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

Reserved on: 2nd June, 2022
Pronounced on: 4th July, 2022

\+ W.P.(C) 4785/2008 & CM APPL. 9216/2008

SAMARPAL & ORS ..... Petitioners
Through: Mr. N.S. Dalal, Ms. Rachana Dalal and Mr. Alok Kumar, Advs.

versus

UOI & ORS ..... Respondents
Through: Mr. Parvinder Chauhan and Mr. Sushil Dixit, Adv. for DUSIB
Ms. Geetanjali Mohan, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% J U D G M E N T
04 .07.2022

1. The homeless, who people the pavements, the footpaths, and those inaccessible nooks and crannies of the city from where the teeming multitude prefer to avert their eyes, live on the fringes of existence. Indeed, they do not live, but merely exist; for life, with its myriad complexions and contours, envisaged by Article 21 of our Constitution, is unknown to them. Even a bare attempt at imagining how they live is, for us, peering out from our gilt-edged cocoons, cathartic. And so we prefer not to do so; as a result, these denizens of

the dark continue to eke out their existence, not day by day, but often hour by hour, if not minute by minute.

2. Articles 38[1] and 39[2] of the Constitution of India obligate the State to secure a social order in which the sacred preambular goal of justice, social, economic and political, informs all institutions of national life and, towards this end, to strive to minimise inequalities in income, and to endeavour to eliminate inequalities and status, facilities and opportunities. In particular, Article 39 requires the State to direct its policy towards securing (i) that citizens have the right to an adequate means to livelihood (*vide* clause (a)), (ii) that ownership and control of material resources of the community are so distributed as best to subserve the common good (*vide* clause (b)) and (iii) that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment (*vide* clause (c)). Alleviation of the plight of the poor and homeless is subsumed in each of these directive principles which, though they are

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[1] **38. State to secure a social order for the promotion of welfare of the people. –**
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

[2] **39. Certain principles of policy to be followed by the State. –** The State shall, in particular, direct its policy towards securing –
(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

not enforceable by Court, are nonetheless fundamental in the governance of the country, and mandatorily required to be borne in mind by the State while making laws (vide Article 37[3]). One may legitimately extrapolate the mandate of Article 37 to requiring the State to bear, in mind, the directive principles not only while making laws, but also while implementing laws.[4] Every statutory instrument, be it plenary or subordinate, is required to be so interpreted as to render it constitutional, rather than unconstitutional.[5] Juxtaposed, these principles require all statutes, and instruments of state policy, to be interpreted in a manner which would harmonize with the directive principles of state policy, contained in Chapter IIIA of the Constitution of India.

3. When the poor and deprived knock at the doors of the Court, the Court is required to be sensitive and sensitised in equal measure. The Court is required to remain alive to the fact that such litigants do not have access to exhaustive legal resources. The onus that the law places on the petitioner who petitions the Court, to positively establish every ingredient necessary to entitle him to relief has, in the case of the impecunious with meagre resources at hand, to be tempered with the conviction that, if the litigant is entitled to relief, relief should not be denied to him on technical considerations. As one of the three co-equal wings of the government, albeit functioning independent of, and uninfluenced by, the other two, the judiciary is required to remain as

[3] **37. Application of the principles contained in this Part. –** The provisions contained in this Part shall not be enforceable by any court, but the principles therein lay down our nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

[4] Refer **Minerva Mills v.UOI, AIR 1980 SC 1789**

[5] Refer **Express Newspapers Ltd. v. UOI, AIR 1958 SC 578; M. Pentiah v. Veermallappa, AIR 1961 SC 1107; Kedar Nath Singh v. State of Bihar, 1962 Supp (2) SCR 769** ; **State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453; Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228**

sensitive to the call of Articles 38 and 39 as the legislature, or the executive. Law, with all its legalese, is worth tinsel, if the underprivileged cannot get justice. At the end of the day, our preambular goal is not *law*, but *justice*. Law is but the instrument, the *via media*, as it were, to attain the ultimate goal of justice, and law which cannot aspire to justice is, therefore, not worth administering.

Facts

4. The petitioners are five in number. Be it noted, at the very outset, that the petition has not been filed in a representative capacity, and that the relief sought in the petition is restricted to the five petitioners before the Court. For no fault of the petitioners, this petition has lingered in this Court for 13 years since it was filed. Issuance of omnibus directions, at this distance of time, in respect of persons who may not have chosen to approach the Court, would be neither practical nor practicable.

5. This judgment would also, therefore, apply in its operation to the five petitioners in this petition, and to no one else.

6. The petitioners claim to have been residing in the Shahid Basti *jhuggi* (slum) cluster, near the New Delhi Railway Station, since the 1980s, which falls in the Nabi Karim electoral constituency. They claim that their names were entered in the Electoral Register and that they were also exercising voting rights. They also claim to be in possession of ration cards and/or other documents which would

establish their claim that, since the 1980s, they had been residing in the Shahid Basti slum colony.

7. In 2002-2003, the Railways, who were seeking to convert the New Delhi Railway Station into a "world-class" railway station and, for that purpose, to increase the number of platforms from 9 to 16, desired to acquire the land on which the petitioners were situated. The petitioners aver that, for this purpose and at the behest of the Railways, they shifted to another location on the opposite side of the tracks, situated at Lahori Gate, and set up a slum colony there. The name of the slum colony, it is stated, remained the same, i.e. Shahid Basti.

