ors.***, 1985 (3) SCC 545.

7. I have given my anxious consideration to the rival contentions of the parties.

8. At the outset, it is required to be considered whether the concerned settlements marked at points 'A' and 'B' in the site plan filed as Annexure P-1 of the writ petition W.P.(C) 9625/2022, qualify as *jhuggi jhopri basti* as defined under the DUSIB Act, 2010. If so, whether the said *jhuggi jhopri bastis* are covered by the 2015 Policy. This aspect assumes importance because the 2015 policy contains various pre-requisites for relocation of *jhuggi jhopri bastis*. The writ petition is itself predicated on the premise that the Petitioners are entitled to the benefit of the 2015 policy.

9. Section 2(g) of the DUSIB Act, 2010 defines *jhuggi jhopri basti* as under: -

*“2(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 31<sup>st</sup> 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. In terms of the DUSIB Act, the 2015 policy was framed which provides 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. Government of National Capital Territory of Delhi will use the following methods to ensure that no new jhuggis come up:*

- a. Government of National Capital Territory of Delhi has started procuring satellite maps every three months to keep an eye on any new constructions. New illegal constructions would be removed immediately.*
- b. Government of National Capital Territory of Delhi is willing to do joint inspections with land owning agencies at regular intervals and any fresh jhuggis would be removed immediately.*
- c. Government of National Capital Territory of Delhi would enroll volunteers from Jhuggi Jhopri Bastis, who will act for the Government and would inform Government if any fresh jhuggi comes up in any area.”*

11. Apart from the aspect that clusters/ settlements marked as Sites A and B are at a considerable distance from each other and arguably do not meet the requirement of Section 2(b)(iii) of the DUSIB Act, 2010, the admitted factual position is that the said clusters/settlement are not covered by any notification issued by DUSIB, whereby the said clusters have been notified to be “*jhuggi jhopri bastis*”.

12. A perusal of the 2015 Policy also makes it clear that only *jhuggi jhopri bastis* that have come up before 01.01.2006 are eligible for rehabilitation/re-location in terms of the said Policy. More importantly, by definition in the statute itself, notification by DUSIB is an essential pre-

requisite to be qualified/ recognized as a *jhuggi jhopri basti* for the purpose of the Act and the 2015 Policy. Admittedly, no such notification has been issued qua the clusters/settlements of the petitioners. As such, reliance placed by the petitioners relying upon the 2015 Policy, or the 2016 Protocol for that matter, is misconceived, for the reason that same is applicable only to such *jhuggi jhopri bastis* which are duly notified by the DUSIB.

13. Also, in the present case, there is a serious doubt as to whether the address in the address proofs furnished and relied upon by the petitioners correspond to the location of sites A and B. This aspect, coupled with the divergence between the Google Earth images filed along with the petition and the rejoinder, and the Google earth images of the years 2004, 2006 relied upon by the respondent, repel the assertion that the petitioners have been residing in the said sites on or before 01.01.2006.

14. A Division Bench of this Court had occasion to deal with an identical situation in *Vaishali (Minor) (Through Next Friend Mrs. Sita Devi) & Ors. v. Union of India & Ors.*, LPA No. 271/2022 decided on 19.04.2022 in the context of *jhuggi jhopri* cluster at Sarojini Nagar. The following contentions were raised by the appellants in that case:-

*“3. In the writ petition, the petitioners/appellants had averred that the jhuggis in question are situated at Sarojini Nagar and that the same have been in existence since 1980s. There are more than 1000 residents in about 200 jhuggis and have been living at the abovementioned site for several decades. The residents include various families from the poorest of the poor section of the society, who undertake activities such as*

daily wage laborers, drivers, vegetable vendors, maid, servants etc. On 04.04.2022, a team of respondent no.1 alongwith a team of the Delhi Police reached the abovementioned jhuggis, without issuing prior notice, and informed the appellants that the jhuggis are going to be demolished and a large-scale demolition drive will be carried out, with bulldozers and heavy machines.

