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

% ***Reserved on: 22.03.2023***
Pronounced on: 27.03.2023

\+ **W.P.(C) 5214/2018 & CM APPL. 2326/2023 & 12969/2023**

BELA ESTATE MAZDOOR BASTI SAMITI ..... Petitioner

Through: Ms. Kawalpreet Kaur, Mr. Umesh Kumar, Ms. Mughdha, Mr. Nayab Gankar and Ms. Sumayya Khatoon, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ORS. ..... Respondents

Through: Mr. Parvinder Chauhan and Ms. Aakriti Garg, Advocates for DUSIB/R-1 with Mr. Prakashdeep, LA.

Dr. Sanjay Jain, ASG of India with Ms. Prabhsahay Kaur, Standing Counsel, DDA, Ms. Kanak Grover and Ms. Tanya Aggarwal, Advocates for R-2/DDA.

Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Ayushi Bansal, Mr. Sanyam Suri and Ms. Arshya Singh, Advocates for R-3 & 4.

Ms. Anju Gupta and Mr. Roshan Lal Goel, Advocates for R-5.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

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J U D G M E N T

GAURANG KANTH, J.

1. By way of present Writ Petition under Article 226 of the Constitution of India, the Petitioner is challenging the eviction notices issued by Respondent No. 2/DDA to the residents of Bela Estate, New Delhi. The Petitioner is also seeking, *inter alia*, a stay of eviction of residents from Bela Estate. It has been further sought that if they are evicted then they may be provided an alternative accommodation for rehabilitation by Respondent No. 1/DUSIB.

BRIEF FACTS RELEVANT FOR ADJUDICATION OF THE PRESENT WRIT PETITION

2. The Petitioner is claiming itself to be an association of residents of Bela Estate. It is the claim of the Petitioner that Bela Estate, New Delhi is a large JJ cluster on the western bank of river Yamuna and comprises of 5 sub-areas namely China Colony, Bela Gaon, Malla Gaon, Moolchand Basti and Kanchan Puri. It is further the claim of the Petitioner that these slum clusters at Bela Estate have been in existence since past more than 70 years and consists of more than 700 households. It has been alleged that most of the residents have been residing in the subject area prior to 01.01.2015 which is one of the requirements of the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 ('***DUSIB policy, 2015***').
3. It is stated by the Petitioner that a survey of residents of Bela Estate was conducted by DDA during the period 2004- 2006 and they were issued provisional land allotment proposal and demand letters by

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DDA. It is the case of the Petitioners that they deposited the amount as demanded by DDA and submitted the necessary documents, however, no alternative land was allotted to them by DDA.

4. In pursuance of the Order dated 13.01.2015 passed by the learned National Green Tribunal (*'**NGT**'*) in OA No. 06/ 2012, titled as '*Manoj Mishra Vs UOI & Ors*.', Respondent No. 2/DDA issued eviction notices to the residents of Bela Estate directing them to remove illegal encroachment and to vacate Respondent No. 2/DDA's land.

5. Under these circumstances, being aggrieved by the eviction notice issued by DDA, the Petitioner has approached this Court seeking the following reliefs:

> *"a. direct respondent no. l DUSIB to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ slum Rehabilitation and Relocation Policy, 2015;*
> *b. stay the eviction of residents and their belongings at Bela Estate, New Delhi-110002*
> *c. direct the R3, Police, to provide protection against any demolition to the residents until express order from the Court.*
> *d. direct R2, DDA to pay the petitioner an amount of Rs. 80,000/- (Rupees Fifty Thousand Only) as the cost of mental agony and undertaking the legal proceedings by way of this petition.*
> *e. any other order deemed fit and proper in the circumstances of the present case."*

6. This Court issued notice to the Respondents on 14.05.2018 and directed to maintain *status quo* as to the possession of the said property in question. Later this Court vide order dated 16.12.2020 modified the interim order dated 14.05.2018 to the extent that *"the respondent nos. 1 and 2 shall carry out a survey of the area in a manner as was directed by the Hon'ble Division Bench of this Court in LPA 276/2020, titled Shakil Ahmed & anr Vs Delhi Development*

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Authority & Ors, before conducting any demolition activity in the area in question".