8. The Railways have, in an Additional Affidavit filed by them pursuant to orders passed by this Court, acknowledged the fact that, during the exercise of increasing the number of platforms in the New Delhi Railway Station in 2003, they had to remove the *jhuggis* in the Shahid Basti below the foot over bridge and shift them to the Lahori Gate side. Though they contend that only 10 to 15 *jhuggis* were so shifted, the petitioners, in their response to the additional affidavit, dispute this figure and assert that their *jhuggis* were amongst those which were so relocated.

9. Continuing expansion and modernisation of the New Delhi Railway Station required the Railways to clear the area at the Lahori Gate side as well. Accordingly, after issuing notices, to the residents of the *jhuggis* situated in the area on 16th May, 2008 and 27th May,

2008, the Railways proceeded to demolish the *jhuggis* on 14th June, 2008, and evict the petitioners therefrom.

10. Admittedly, the slum cluster at the Lahori Gate side, in which the petitioners were residing when they were evicted in 2008, prompting them to approach this Court, was set up only in 2003, after the petitioners were evicted from the slum cluster in their occupation on the opposite side of the tracks.

11. The petitioners' contention is that, under the Policy for Relocation of Slum Dwellers of the Ministry of Urban Development (MoUD) ("the Relocation Policy", hereinafter), the eviction of the petitioners could not have been undertaken without a prior survey to ascertain the *jhuggi* dwellers who would be eligible for relocation under the Relocation Policy and, thereafter, allocating, to such eligible *jhuggi* dwellers, alternate plots where they could reside.

12. The Railways contend, *per contra*, through Ms Gitanjali Mohan, learned Counsel, that the Relocation Policy envisaged relocation only of residents of *jhuggis* which had been set up on or before 30th November 1998. The petitioners' *jhuggi* at Lahori gate having admittedly been set up only in 2003, the Railways contend that the petitioners could not be regarded as entitled to relocation. The requirement of conducting a survey apply, according to the Railways, only to eligible slum clusters, which were in existence, at the site, on or before 30th November 1998. No fault, therefore, according to them, could be found in the petitioners having been evicted from the Lahori

Gate area without conducting any survey. Requisite notice, prior to eviction, it is pointed out, was issued to the petitioners, not once, but twice.

13. Mr. Parvinder Chauhan , learned Counsel for the Delhi Urban Shelter Improvement Board (DUSIB), as the rechristened Slum and JJ Department of the Government of National Capital Territory of Delhi (GNCTD), submits that the DUSIB does not determine the entitlement of eligibility of *jhuggi* dwellers to relocation. That entitlement, he submits, has to be determined by the land owning agency; in the present case, the Railways. If the Court were to hold that the petitioners were eligible for relocation, it would be for the Railways to relocate the petitioners, and the responsibility of the DUSIB would only be to assist in the relocation.

14. At the same time, Mr. Chauhan echoes Ms Mohan's contention that the petitioners were not, under the Relocation Policy, entitled to relocation. Any order passed to the said effect by this Bench, Mr. Chauhan reminds me, would be susceptible to appeal and, were such appeal to be preferred, the DUSIB would also be a party in the proceedings.

15. That, then, is the limited factual matrix.

Rival Contentions

16. Mr. Dalal, learned Counsel for the petitioners, submits that, as holders of documents which proved that they were residing in *jhuggis*, albeit on the other side of the tracks, since the 1980s, and in view of the admission, by the Railways, that they had been shifted, at the Railways' insistence, to the Lahori Gate area in 2003, the petitioners could not be regarded as ineligible for relocation under the Relocation Policy. It would be unreasonable, contends Mr. Dalal, to disentitle the petitioners to relocation merely because the *jhuggi* in which they happened to be residing at the time of their eviction in 2008 was set up only in 2003, ignoring the fact that, for more than two decades prior thereto, they had been residing in *jhuggis* on the other side of the tracks. Mr. Dalal also submits that the entire exercise of eviction of the petitioners was in contravention of the Relocation Policy, which envisaged a joint survey before such an exercise was undertaken, to identify slum dwellers eligible for relocation. Without conducting any such survey, Mr. Dalal submits that the Railways cannot seek to contest the petitioners' entitlement to relocation. To a query from the Court as to whether, at this distance of time, the petitioners are still pressing their claim for relocation, Mr. Dalal submits that the petitioners are still in touch with him, and continue to press their claim. He relies on the judgement of the Division Bench of this Court in ***Sudama Singh v. Government of Delhi***[6] .

17. Mr. Chauhan's submissions, on behalf of the DUSIB, have already been noted *supra*. He further emphasises the fact that the Relocation Policy is not under challenge and that, therefore, the

[6] **168 (2010) DLT 218 (DB)**

petitioners are bound by the cut-off date of 30th November 1998, envisaged by the Policy. He draws attention to the fact that para 25 of the Relocation Policy makes it is incumbent on the land owning agency to approach the DC to clear squatters who had encroached on the lands after 30th November 1998. Mr. Chauhan submits that the fixation of cut-off date was salutary in its purpose, as the length of stay in the *jhuggi* was a measure of the penury of the resident.