4. The appellants, placing reliance on the judgments of this Court in **Sudama Singh &Ors. vs. Government of Delhi**, 168 (2010) DLT 218 (DB) and **Ajay Maken vs. Union of India &Ors.**, 260 (2019) DLT 581 (DB), filed the above petition, claiming that there ought to be a survey conducted by the respondent no. 2/Delhi Urban Shelter Improvement Board (hereinafter referred to as the 'DUSIB'), prior to any action of demolition/relocation being carried out. As no plan of rehabilitation/relocation for the residents of the jhuggis at Sarojini Nagar has been prepared by the respondent nos. 1 and 2 prior to the issuance of the eviction/demolition notice, thousands of jhuggi dwellers would be left homeless and this would be in violation of the law laid down by this Court in the above referred judgments.

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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."

[emphasis supplied]

15. The above contentions were duly considered by the Division Bench and it was held as under:-

"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.

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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 .”*

16. The reasoning given by the Division Bench in the aforesaid case squarely applies to the present case as well.

17. In **Tejpal Guatam and Others v. Central Public Works Department**, 2018 SCC OnLine Del 10484, it was held that in the absence of a notification by DUSIB, notifying any jhuggi cluster as a “jhuggi jhopri basti”, it is not possible to extend the benefit of the 2015 Policy to such a jhuggi cluster. The relevant observations of the court in that case are as under:

*“11. As far as the policy, to which attention is drawn, the same is of DUSIB of GNCTD and is titled “Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015”.*

12. *The said policy, in Part A thereof, in Clause 2(a)(i) titled “Who is eligible for Rehabilitation or Relocation” provides as under:*

***“JJ Bastis which have come up before 01.01.2006 shall not be removed (as per NCT of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such JJ Bastis before 01-1-2015 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)”***

13. *And in Part B thereof under Clause 1(ii) provides the eligibility criteria for allotment of alternative dwelling units to rehabilitate and relocate JJ dwellers inter alia as under:*

***“(ii) The Jhuggi Jhopri basti in which the JJ dwellers are residing must be in existence prior to 01-01-2006. However, the cut-off date of residing in the jhuggi for becoming eligible for rehabilitation shall be 01-01-2015 (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013)”***

14. *On enquiry, as to what is the definition/criteria of “JJ bastis” mentioned in Part A under Clause 2(a)(i), the counsel for the petitioners has drawn attention to the Delhi Urban Shelter Improvement Board Act, 2010 Section 2(g) wherein defines ‘Jhuggi Jhopri Basti’ as meaning any group of jhuggis which the Board i.e. DUSIB may, by Notification declare as a jhuggi jhopri basti in accordance with the factors prescribed therein.*

15. *The counsel for the petitioners, on enquiry, admits that there is no Notification with respect to the jhuggis of the petitioners, if at all in a basti.*

16. *It has thus been enquired from the counsel for the petitioners, that once the jhuggis of the petitioners or the basti if any where the said jhuggis are situated, has not been notified, on what basis the petitioners can claim a right of rehabilitation.*