7. In the present matter, DDA filed 4 Affidavits and 3 early hearing Applications. In addition, CM No. 28509/2018 was also filed by the DDA for vacating the stay granted by this Court vide order dated 14.05.2018. The consistent stand of the DDA, which is emerging from these Affidavits are as follows:

   (i) Yamuna River Bed on both sides of River Yamuna falls in 4 villages which are Bela, Inderpat, Chiragah Janubi and Chiragah Shumali and all the aforesaid villages were placed at the disposal of Delhi Improvement Trust (DIT or erstwhile DDA) vide Nazul Agreement dated 31-03-1937.

   (ii) The subject land is a part of 'O' Zone" of the MPD-2021 (Master Plan of Delhi), which are the one in 25 years floodplains, on which any activity whether commercial/residential/agricultural is illegal and is completely banned.

   (iii) The Jhuggi clusters existed in China Colony, Bela Gaon, Malla Gaon, Mool Chand Basti & Kanchan Puri were removed way back in 2004 to 2006 and were resettled in Bawana & Narela. Hence as on today, no such identified clusters are in existence at site. However, some of the persons, who already got the resettlement plots, have come back and reoccupied the site in question and fraudulently claiming the alternative allotment on the basis of the same documents on the basis of which they have already obtained the allotments.

(iv) The Petitioner is guilty of filing multiple litigations at different forums for the same cause of action.

(v) The site in question is located at a distance of approximately 200- 800 meters from the Yamuna River. It is located on the Yamuna floodplains, where eventually a Biodiversity Park as a part of the Restoration and Rejuvenation of River Yamuna Floodplains is to be developed. For the development of the Biodiversity Park, DDA has awarded a tender worth Rs.6,25,18,660/- to an agency on 11.12.2020. The agency has started the work in full swing and work is in full progress at the available land. However, around 30% area of the land upon which the Biodiversity park is to be built is under encroachment by the Petitioners.

(vi) DDA has already developed 330 hectares of the floodplains, into a Green belt and planted many different varieties of trees and shrubs. Similar work on 700 hectares of land to develop the flood plain land into a Green belt is ongoing

(vii)The Petitioners are carrying out agricultural and commercial activities at the Yamuna River Flood Planes. Such activities are not only detrimental to the ecology and morphology of the Yamuna, but are directly prohibited by the learned NGT. The waste material from these sites is being dumped in the Yamuna River, immensely polluting and destroying the river.

(viii)It has been directed by the learned NGT, in a matter transferred to it by the Hon'ble Supreme Court and monitored by the learned NGT for over two decades that the Yamuna Flood

Plains are to be protected and no encroachment or construction of any kind ought to be permitted therein. It was in a bid to fulfil this mandate and keep the Yamuna Flood Plains encroachment free that demolition/removal action was undertaken by Respondent No.2. Learned NGT has directed Respondent No. 2/DDA to undertake physical demarcation of the entire floodplains within three months and after taking re-possession within next three months, fence the area and undertake its redevelopment. Furthermore, the learned NGT has placed a penalty on Respondent No. 2/DDA of Rs. 5 lakh per month till the compliance of its directions, which has been ordered to be recoverable from erring officers.

(ix) Respondent No. 2/DDA has been entrusted with the affirmative duty to fiercely protect the River Yamuna, its morphology and its flood plains.

(x) The Petitioners failed to produce any site map to identify their location. As per the direction of this Court dated 16.12.2020, Respondent No.2 carried out physical mapping of the area. As per the said physical mapping, it is clear that small groups of the chappars/makeshift jhuggis are scattered in different parts of *"Bela Estate"* that is about 2800 Meters in length/455 acres, and no cluster or group of jhuggis is more than 50. Thus, the alleged cluster(s) do not even fall within the definition of a "Jhuggi Jhopdi Basti" in Section 2(g) of the Delhi Urban Shelter Improvement Board Act, 2010 (‘***DUSIB Act, 2010***’), thereby

disentitling them to any relief whatsoever under the DUSIB Act, 2010 or the subsequent DUSIB Policy, 2015.

(xi) The site/ hutments where demolition is proposed to be carried out, do not form part of any notified JJ Cluster/JJ Basti as per the List of 675 Notified JJ Bastis released by DUSIB/Respondent No.1.