18. Were the cut off date to be challenged, Mr. Chauhan submits that he could easily justify fixation thereof.

19. Ms Mohan, appearing for the Railways, submits that there is no ambiguity, whatsoever, in the Relocation Policy, which contemplates relocation only of dwellers of *jhuggis* which were in existence prior to 30th November 1998. Once the petitioners had admitted that the *jhuggis* on the Lahori Gate side, in which they were residing in 2008, had come up only in 2003, she submits that the petition is devoid of any sustainable course of action. She also emphasises the fact that the Relocation Policy, and the fixation of a cut off date of 30th November 1998, thereunder, is not under challenge and that, therefore, the petitioners, as well as the Court, would be bound by the said cut-off date. She submits that there are several judicial pronouncements upholding the validity of fixation of cut-off dates in Governmental policies, and submits that an open-ended policy, with no cut off date, would become impossible and impracticable to manage. Ms Mohan points out that the judgement of the Division Bench of this Court in ***Sudama Singh***[4], on which Mr. Dalal relies, itself directs, in his

concluding para, relocation of the eligible *jhuggi* dwellers, in terms of the Relocation Policy, subject to proof of residence prior to the cut off date. As such, the sanctity of the cut off date stands recognised even by the Division Bench of this Court. Inasmuch as the *jhuggi*, from which the petitioners were evicted, was found to be of recent (2003) vintage (as the petitioners themselves admit), Ms Mohan submits that no fault could be found with the Railway authorities in evicting the petitioners without conducting any prior survey. It is only where the *jhuggi* was found to have been in existence prior to 30th October, 1998, submits Ms. Mohan, that a biometric survey was required to be conducted, in order to ascertain the identity of the *jhuggi* dwellers eligible for relocation. Ms Mohan places reliance on the judgement of this Court in ***Rohit Raj Chhabra v. U.O.I.***[7] , and emphasises para 24 of the report in that case.

20. Mr. Chauhan and Ms. Mohan submit, jointly, that, as the cut-off date, under the Relocation Policy, was not with respect to residence in Delhi but with respect to the date from which the *jhuggi*, from which the petitioners were being evicted, had been in existence, the documents such as the electoral card, ration card, etc., that the petitioners sought to press into service to show that they were residing in Delhi since the 1980s, could not come to their aid.

The Relocation Policy

[7] **243 (2017) DLT 427**

21. As the entire dispute revolves around the Relocation Policy, it is necessary to reproduce the relevant clauses thereof, as under:

"GOVERNMENT OF NCT OF DELHI
URBAN DEVELOPMENT DEPARTMENT
VIKAS BHAWAN : NEW DELHI

Sub: Policy Guidelines for implementation of the scheme for Relocation of JJ clusters

The Government of Delhi is implementing a Plan scheme for relocation of JJ clusters in Delhi. After reviewing the major problems in the implementation of the existing relocation policy, it has been decided to review the policy guidelines for effective implementation of the scheme.

The Delhi Government has approved the revised policy guidelines for implementation of the Plan for Relocation of JJ clusters. Accordingly, the existing policy for relocation of JJ clusters is revised as under w.e.f. 1.4.2000.

1. *Jhuggis* will be relocated only from project sites where specific requests had been received from the landowning agencies for cleaning of the project lands. No large-scale removal of these should be resorted to without any specific use for the cleared site.

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6. *Cut off date and eligibility criteria:- Cut off date for beneficiaries would be 30.11.98. To verify eligibility, Ration Cards issued prior to 30.11.98 will be taken into account. The name of the allottee must also figure in the notify Voters'List as on 30.11.98. Jhuggis who came up after 30.11.98 will be removed without any alternative allotment by the project Executing Agency*.

7. Size of plot:- Keeping in view the scarcity and high cost of land, the plot size now approved for JJ dwellers will be as under:-

Size of plot	JJ dwellers who	JJ dwellers who

	were eligible before 31.1.90	had become eligible between 1.2.90 and 30.11.98
Size of plot for a single dwelling unit with WC	20 sq m	15 sq m
Ground Coverage	100%	100%

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19. Terms of allotment:- The grant of freehold plot to JJ dwellers at the relocation site has been agreed to, in principle by the Delhi Government subject to clearance by the Government of India. Separate instructions with regard to nature and tenure shall be issued shortly.

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21. Survey of clusters:- Prior to relocation and payment of subsidy by the land owning agency and Delhi Government, a joint survey of the sub- cluster will be carried out by the DC of the revenue district, jointly with the land owning agency and Executing Agency. The figure of rupees to be relocated should be determined on the basis of this survey, keeping in view the eligibility criteria.

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24. Executing Agency for the scheme:- Slum Wing of the MCD will be the Executing Agency for relocation of JJ clusters from the lands belonging to MCD and Delhi Government at its departments/agencies. In case of Central Government Departments/Agencies like Railways, DDA, L & D, DCB, NDMC, etc. they will be free to carry out the relocation themselves as per the policy of the Delhi Government, or entrust the work to the Slum Wing of MCD. The subsidy of Delhi Government as per the approved funding pattern, will be available to all the Executing Agencies."