17. *The counsel for the petitioners, instead of replying to the aforesaid, states that the petitioners are being targeted, inasmuch as dwellers of some of the other jhuggis in the vicinity have not been issued notices and no orders have been passed against them.*
18. *However, the law does not recognise any concept of negative equality. Once, the petitioners are admittedly not having any right to challenge the action of the respondents of removal of jhuggis in occupation of the petitioners, the petitioners cannot be permitted to perpetuate the illegality by contending that the respondents have not taken any action against others. It cannot be lost sight of that removal of such jhuggis/unauthorised occupants is not free from difficulties and if the respondents in their wisdom have decided to for the first time being proceed against the petitioners only and not against others, the action against the petitioners cannot be faulted with.*
19. *The counsel for the respondent No. 2 DUSIB has in addition, pointed out (i) that the land which the petitioners are occupying is of the Government of India and the policy relied upon does not apply to such land, per Section 10 of the DUSIB Act; (ii) that though the petitioners have filed photocopies of a number of documents to show their possession since prior to 1<sup>st</sup> January, 2015, being the cut-off date in terms of Clause 2(a)(i) of Part A supra of the policy but except for one or two documents, all the other documents are of after the said date; (iii) that for Clause 2(a)(i) of Part A to apply, what has to be proved is that the basti was in existence before 1<sup>st</sup> January, 2006 and the date of 1<sup>st</sup> January, 2015, is only with respect to occupation of such jhuggis which may have come up in such bastis; (iv) there is no averment in the petition, of the existence of any basti where the jhuggis of the petitioners are situated, prior to 1<sup>st</sup> January, 2006 and the petitioners thus, even if the policy were to apply, have no right under the policy.*

20. *Though the counsel for the petitioners has also raised sympathy grounds and the sympathy in favour of the homeless is indeed justified, but such sympathy cannot be permitted to allow the colonies which have been developed by Government of India or by the GNCTD or by private developers, to be turned into slums, by allowing the jhuggis jhopris to come up in the open spaces in the said colony. Rather, from the photographs, it appears that the subject jhuggis are touching the wall of the government accommodation which may have been allotted to government officials and whose residence along with their family members in the said accommodation may not be possible as long as the jhuggis exists. This Court, when approached cannot consider the plight of the petitioners alone and has to necessarily consider the overall situation and considering which it is felt that showing any sympathy to the petitioners will be to the prejudice of other citizens of the country including government employees who for years wait for their turn for allotment of government accommodation. Such government employees cannot be deprived of such benefit of their employment, by making the accommodation allotted to them unusable for the reason of allowing petitioners and others to surround the said accommodation with their unauthorised jhuggis.”*

*[emphasis supplied]*

18. In ***Shakarpur Slum Union vs. DDA & Ors.***, W.P.( C) 6779/2021 decided on 2<sup>nd</sup> August, 2022, this Court reiterated that any jhuggi cluster which was not a part of any notified *jhuggi jhopri basti*, and which was not in existence prior to 2006 was not entitled to the benefits of the 2015 policy. The scope of the judgments in **Ajay Maken (supra)** and **Sudama Singh (supra)** has also been considered in the said case and it has been held as under:

“33. The reliance of the Petitioner-Union on the judgment of this Court in Ajay Maken (supra) also does not hold any water. The judgment of Ajay Maken (supra) holds to the extent that once a cluster has been identified under the DUSIB Policy, then the persons living in that JJ cluster cannot be treated as illegal encroachers and they cannot be removed from that location without being rehabilitated in accordance with the DUSIB Policy. As stated earlier, when the judgment of Sudama Singh (supra) was pronounced, there was no policy in place and this Court in Ajay Maken's case was dealing with the cluster which had been identified by the DUSIB and, therefore, the members of that cluster were entitled to the benefit of the DUSIB Policy. The learned counsel for the Petitioner has contended that a reading of paragraph 171 of the judgment of this Court in Ajay Maken (supra) indicates that the Division Bench of this Court has held that the DUSIB Policy, 2015, will apply to all the jhuggi Clusters alike and that, therefore, regardless of the fact that the present Cluster is included in the notified Cluster or not, the protection given by this Court in the judgment of Sudama Singh (supra) should be extended to the Petitioners as well. This argument does not hold water. If this submission is accepted, the entire DUSIB Policy, 2015, would be rendered infructuous, and there would have been no necessity for the DUSIB to bring out the policy restricting the right of rehabilitation only to those Clusters which were existing on 01.01.2006 and those jhuggis which were inside those Clusters as on 01.01.2015. It is the opinion of this Court that the judgment of Ajay Maken (supra) has to be read in that light. The said judgment has not rendered the DUSIB Policy, 2015, as violative of Article 14 of the Constitution of India. The purpose of the judgments passed by this Court in Sudama Singh (supra) and Ajay Maken (supra) was not to provide rehabilitation of the dwellers in the JJ Cluster even if they have encroached on government land. Encroachment on government land cannot be said to be a fundamental right of any person and a person encroaching upon government land cannot claim that he is entitled to rehabilitation as a matter of right even in the

*absence of any policy bestowing the benefit of rehabilitation and relocation on the said person.”*

The aforesaid judgment also takes note of and relies upon the judgment of the Division Bench in **Vaishali (supra)**.