(xii) As per the DUSIB Act, 2010 and the DUSIB Policy, 2015, every JJ Dweller and every JJ Basti/cluster is not automatically entitled to alternate housing and/or in situ rehabilitation, neither is it entitled to seek survey as a matter of right. In this regard, Clause 2(a)(i) of DUSIB Policy, 2015 (Part A) clearly specifies that only those JJ Basti's which have come up prior to 01.01.2006 shall not be removed/demolished without providing alternate housing. Clause 2(a)(ii) itself states that no jhuggi that comes up after 01.01.2015 shall be provided any alternate housing. Clause 1 of DUSIB Policy, 2015 (Part B) further enlists 11 eligibility criterions for allotment of alternate dwelling units for the purpose of rehabilitation and relocation of JJ dwellers.

8. Respondent No.1/DUSIB also filed their Affidavit. It is the stand of the DUSIB that the land in question is not a notified JJ Cluster and hence DUSIB Policy of 2015 is not applicable in the present case.

9. The Petitioner failed to file any rejoinder to the Affidavits filed by the statutory bodies. However, in response to CM No. 2326/2023, the Petitioner filed a reply. In the said reply, the Petitioners stated that most of the Petitioners were eligible for rehabilitation as per the

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survey conducted by DDA in the year 2004 and they are ready and willing to vacate the subject land provided they were given rehabilitation in accordance with law.

10. With the consent of all the parties, this Court had taken up the matter for hearing on 16.03.2023. On the said date, at the outset itself, the learned counsel for the Petitioner submitted that the relief sought in the present writ petition is confined to only 33 residents who are found to be eligible in the survey conducted by DDA in the year 2004 and 2005. Dr. Sanjay Jain, learned Additional Solicitor General who appears for DDA points out that even though it is the stand of the DDA that many of the residents who are claiming rehabilitation have already been allotted alternate sites, as far as 33 residents are concerned, DDA will carry out an exercise to find out their eligibility in terms of the provisional allotment letters issued to them by DDA.

11. Hence considering the said limited prayer of the Petitioner, this Court directed the DDA, inter alia, as follows:

> *"To ascertain the factual position, DDA is directed to carry out the exercise of finding out whether these 33 residents have been allotted any alternate site in view of the letter of allotment issued in favour of the 33 petitioners as alleged by the counsel for the petitioner. Let an affidavit be filed by the DDA before the next date of hearing.*

12. Consequently, Respondent No. 2/DDA filed an Affidavit dated 21.03.2023 through Deputy Director (Central Zone), Land Management, wherein it was stated on oath that as per the records of DDA, out of these 33 residents, 13 residents were allotted alternate plots at Bawana and Narela; 7 residents were found to be ineligible for rehabilitation; and with respect to the remaining 13 residents, the DDA was not able to find their details of allotment. However, it was

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submitted by DDA that either these residents were found ineligible or they were allotted alternate plots but they returned to the flood plains. It is the stand of the DDA that the claims of these people are highly belated and no documents were placed on record to show that they pursued their claims since 2004.

13. At this stage, learned counsel for the Petitioner submits that her clients instructed her not to confine the prayer of the present writ Petition to 33 people and but to pursue the case of all the Petitioners on its own merits. In view of the same, learned counsel for the Petitioner argued the case of all the Petitioners based on the documents available on record.

ARGUMENTS ADVANCED ON BEHALF OF PETITIONER

14. Ms. Kawalpreet Kaur, learned counsel for the Petitioner argued that the residents of Bela Estate have been residing there since more than past 20 years. They all have their respective documents which prove that they have been living there for more than 20 years. Therefore, they are entitled to rehabilitation as per the DUSIB Policy, 2015. She relied upon the judgments of this Court in ***Ajay Maken & Ors. Vs Union of India***, W.P. (C) 11616 of 2015, decided on 18.03.2019, and ***Sudama Singh & Ors. Vs Government of Delhi***, W.P. (C) 8904/ 2009, decided on 11.02.2010.

15. Ms. Kawalpreet Kaur, learned counsel for the petitioner averred that the eviction notices which were issued to some residents of Bela Estate by DDA were in violation of Delhi Development Authority (Removal of Objection Development) Rules, 1975 which lay down the

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procedure to be followed for the removal of objectionable construction. The principle of natural justice has not been complied with and hence, there is a clear violation of Section 3, 4 and 5 of these Rules. She further averred that the demolition notices were also contrary to the DUSIB policy, 2015 which governs the removal of slums in Delhi.