22. Mr. Chauhan and Ms. Mohan emphasise the concluding stipulation in para 6 of the Relocation Policy, to the effect that *jhuggis* which came up after 30th November 1998, would be removed without any alternative allotment, by the project Executing Agency. Nothing, in their submission, survives in the petitioners' case after this, especially as the Relocation Policy is not under challenge. Additionally, Ms Mohan has pointed out that ***Sudama Singh***[4], too, directed grant of alternative plots subject to proof of residence prior to the cut off date. The cut off date is, therefore, they submit, sacrosanct.

Analysis

23. ***Sudama Singh***[4], authored by A.P. Shah, CJ, is regarded as some kind of a watershed in slum rehabilitation jurisprudence. The judgement examines, in incisive detail, the rights of slum dwellers, referring, in the process, to the relevant clauses of the Master Plan for Delhi (MPD) 2021, international conventions, the 2009 Urban Poverty Report of the Ministry of Housing and Urban Poverty Alleviation, Government of India, the Relocation Policy, and pronouncements of the Supreme Court and the South African Constitutional Court, relevant to the issue.

24. That said, the issue in controversy in ***Sudama Singh***[4] is different from that which arises the present case. The defence, put up by the Governmental authorities, to the petitioners' prayer for rehabilitation in that case, was that the petitioners were occupying areas which blocked the "right of way". Slum dwellers who blocked

the "right of way", contended the respondents before this Court in the said case, were not entitled to relocation, on being uprooted from the areas in their occupation. Indeed, so insubstantial was the argument that its outcome might justifiably be regarded as having been pre-ordained. Predictably, this Court held that the Rehabilitation Policy, which was aimed at protecting the rights to life and livelihood of slum dwellers, did not engraft, within itself, any exception in respect of slum dwellers who occupied the "right of way". Emphatically rejecting, therefore, the stand adopted by the respondents before it, this Court declared thus (in para 62 of the report):

> "62. 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 *jhuggi*es, are available at the site of relocation."

The decision of the Division Bench of this Court in ***Sudama Singh***[4] was carried, by the GNCTD, in appeal to the Supreme Court vide SLP

(C) 445-446/2012 which was, however, withdrawn[8]. ***Sudama Singh***[4], therefore, continues to hold the field.

25. Having said that, the decision in ***Sudama Singh***[4], though path-breaking, does not advance adjudication of the rival contentions urged before the Court in the present case, as the Court, in ***Sudama Singh***[4], expressly granted relief in terms of the Relocation Policy. The respondents, in fact, seek to rely on ***Sudama Singh***[4] to contend that as para 6 of the Relocation Policy excepts its application to *jhuggis* established after 30th November 1998, and to the dwellers of such *jhuggis*, the petitioners, as residents of *jhuggis* which came up only in 2003, are not entitled to relocation.

26. This case, therefore, throws up, for direct examination, the scope of para 6 of the Relocation Policy. At the cost of repetition, the para may once again be reproduced, thus:

> "6. Cut off date and eligibility criteria:- Cut off date for beneficiaries would be 30.11.98. To verify eligibility, Ration Cards issued prior to 30.11.98 will be taken into account. The name of the allottee must also figure in the notify Voters'List as on 30.11.98. *Jhuggis* who came up after 30.11.98 will be removed without any alternative allotment by the project Executing Agency."

27. If one were to read the last stipulation, in the afore-extracted para 6 of the Relocation Policy, in isolation, unquestionably the respondents' contention has merit. It appears to lay down an absolute proscription to grant of alternative allotment to residents of *jhuggis* which came up after 30th November 1998.

[8] **2013 SCC OnLine SC 1328**

28. What the Relocation Policy does not address, however, is the fate of dwellers, such as the petitioners (as they claim), who were found residing in *jhuggis* which had come up after 30th October, 1998, but who were residing, even prior thereto, in *jhuggis* located elsewhere. Can they be denied the benefit of relocation merely because the *jhuggis*, in which they happened to be residing at the time when the authorities came to evict them, were established after 30th October, 1998?

29. To a pointed query, in this regard, learned Counsel for the respondents responded, in one voice, in the affirmative. Their contention is that, for better or for worse, para 6 of the Relocation Policy says what it does. It fixes a cut off date, and fixation of a cut off date, even in the matter of extending, to citizens, a beneficial executive dispensation, has been held, in several decisions, to be legally justifiable. The cut off date, once fixed, they submit, is sacrosanct. The cut off date, even in the terms in which it has been fixed in para 6 of the Relocation Policy, applies to the date on which the *jhuggis*, in which the persons being evicted were found to be residing, had come into existence. There is no scope, in the Relocation Policy, submit learned Counsel, to investigate into the living conditions of the *jhuggi* dwellers prior to their taking up residence in the *jhuggis* slated for demolition.