19. Another aspect, which cannot be lost sight of is that the alleged clusters are located squarely on the Yamuna floodplains, and thus, they pose a threat to life, particularly in the monsoon season, as the said area can be prone to flooding at short notice.

20. It has also been strenuously emphasized by Mr. Sanjay Jain, learned Additional Solicitor General that an eco-restoration plantation has to be undertaken by the DDA as a part of restoration and rejuvenation of the Yamuna River floodplains in compliance of number of orders/judgments of NGT. It is also submitted that specific plantation has been taken up during the current monsoon season on the land in question (approximately 27 ha) for the Regional Rapid Transit System ('RRTS') project by the National Capital Region Transport Corporation ('NCRTC'). It is further submitted that around 35,000 trees had to be felled by the NCRTC due to the RRTS alignment, and land within Delhi was sought by NCRTC from DDA for compensatory plantation in lieu thereof. It is submitted that the land in question falls within the areas allocated by DDA for such compensatory plantation for NCRTC, and that a substantial amount has already been deposited by NCRTC to enable DDA to undertake the plantation and its

maintenance thereafter. It is further submitted that such plantation can only be viably undertaken during/ around the monsoon season. It is submitted that in view of the *status quo* granted vide order dated 28.06.2022, DDA had to halt the compensatory plantation planned for the current monsoon season and that further delay in plantation will render the exercise impracticable, and that DDA will have to wait till the next year, which will adversely impact compensatory plantation in lieu of crucial RRTS public project. It is further submitted that the compensatory plantation is crucial for the public policy project of RRTS being carried smoothly by NCTRC, and failure to undertake compensatory plantation could thwart the timely progress of the project.

21. It is also relevant to note that the eco-restoration plantation undertaken by DDA is in compliance of the order dated 11.03.2022 passed by this Court in the case titled as ***HT Media Ltd. Vs. Vinay Yadav***, being Cont. Cas. (C) 631/2019, whereby DDA had undertaken plantation suitable for the floodplains in the subject area and in which compliance has been called for by this Court.

22. I find force in the contention that DDA is attempting to clear the floodplains of any encroachment to protect life and property, and that the stay order passed by this Court is not only thwarting the project plans of DDA, but also puts the petitioners themselves at risk in the event of any flooding in the floodplains. The public purpose undertaken by DDA on the

Yamuna floodplains is in the interest and betterment of the entire city. The alleged sites in question fall squarely in the intended project site.

23. In the light of the aforesaid, interim order dated 28.06.2022 is liable to be vacated. It is ordered accordingly.

24. However, even though the petitioners are not entitled to the benefit of the 2015 Policy, respondents cannot completely absolved of their obligation to take suitable ameliorative measures to mitigate the suffering of the Petitioners.

25. It is assured by the learned Additional Solicitor General appearing on behalf of the DDA that there is a shelter run by DUSIB at a close distance from the subject site which the petitioners can take benefit of when displaced, and that will not render them without shelter.

26. The aforesaid assurance given on behalf of DDA is accepted and is taken on record. Further, the respondent no.1/DDA is directed to provide all possible assistance for rehabilitation of the petitioners. The DDA is directed to file an Affidavit setting out the measures taken by it in this regard.

27. With the aforesaid observations, the present applications stand allowed.

**SACHIN DATTA, J.**

**AUGUST 04, 2022**

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