16. Learned counsel for the Petitioner argued that though the Respondent No. 2/DDA has stated in its affidavit that 13 persons out of 33 residents of Bela Estate were allotted land for their rehabilitation, but it failed to produce before this Court any possession letter or allotment letter. She stated that no possession or demand letter was ever issued to these 13 persons. If it would have been, then they would have made the deposits with the DDA as would have been required and then would have taken the possession of the alternate accommodation. She also admitted that some residents of Petitioner had gone at the site of rehabilitation provided by DDA and she admits that people have been rehabilitated there. But, she stated that these 13 persons to whom DDA claims to have allotted the plots for rehabilitation, have not received any possession or demand letter.

17. With respect to 7 residents who were not found eligible for rehabilitation and 13 residents whose documents were not found with DDA, Mr. Kawalpreet Kaur, learned counsel submitted that these residents may be given an opportunity to again produce their documents before the Respondents and their documents may be examined again for the purpose of rehabilitation under DUSIB Policy, 2015.

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18. Ms. Kawalpreet Kaur, learned counsel for Petitioners prayed that before demolition, Respondent No. 2/DDA may be directed to do a survey and an opportunity may be granted to the residents of Bela Estate to produce documents in support of their eligibility for rehabilitation as per DUSIB policy, 2015.
19. Lastly, Ms. Kawalpreet Kaur, learned counsel prayed that some of the residents of the Bela Estate are students who are studying in Class 12th and have their Board exams scheduled till 04th April, 2023. She requested that a direction may be passed that no demolition takes place till that time.

ARGUMENTS RAISED ON BEHALF OF RESPONDENT NO.2/ DDA

20. Dr. Sanjay Jain, learned Additional Solicitor General who appeared for Respondent No. 2/DDA submitted that the Petitioner, which claims itself to be an association of residents of Bela Estate does not have a locus to seek relief for all the residents under this Petition. Therefore, the present Petition is not maintainable and should be dismissed on this ground alone.
21. Learned ASG further submitted that as per the Affidavit dated 21.03.2023 filed by Respondent No. 2/DDA, the 13 residents who were found to have been allotted alternate land for rehabilitation are not entitled to any relief in the present Petition. He further stated that the 7 residents, who were not found eligible for rehabilitation pursuant to the survey done by DDA during 2004-2006, are also not entitled for any relief from this Court. With respect to the remaining 13 persons

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whose details of allotment were not found, he suggested that this Court may direct them to produce their documents and Respondent No. 2 will verify whether they are entitled to rehabilitation or not.

22. Dr. Sanjay Jain, learned ASG further submitted that Respondent No. 2 is also ready to provide temporary accommodation to these 13 persons, whose documents were not found for a period of 15 days during which they can find suitable accommodations for themselves.

23. Learned ASG averred that an Order was passed by the learned NGT on 09.01.2023 in OA NO. 21/2023, pursuant to which, a high level Committee was constituted and it was resolved that the restorative project namely, Asita West has to be completed by 30.06.2023. In order to complete the project, it is important that possession from the residents of Bela Estate is taken over by DDA. He submitted that order of learned NGT would be violated if the project is not completed on time, therefore, he requested that this Court may direct the Petitioner to vacate the land of DDA within a week so that project can be completed on time.

24. Furthermore, the learned ASG argued that the Petitioner has deliberately used the term 'Bela Estate' and has alleged that it comprises of several villages. He argued that no such Bela Estate exists and it is a term which has been coined by the Petitioner in order to show that all these slum clusters contain more than 50 households which is a requirement for DUSIB Policy, 2015. It is submitted that anyhow on the merits of the Petition, the same is liable to be dismissed as the Petitioner is not entitled to the relief sought for in the present Petition. In support of his contention, Dr. Sanjay Jain. Learned ASG

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relied upon the judgments of this Court in ***Shobha Dikshit Vs Delhi Urban Shelter Improvement Board & Ors.***, having Neutral Citation No. 2023/DHC/001403; and ***Kasturba Nagar Residents Welfare Association Vs Government of NCT of Delhi & Ors.***, having Neutral Citiation No. 2023:DHC:1932-DB.