30. Qua the petitioners, learned Counsel submit that the *jhuggis* in which they were found to be residing on 14th June, 2008, when the

Railway authorities visited the site, having been found to have come up after 30th October, 1998, the scope of enquiry ended there. The petitioners were, by the very fact that the *jhuggis* in which they were residing were of recent vintage, *ipso facto* disentitled to relocation; ergo, submit learned Counsel, no occasion arose for conducting any survey or for any further enquiry into the matter. All that remained was to evict the petitioners. The petitioners' contention that, since the 1980s, they had been residing in *jhuggis* elsewhere, according to learned Counsel for the respondents, is irrelevant, as what matters is the date on which the *jhuggis*, in which the petitioners were found to be residing at the time when they were being sought to be uprooted, had come up.

31. By way of an aside, I may note that Mr. Dalal had also queried as to how the respondents came to know that the *jhuggis* in which the petitioners were found residing on 14th June, 2008, had come up after 30th October, 1998, without conducting any survey. I do not intend to devote time to this issue, as the petitioners admit that the *jhuggis* at the Lahori Gate side of the tracks had, indeed, come up only in 2003.

32. Returning, thus, to the issue at hand, the Court is required to assess the merit of the respondents' contention that, if the *jhuggis* which were proposed to be removed had come up after 30th October, 1998, the question of whether the residents of such *jhuggis* had, prior to the said *jhuggis* being set up, been residing in *jhuggis* elsewhere, is irrelevant, in determining their entitlement to relocation.

33. While it is true that para 6 of the Relocation Policy does not grant any beneficial amnesty to *jhuggi* dwellers who were residing in *jhuggis* elsewhere prior to the cut off date of 30th June, 1998, equally, however, it does not state, either expressly or by necessary implication, that such pre-30th October, 1998 residence, in *jhuggis* located elsewhere, is *irrelevant* in determining the entitlement of the *jhuggi* dwellers to relocation. In fact, the Relocation Policy does not address the plight of persons who, though the *jhuggis* in which they were residing at the time of visit by the authorities had come up after 30th October, 1998 were, in fact, residing in *jhuggis* elsewhere prior to the said cut-off date.

34. The directions in ***Sudama Singh***[4] do not assist much, in this regard. Direction (iii) mandates relocation of those of the petitioners before this Court in the said case, who were eligible for relocation under the Relocation Policy, "subject to proof of residence prior to cut off date". Reading this stipulation as "subject to proof of residence *in the jhuggi from which they are being sought to be evicted*, prior to the cut off date" would, in my view, amount to rewriting ***Sudama Singh***[4]. That, however, is how learned Counsel for the respondents would seek to read ***Sudama Singh***[4]. In my view, that is impermissible. The latitude available with a Court, in interpreting a precedent, can never extend so far as to enable it to *rewrite* the precedent.

35. The issue of how the Relocation Policy would apply to a *jhuggi* dweller, being sought to be evicted from *Jhuggi* A, on the ground that *Jhuggi* A was set up after 30th October, 1998, if the said *jhuggi*

dweller was residing in *Jhuggi* B even before 30th October, 1998 and till he shifted to *Jhuggi* A, thus, still looms large.

36. Ms Mohan, appearing for the Railways, submitted that fixing of cut-off dates, for application of beneficial policies, is permissible in administrative law, and has been upheld in several decisions. To my mind, this argument really begs the issue at hand. The fixing of 30th November 1998, as a cut off date for the purpose of availability of the benefit of the Relocation Scheme, cannot be regarded as constitutionally infirm. To his credit, Mr. Dalal, too, did not challenge the Relocation Policy on the ground that it ought not to have fixed a cut off date of 30th November 1998. That, however, is not the issue. The issue is whether the cut off date can be so operated as to deny the benefit of the Relocation Policy to *jhuggi* dwellers who have been staying in *jhuggis*, in Delhi, prior to 30th November 1998, but may have shifted to the *jhuggi* from which they were being proposed to be evicted only after 30th November 1998. In other words, would the cut off date of 30th November 1998, apply to the physical existence of the *jhuggi* which is being sought to be removed, or to the status of the *jhuggi* dwellers as *jhuggi* dwellers? As such, it is not so much the fixation of the cut off date of 30th November 1998, as the manner in which that cut off date is to be implemented, which arises for consideration.

37. ***Sudama Singh***[4] takes note of the judgement of the Supreme Court in ***Bangalore Medical Trust v. B.S. Muddappa***[9], to hold that a

[9] **(1991) 4 SCC 54**

plan, prepared in terms of the statute, concerning the planned development of the city, attains a statutory character and is enforceable as such. The Relocation Policy would also, in my view, be entitled to similar status, especially as it has, from time to time, been enforced by the Court.

38. The provisions of the Relocation Policy have, therefore, to be accorded a purposive interpretation. In the context of statutes, the new "golden rule" is the rule of purposive interpretation, as opposed to the earlier golden rule of literal interpretation, as held by the Supreme Court in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[10] and ***Richa Mishra v. State of Chhatisgarh***[11].

39. Ameliorative and beneficial statutes and schemes have, it is trite, to be broadly and liberally interpreted, so as to maximise their scope and effect. The Directive Principles of State Policy are required to be borne in mind, and the Court must lean towards attaining a teleological approach with a social perspective.[12] In ***Moti Ram v. State of M.P.***[13], the Supreme Court, in the inimitable words of Krishna Iyer, J., advised applying the Gandhian talisman, when dealing with statutes which were ameliorative or intended at benefiting the poor and needy:

> "Whenever you are in doubt ... apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him."

