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

\+ LPA 271/2022 & CM APPL. 18769-71/2022

VAISHALI (MINOR) THROUGH NEXT FRIEND AND ORS

..... Appellant

Through: Mr.J.P. Sengh, Sr. Adv. with Mr.Aman Pawar, Mr.Harsh Gattani, Mr.R.L. Sinha & Ms.Manisha Mehta, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Vineet Dhanda, CGSC for UOI.
Mr.Parvinder Chauhan, SC for DUSIB with Mr.Sushil Dixit, Adv.
Mr.Anuj Aggarwal, ASC for GNCTD/R-3 & R-4 with Mr.Sanyam Suri, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% 19.04.2022

1. This appeal has been filed challenging the judgment dated 11.04.2022 passed by the learned Single Judge in W.P. (C) 5941/2022, dismissing the writ petition filed by the appellants herein on the ground that the appellants/petitioners have not been able to show that the jhuggi jhopri cluster at Sarojini Nagar, where the appellants' jhuggis are located, is notified under the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 (hereinafter referred to as the 'Act'), thereby casting an obligation on the respondent to frame a scheme for rehabilitation and for relocation of their jhuggis before any action of eviction is undertaken.

2. The petitioners/appellants had filed the above referred writ petition, *inter alia*, praying for the following reliefs:

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> *a) Quashing the eviction/ demolition notices dated 04.04.2022, issued by the Respondent No. 1, for the same being in violation of, inter-alia, the law laid down by this Hon'ble Court in* ***Sudama Singh & Ors. vs. Government of Delhi & Anr.*** *(2010) 168 DLT 218 (D.B.) and* ***Ajay Maken Vs. Union of India & Ors.*** *260 (2019) DLT 58 (D.B.), as the Respondent agencies have failed to provide for rehabilitation/ relocation, of the affected population prior to their eviction;*
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> *b) Issue a Writ of Mandamus or any other appropriate Writ directing the Respondent No. 2 to carry out a survey of the aforesaid Jhuggis of Sarojini Nagar in terms of the 'Protocol' devised for the removal of Jhuggis;*
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> *c) directing the Respondents to prepare and provide rehabilitation plan for the jhuggis of Sarojini Nagar where the Petitioners are residing;*"

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.

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

6. The learned senior counsel for the appellants has placed reliance on the judgment of this Court in ***Ajay Maken*** (*supra*). He submits that this Court had observed that one reason for the failure to notify slums was that a notified slum would have to be dealt with only in accordance with the Slum Areas (Improvement and Clearance) Act, 1956 in terms of *in-situ* rehabilitation, which clearly was not the priority of the State. The Court further held that not only the jhuggi jhopri (hereinafter referred to as 'JJ')

cluster and jhuggi dwellers in the 675 JJ clusters entrusted to the DUSIB are required to be dealt with in terms of the decision in ***Sudama Singh*** (*supra*), but every jhuggi dweller, anywhere in the National Capital Territory of Delhi (hereinafter referred to as 'NCTD'), has to be dealt with in terms of the said decision. No slum dweller in the NCTD-in one area, can be treated differently from that in another.

7. Further referring to the order dated 11.12.2017 issued with the approval of the Lieutenant Governor of the NCTD, notifying the Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015 (hereinafter referred to as the 'Policy'), he submits that DUSIB is only to act as a nodal agency for relocation/rehabilitation of the JJ bastis. Any of the JJ bastis which have come up before 01.01.2006, cannot be removed without providing them alternative housing.

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

9. On the other hand, the learned counsels for the respondent nos. 1 and 2 submit that the jhuggi cluster, where the jhuggis of the appellants are situated, was not in existence as on 01.01.2006. They submit that pursuant to

a survey carried out in 2016, a list of 675 JJ cluster that were in existence as on 01.01.2006, was notified under the provisions of the Act. They submit that, therefore, the appellants are not entitled to rehabilitation and/or any protection from this Court.

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

> "*(g) "jhuggi jhopri basti" means any group of jhuggis which the Board may, by notification, declare as a jhuggi jhopri basti in accordance with the following factors, namely:-*
> *(i) the group of jhuggis is unfit for human habitation;*
> *(ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and*
> *(iii) it is inhabited at least by fifty households as existing on 1st January, 2006:*
> *Provided that the Board may, by order, attach any jhuggi or jhuggis scattered in the nearby areas to any jhuggi jhopri basti and such jhuggi or jhuggis shall be deemed to be part of such jhuggi jhopri basti;*"
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> *(Emphasis supplied)*

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

are applicable only with respect to "Jhuggi Jhopri basti", that is, *inter-alia* a group of fifty households as existing 01.01.2006 and duly declared by DUSIB as such by way of a Notification.

12. As noted by the learned Single Judge, the appellants have been unable to produce any such notification under Section 2(g) of the Act. Even in appeal, no such Notification has been produced by the appellants. The appellants are, therefore, not entitled to any protection under the Act.

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

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

any such decision has been taken by the Board in the present case for the jhuggis at Sarojini Nagar. The appellants cannot, therefore, take the benefit of the Proviso to Section 2(g) of the Act to stake a claim of rehabilitation.

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

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

17. In view of the above, we find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

APRIL 19, 2022*/rv/U*