LEGAL ANALYSIS

25. This Court has heard all the counsel for the parties and also examined the documents placed on record and the judgments relied upon by the parties.
26. The moot question to be addressed in the present writ petition is whether the Petitioners, who are admittedly jhuggi dwellers staying at the Yamuna Flood Plains, have any right under law for the rehabilitation.
27. At this juncture, it would be apt to refer to the decision of this Court in ***Shobha Dikshit*** case (*supra*), where this Court dealt with a writ petition praying for similar reliefs. In that case, this Court also dealt with the judgments relied upon by the Petitioner in present case i.e. ***Sudama Singh*** (*supra*) and ***Ajay Maken*** (*supra*), and it was held as follows:

> *"46. Further, it would be apposite to refer to the decision of a Coordinate Bench of this Court in Dinesh Singh & Ors. Vs Delhi Development Authority & Ors., W.P. (C) 12384/2022, wherein the Court after considering the various judgments of this Court observed as follows:*
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> > *"11. From the decisions aforenoted, it is manifest that a cluster in order to be eligible for extension of benefits under the Rehabilitation Policy must necessarily meet the qualifying criteria as specified in Section 2(g) of the Act. Consequently, it*

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must be a notified cluster comprising of not less than 50 jhuggis. The aforesaid cluster must additionally form part of the 675 clusters which had been identified by the DUSIB. The recitals and recordal of facts of the present case leads the Court to the inescapable conclusion that the cluster in question would not meet those requirements. In view of the aforesaid, the reliefs as claimed cannot possibly be granted.

12. The Court deems it apposite to observe further that neither Sudama Singh nor Ajay Maken mandate a rehabilitation measure being adopted and coverage under the Rehabilitation Policy being extended without the cluster otherwise conforming to the requirements as placed under the Act. The Court also bears in mind that the undisputed fact that the Rehabilitation Policy which was placed in the shape of a protocol in Ajay Maken was neither interfered with nor any adverse observation in respect thereof entered."

47. A Coordinate Bench of this Court had similar facts before it in the case of Shakarpur Slum Union Vs DDA & Ors., W.P. (C) 6779/ 2021. The Coordinate Bench distinguished the facts presented before it from the facts before the Court in Ajay Maken (supra) and Sudama Singh (supra). The relevant portion of the said judgment is extracted hereinbelow:

"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

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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."

48. A Division Bench of this Court was also presented with similar facts in a LPA and while disposing of the same, the Ld. Division Bench of this Court observed in its Order dated 19.04.2022, passed in LPA 271/2022, titled as 'Vaishali (Minor) through Next Friend & Ors. Vs Union of India & Ors.', as follows:

"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.

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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

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> *cluster as on 01.01.2006. Therefore, the said judgments would have no application to the facts of the present case."*

49. Further, it would be apposite here to refer to a decision of a Single Bench of this Court in Kasturba Nagar Residents Welfare Association Vs Government of NCT of Delhi & Ors., W.P.(C) 11945/2022, passed on 13.10.2022, wherein it observed as follows:

> *"6. Ultimately it was incumbent upon the petitioners to have established that they were part of an identified cluster and formed part of the list of 675+82 bastis which had been duly identified by DUSIB for the purposes of extension of benefits under the 2015 Policy. The Court further notes that the decisions noticed in Dinesh Singh have consistently held that the question whether the cluster forms part of those which were identified by DUSIB is determinative of whether the residents thereof are entitled to extension of benefits under the 2015 Policy. That was a detailed and comprehensive exercise which was undertaken by DUSIB for the purposes of identifying those clusters to which the relocation and rehabilitation policy would apply.*
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> *7. **The Court also notes that the 2015 Policy incorporated an injunct against recognition and extension of the benefits envisaged therein to clusters which may spring into existence thereafter.** Viewed in that light, there appears to be no scope in law to undertake a fresh exercise to determine whether a cluster was in existence prior to the cut-off date prescribed under the 2015 Policy. That issue clearly attained finality once the list of eligible clusters had been duly identified by DUSIB. The prayers for the Court to embark down that path would not only lead to it being compelled to delve into disputed questions of fact and a de novo assessment of evidence, it would also unsettle a position which was statutorily conferred finality.*
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> *8. The Court also bears in mind that the petitioners are not shown to have assailed their exclusion from the list of identified clusters at any point of time prior to the filing of the instant writ petition. The record would indicate and establish that the identity of clusters which came to be included for the purposes of extension of benefits under the 2015 Policy, was a matter of common public knowledge. It is not the case of the petitioners*

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that they were oblivious to their exclusion from the list of identified JJ bastis. If the Court were to countenance or entertain a challenge as suggested in the present petition, it would become an unending exercise and scuttle the very objective of the Act and the 2015 Policy."