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[10] **(2016) 3 SCC 619**
[11] **(2016) 4 SCC 179**
[12] **B. Shah v. Presiding Officer, Labour Court, (1977) 4 SCC 384**
[13] **(1978) 4 SCC 47**

Interestingly, ***Moti Ram***[11] identified, in its opening sentences, the grievance of the petitioner before the Court in that case, thus:

> " 'The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread,' lampooned Anatole France. The reality of this caricature of equal justice under the law, whereby the poor are priced out of their liberty in the justice market, is the grievance of the petitioner."

We, in the present case, are indeed concerned with the poor, who are forced to sleep under bridges and to beg in the streets.

40. In this regard, covenants in policy documents, containing the terms of administrative and executive policies, cannot be subjected to as strict an interpretation as would be accorded to plenary or parliamentary statutory instruments. They have, therefore, to be interpreted broadly, keeping in mind the purpose that the policy seeks to achieve.

41. So far as the purpose that the Relocation Policy seeks to achieve is concerned, the answer was provided by Mr. Chauhan himself, by his submission (while seeking to justify the fixation of a cut off date) that the length of stay in the *jhuggi* would be indicative of the level of penury of the *jhuggi* dweller. Amelioration of the financial condition, and quality of life, of the *jhuggi* dweller is, needless to say, the avowed objective of all policies which seek to rehabilitate slum dwellers, including the Relocation Policy. Viewed thus, it would run against the very grain of the Relocation Policy and its aims and objectives to prefer, for rehabilitation and relocation, a *jhuggi* dweller

who has to his credit a shorter length of *jhuggi* stay, as compared to one who has been a *jhuggi* resident for a longer period of time.

42. As already observed hereinabove, the Relocation Policy does not contemplate a situation in which a dweller in a *jhuggi*, which is being sought to be removed, has earlier been dwelling in other *jhuggis*. If the length of *jhuggi* stay is, as Mr. Chauhan submits, to be treated as indicative of the financial penury of the *jhuggi* resident, a person who has been residing in *jhuggis* for a longer length of time would, naturally and logically, be entitled to preferential treatment in the matter of relocation, vis-à-vis a person who has been residing in *jhuggis* for a lesser period of time. At the very least, the Relocation Policy cannot be so applied so as to extend its benefits to a *jhuggi* dweller who has been a *jhuggi* dweller for a shorter length of time, and deny its benefits to a *jhuggi* dweller with a longer period of *jhuggi* stay to his credit.

43. If para 6 of the Relocation Policy is to be applied in the manner in which Mr. Chauhan and Mr. Mohan would advocate, this, however, would be the precise outcome. Learned Counsel have been at pains to point out that the concluding stipulation in para 6 refers only to the time from which the *jhuggi*, being sought to be removed, has been in existence. The right of the residents of the *jhuggi* to relocation would, according to them, have to be tested on this ground, and on this ground alone. Applying this test, they submit that when, on 14th June, 2008, the Railway authorities visited the petitioners' *jhuggi* at the Lahori Gate side, the *jhuggi* was found to be of only 2003 vintage.

The *jhuggi* having thus come into existence after the fatal cut off date of 30th November 1998, learned Counsel would submit that the residents of the *jhuggi* could not be regarded as entitled to relocation. That they may have, prior to shifting to the *jhuggi* at the Lahori Gate side, been residing in *jhuggis* elsewhere, according to learned Counsel, is immaterial, as it is not envisaged as a relevant circumstance in the Relocation Policy, and the Policy itself is not under challenge.

44. Such an approach would, however, be completely out of sync with the professed objective of the Relocation Policy, which is amelioration of the financial condition of the *jhuggi* dwellers. The Lahori Gate *jhuggi*, admittedly, came up in 2003 or thereabouts, i.e. approximately five years after the cut off date of 30th November 1998. According to the petitioners, prior to shifting to the Lahori Gate side in 2003 at the instance of the Railways, they were, since the 1980s, residing in the Shahid Basti *jhuggi* on the opposite side of the tracks in the Nabi Karim constituency. Significantly, the fact that *jhuggis*, situated in the Shahid Basti, Nabi Karim, were shifted to the Lahori Gate side at the instance of the Railways, stands acknowledged by the Railways themselves, in para 4 of their additional affidavit, which reads thus:

> "4. In any event all these documents bear the addresses as Shahid Basti, Nabi Karim or Ramnagar etc. whereas Railway had removed some *Jhuggis* from between the tracks in order to shift their washing line from New Delhi Railway Station to increase the number of platforms for convenience of public. Earlier there were only 9 platforms at New Delhi Railway Station which were increased to 16 in number. This was done from the year 2003 2008. At that time there was

> encroachment by about 10 or 15 *jhuggi* is only near the old food over bridge. This encroachment had a over a period of 3 or 4 years only, after they were removed by Railway Administration from in between the tracks thereafter *Jhuggi* dwellers relocated themselves to nearby area towards Lahori Gate where they were only 0 to 20 m away from the railway track whereas 15 m is in fact the safety zone. In this Lahori gate area *jhuggi* dwellers relocated themselves in the year 2003."

It stands acknowledged by the Railways, therefore, that the *jhuggis* which came up in the Lahori Gate area in 2003 were peopled by dwellers of *jhuggis* on the other side of the track, from where they were removed by the Railways in 2003. There were, therefore, at least some Lahori Gate *jhuggi* dwellers who had been *jhuggi* residents even prior to their shifting to Lahori Gate at the instance of the Railways.

45. If that be so, in my considered opinion, not extending, to such *jhuggi* dwellers, who were residents of *jhuggis* elsewhere prior to their shifting to the Lahori Gate side in 2003, of the benefit of the period during which they were residing in *jhuggis* at other sites, while assessing their entitlement to relocation under the Relocation Policy would be against the very object and purpose of the Policy. If, in other words, a resident of the Lahori Gate *jhuggi* had been a *jhuggi* dweller, albeit on the other side of the tracks, from a period prior to the cut off date of 30th November 1998, it would be unjust, unfair and contrary to the avowed purpose and objective of the Relocation Policy to deny him the benefit of relocation.

46. *Jhuggis*, it must be remembered, are not structures of cement and concrete. *Jhuggi* dwellers represent a shifting, nomadic, populace. Rarely is it that *jhuggi* dwellers can claim to permanently establish themselves at any particular site. They are often uprooted from the place where the place where they dwell, and shifted, perforce and often against their will, elsewhere. Hounded by poverty and penury, they have no option but to comply. Slum dwellers do not stay in slums out of choice. Their choice of residence is a last ditch effort at securing, for themselves, what the Constitution regards as an inalienable adjunct to the right to life under Article 21, viz. the right to shelter and a roof over their heads. As to whether the roof provides any shelter at all is, of course, another matter altogether.

47. Mr. Chauhan is, therefore, correct in his submission that the length of *jhuggi* stay is a measure of the level of penury of the *jhuggi* dweller. He errs, however, in failing to recognise the sequitur. The longer the length of *jhuggi* stay that the *jhuggi* dweller has to his credit, the greater must, of needs, be his entitlement to relocation under the Relocation Policy. Viewed thus, the somewhat blinkered interpretation that learned Counsel for the respondents seek to accord to para 6 of the Relocation Policy, merely predicated on the concluding stipulation in the said paragraph cannot, in my view, sustain.

48. Rather, the paragraph is required to be read as a whole. The opening sentence stipulates that the "cut-off date for beneficiaries" would be 30th November 1998. This is succeeded by the stipulation

that, "to verify eligibility, Ration Cards issued prior to 30.11.98 will be taken into account". Additionally, the paragraph requires the name of the allottee to figure in the notified Voters' List as on 30th November 1998. While emphasising the specification, in the concluding sentence of the said paragraph, that *jhuggis* which had, after 30th November 1998, would be removed without alternative allotment, learned Counsel for the respondents did not advert to the earlier stipulations in the paragraph. These indicate that the governing consideration, even in the mind of the framers of the Relocation Policy, was the length of *jhuggi* stay. If, in other words, the *jhuggi* dweller could, using his Ration Card or other valid document, establish that, prior to 30th November 1998, he was a *jhuggi* resident *somewhere in Delhi*, he had to be regarded as a "beneficiary" under para 6 of the Relocation Policy. That he may have shifted to the Lahori Gate *jhuggi* after 1998 cannot, in my view, be a hindrance to his entitlement.

49. By so holding, I am not, in my view, doing violence to the express words of the Relocation Policy, for three reasons, which already stand elucidated. The first is that the Relocation Policy, being a policy document framed by the executive, rather than the legislature, is not subject to the same rigours of interpretation to which legislative documents are subject. The Policy is required to be accorded a purposive interpretation, in sync with its objectives. The objective of the Relocation Policy being amelioration of the financial and living conditions of the slum dwellers, the interpretation to be placed on its covenants has also to further this purpose. This, in turn, would require

the factoring in, as a consideration while examining the *jhuggi* dweller's right to relocation, of his total length of *jhuggi* stay, whether in the *jhuggi* which is proposed to be removed or in any other *jhuggi* elsewhere. The second is that, if para 6 of the Relocation Policy is holistically read, the right to relocation, of the "beneficiary" of the Policy, is to be discerned on the basis of the length of residence as evinced by Ration Cards, Voter ID cards, etc. So long, therefore, as the *jhuggi* dweller is able to establish, from such documents, that he has been a *jhuggi* resident, whether in that *jhuggi* or in any other *jhuggi*, prior to 30th November 1998, the benefit of the Relocation Policy cannot be denied to him. The third is that we are dealing, in the present case, with a situation not strictly envisaged by the Relocation Policy, i.e., where the resident of the *jhuggi* which is being proposed to be removed was, prior thereto, staying in *jhuggis* elsewhere, since a point of time prior to 30th November 1998. Dealing, as we are, with a situation that, apparently, the Relocation Policy does not envisage or cater to, the answer has also to be sought *res integra*, founded on the principles and objectives behind the Relocation Policy, and not by according, to the convenants of the Policy, a hyper-semantic and unduly strict interpretation – as one may accord, for example, to a parliamentary legislation.