50. In view of the authorities discussed hereinabove, the law is well settled that after coming into force of the DUSIB policy, 2015, the residents of jhuggis whose jhuggis were not notified by DUSIB, are not entitled to any rehabilitation or relocation. Therefore, in light of the decisions mentioned hereinabove, this Court is not willing to injunct to the Respondents to provide rehabilitation to the Petitioner or other residents of the said Jhuggis."

(Emphasis supplied)

28. It is apposite to also refer to the decision of Division Bench of this Court in ***Kasturba Nagar Residents Welfare Association*** case (*supra*) wherein it was held as follows:

"14. The purpose of restricting the benefit of 2015 Policy is clear from the policy itself which forbade coming up of jhuggis after 01.01.2015. As rightly pointed out by the learned Single Judge, no material has been provided by the Appellant/Association that the cluster, in which its members are residing, has been identified by the DUSIB. Rather, the stand of DUSIB is categorical that the area where the members of the Appellant Association reside does not form a part of the list identified by the DUSIB for the purpose of rehabilitation.

15. The contention that the members of the Appellant/Association have been residing in the basti from 1980 has been denied by the Respondents. Filing documents to show that they have proof of residence is not conclusive proof of continuous stay in the area because this Court can take judicial notice of the fact that persons who stay in such bastis migrate from the place when they get a better accommodation or a new job but they continue to have papers showing these addresses. This issue can only be decided in proper suit where it has to be established by leading evidence that they continue to reside in these addresses.

16. The contention of the Appellant that certain persons in Vishwas Nagar, who were residing in that area were rehabilitated, holds no

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water because Vishwas Nagar is mentioned in the list of clusters identified by the DUSIB. Further, even if some persons who were not entitled for rehabilitation and have been rehabilitated, cannot be a ground to grant rehabilitation in violation of the Policy because the law does not recognize the concept of negative equity. The judgment of this Court in Shakarpur (supra) has recognized the human problem and directions have been given in that judgment to ensure that persons who are facing demolition are no rendered homeless straightway. Relevant portions of the said judgment reads as under:

> *"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.*
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> *39. When this Court pointedly asked Mr. Chauhan, learned counsel for DUSIB, as to whether they have any provision for accommodating such persons, who are to be evicted, this Court was informed that normally when DUSIB conducts any demolition drive, it ensures that no demolition takes place when academic year is about to end or during monsoons. He stated that normally demolition takes place between March to June and August to October. This Court expects from the DDA to follow similar norms for demolition as well."*

29. In the present case, it is not the case of the Petitioner that the JJ Clusters in Bela Estate are notified by DUSIB. Though, it has been averred in the Petition that the Bela Estate is in existence for more

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than 70 years but the Petitioner has not placed any documentary evidence in order to support this averment. Therefore, the Petitioner has neither proved the fact that the JJ clusters in Bela Estate were notified by DUSIB nor it has been proved that the jhuggis in these clusters were constructed before the date of 01.01.2015. Hence, they are not entitled for the relief of rehabilitation as per DUSIB Policy, 2015. Further, in the present case, it has been admitted by the Petitioner that DDA had conducted a survey during the period 2004 to 2006. As stated in the Affidavit dated 21.03.2023 filed by DDA, pursuant to the survey, the DDA had allotted a total of 6086 plots for alternate accommodation to the residents who were found eligible. Therefore, under these circumstances and keeping in view the law laid down in the judgments discussed above, this Court is of the considered view that the Petitioners are not entitled for rehabilitation as per DUSIB Policy, 2015.

30. Consequently, in view of the detailed discussions herein above, the present Writ Petition is dismissed. No order as to costs. All pending applications are disposed of accordingly.

GAURANG KANTH, J.

MARCH 27, 2023
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