50. There is yet another, and more equity and fact-based, reason for me to adopt this view, particularly in the facts and circumstances that obtain in the present case. As already noted, the submission of the petitioners that they were earlier residing in the Shahid Basti *jhuggi* on the other side of the track in the Nabi Karim constituency, and had

been shifted, at the instance of the Railways, to the Lahori Gate side has, to an extent, been acknowledged by the Railways themselves in their additional affidavit. Having themselves compelled the petitioner is to shift to the Lahori Gate side in 2003 and, thereby, cease residence in the Shahid Basti *jhuggi* at the Nabi Karim side, the Railways cannot seek to capitalise on their action and deny, to the petitioners, the right to relocation, on the ground that the *jhuggi* at the Lahori Gate side came up only in 2003, thereby denying, in the process, the benefit of their earlier residence in the Shahid Basti *jhuggi* at the opposite side of the track. In other words, having themselves compelled the petitioners to set up a new *jhuggi* in 2003, the Railways cannot use that date as the basis to deny, to the petitioners, their right to relocation, even though they were residing in *jhuggis* elsewhere prior to the cut off date of 30th November 1998. This would be contrary to every known tenet of propriety and fair play.

51. Somewhat disconcertingly, the Railways have, in their Additional Affidavit, sought to brush aside the documents placed on record by the petitioners to demonstrate the length of their stay in Delhi, by stating that the genuineness of the documents could be verified only by the authorities who had issued the documents. The petitioners have responded and, in my opinion, justifiably, that the responsibility of ascertaining the genuineness and veracity of the documents produced by the petitioners as proof of residence, from the authorities, would rest with the Railways. The petitioners, as poor slum dwellers, could hardly be called upon to produce the authorities who had issued their ration cards, Voter ID cards or other documents,

so as to demonstrate their genuineness or veracity. If the Railways do not make the effort at contacting the concerned authorities for that purpose, the benefit of doubt would necessarily enure in favour of the petitioners, who had produced the documents.

Conclusion

52. I am, therefore, of the considered opinion that the sole stand on which learned Counsel for the respondents rest their case, i.e., that the *jhuggi*, at the Lahori Gate side of the railway tracks, from where the petitioners were uprooted, having come into existence only in 2003, the petitioners were not entitled to the benefit of the Relocation Policy by virtue of the concluding stipulation in para 6 thereof, cannot sustain on facts or in law. If the petitioners have been residents of the Shahid Basti *jhuggi* in Nabi Karim, prior to 30th November 1998, they would be entitled to the benefit of the Relocation Policy, even if the *jhuggi* at the Lahori Gate site, from which they were removed, came up only in 2003.

53. Subject, therefore, to the petitioners being able to demonstrate, to the respondents, that they have been residents of the Shahid Basti *jhuggi* in Nabi Karim from a date prior to 30th November 1998, they would be entitled to the benefit of the Relocation Policy and would, therefore, be entitled to alternative accommodation. Given the length of time for which this petition has remained pending, this right would, however, enure to the petitioners' benefit only if they are able,

additionally, satisfy the respondents that they continue, till date, to be *jhuggi* residents.

54. As a result, this petition is allowed to the following extent:

(i) It is declared that

(a) *if* the petitioners have been residents of the Shahid Basti *jhuggi* in Nabi Karim near the railway tracks or the foot over bridge at New Delhi Railway Station, from a date prior to 30th November 1998, and have been continuously living in *jhuggis* till 14th June, 2008, when they were removed, and

(b) *if* they are still residing in *jhuggis* as on date,

they would be entitled to be relocated and granted plots in accordance with their entitlement as per Clause 7 of the Relocation Policy.

(ii) In order to satisfy the respondents in this regard, the petitioners would present themselves before the officer, to be intimated by the respondent to Learned Counsel for the petitioner within a week with all documents in their possession, to demonstrate compliance with conditions (a) and (b) in (i) *supra*.

(iii) Proof of residence would be permitted to be adduced not only by Ration Cards or by Voter ID Cards, but also by any other document, issued by a public or Governmental authority, which is verifiable in nature. It would be for the Railways to

verify the authenticity, genuineness and acceptability of the concerned document. In case any of the petitioners is required to produce any additional document, in the event of the documents produced by said petitioner(s) being found to be unsatisfactory, the Railways would apprise the concerned petitioner(s) accordingly.

(iv) The petitioners who are found, on a perusal of the documents and keeping in mind the observations and findings in this judgement, to be entitled to alternative allotment, would be allotted such alternative accommodation, as per the petitioners' entitlement and in accordance with the Relocation Policy. This shall be done as expeditiously as possible and not, in any event, later than 6 months from the date of production of the documents by the concerned petitioner(s) before the Railways.

55. As the petitioners are slum dwellers, should they be aggrieved by the decision taken by the respondents, or by any other act of the respondents in connection with the aforesaid directions, or should they find it necessary to seek any further directions or clarification from this Court, they would be permitted to revitalise these proceedings by moving an appropriate application, and would not be required to file a fresh writ petition for the said purpose.

56. It is clarified that the aforesaid directions, and the benefit of this judgement, apply only to the five named petitioners in this petition.

57. There shall be no order as to costs.

C.HARI SHANKAR, J

JULY 4, 2022
HMJ