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

Reserved on: 29th July, 2024.
Pronounced on: 17th September, 2024.

\+ **W.P.(C) 9702/2015**

ZIAUL HAQUE & ORS. ..... Petitioners
Through: Mr. Prashant Bhushan and Ms. Nisha Tiwari, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ANR ..... Respondents
Through: Ms. Kritika Gupta, Advocate for R-1.
Mr. Parvinder Chauhan, SC with Ms. Mahima Anand and Ms. Hema Sukhija, Advocates for DUSIB/R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. This is the third round of litigation initiated by the Petitioners, who are displaced residents of a Jhuggie Jhopadi[1] cluster, that was located at the DBS Camp, Jangpura-B, near Balmiki Mandir, New Delhi[2]; seeking rehabilitation following the removal and demolition of their Jhuggies carried out by the Municipal Corporation of Delhi[3] on the instructions of Respondent No. 1 – Delhi Development Authority[4]. Through the present writ petition the Petitioners challenge the decision dated 30th January, 2015[5]

[1] "JJ"
[2] "DBS Camp"
[3] "MCD"
[4] "DDA"
[5] "Impugned decision"

taken in the joint meeting of Respondent No. 1 and 2 which was held in compliance with the Court's directions in Cont. Case (C). 296/2012. The Petitioners' grievance is that through the impugned decision, the Petitioners' request for rehabilitation has been denied by the Respondents, prompting them to seek the intervention of this Court.

FACTS AND CONTENTIONS OF THE PETITIONERS

2. Mr. Prashant Bhushan, along with Ms. Nisha Tiwari, counsel for Petitioners, presented the following facts and contentions:

2.1 The Petitioners were residents of DBS Camp for more than two decades. To substantiate their claim of residence, they place reliance on a 2004 survey of the area conducted by Slum and JJ Department, Municipal Corporation of Delhi,[6] which was the predecessor authority of Respondent No. 2 – Delhi Urban Shelter Improvement Board.[7]

2.2 On 08th November, 2006, without any prior notice, MCD and DDA demolished/removed all the Jhuggies in the DBS Camp area, resulting in displacement of more than 500 families. The Petitioners were not given any advance notice of the demolition, nor were they provided an opportunity to remove their belongings from the Jhuggies before the demolition action was undertaken.

2.3 In response to this action, the Petitioners preferred writ petitions[8] before this Court, seeking appropriate directions for their rehabilitation in accordance with the applicable Government policies. They asserted their status as long-term residents of the Jhuggies and requested a survey to establish their eligibility for relocation. In the said proceedings [W.P.(C)

[6] "Slum and JJ Department"
[7] "DUSIB"
[8] W.P.(C) 2562/2010 and W.P.(C) 413/2007

2562/2010], through an order dated 15th November, 2010, the Court directed the Respondents to conduct a survey of the Petitioners to determine their eligibility for relocation. In terms of the said directions, on 06th December, 2010, Petitioners appeared before DUSIB and produced all requisite documents to support their claims.

2.4 Thereafter, the Respondents conducted a joint inspection of the area on 18th July, 2011 and came to a conclusion that no survey could be conducted since no Jhuggies were found at the demolition site. As a result, the Petitioners filed the first contempt petition [Cont. Case (C). 803/2011], which was disposed by the Court *vide* order dated 8th November, 2011, directing DUSIB to verify the documents produced by the Petitioners and pass a reasoned order determining their eligibility for rehabilitation.

2.5 As such, the Petitioners appeared before DUSIB to prove their eligibility with all relevant documents on 23rd November, 2011, 24th November, 2011 and 01st December, 2011. However, in non-compliance with the Court's directions, no reasoned decision was passed in terms of the Petitioners' eligibility for grant of relocation/rehabilitation. Such continued inaction by the Respondents constrained the Petitioners to file a second contempt petition being - Cont. Case (C). 296/2012.

2.6 During the proceedings in the second contempt case, DUSIB submitted a status report dated 28th January 2013. The status report indicated that, as per reports from the concerned Food & Supply Officer[9], 37 Petitioners who held valid ration cards issued prior to 31st December 1998 – i.e., the cut-off date, were eligible for rehabilitation as per the DDA

[9] "FSO"

rehabilitation policy dated 03rd February, 2004[10]. However, despite such findings, no steps were taken to initiate rehabilitation, leading to continued uncertainty for the Petitioners.

2.7 Subsequently, on 10th May 2013, DUSIB filed an affidavit of compliance in the second contempt petition, stating that based on the reports of the FSO and the Assistant Electoral Registration Officer[11], a total of 43 Petitioners (37 identified by the FSO as per status report dated 28th January, 2013 and additional 6 identified by the AERO) were deemed eligible for rehabilitation.

2.8 Pertinently, in the said contempt proceedings, DDA challenged the eligibility survey conducted by the DUSIB, arguing that it did not adhere to the Court's directions issued on 15th November, 2010, whereby DUSIB had to consider DDA's concerns regarding commercial use of the land by the Petitioners for hazardous plastic waste. In light of this contention, the Court through order dated 16th December, 2014, directed DUSIB and DDA to collaborate with each other to resolve the matter, and submit separate affidavits in this regard within six weeks. In the said order, the Court also emphasized that if the DDA provides any evidence, placing doubt on the question of eligibility of any Petitioner for rehabilitation, a notice must be served to the concerned individuals, thereby ensuring that due process is followed before any adverse action is taken.

2.9 In compliance with aforenoted direction, the DDA and DUSIB held a joint meeting to discuss the matter. This culminated in the impugned decision dated 30th January, 2015, rejecting the claims of Petitioners and

[10] "DDA policy, 2004"
[11] "AERO"

declaring them to be ineligible for rehabilitation. This decision was primarily based on findings from newspaper reports, demolition records, and photographs, which indicated that the Jhuggies were being used for storage of hazardous plastic waste and other materials, rather than as residential dwellings. The Respondents argued that such usage disqualified the Petitioners from being considered for rehabilitation under the prevailing policies.

2.10 Since a decision had been taken by the Respondents on the eligibility of the Petitioners, as per the Court's directions in the order dated 15th November, 2010, Contempt Petition (C). 296/2012 was disposed of observing that no further action was required for compliance of the Court's previous order. However, the Court explicitly granted the Petitioners the liberty to challenge the impugned decision taken by the Respondents, in accordance with law.

2.11 In light of the aforenoted liberty, the Petitioners have preferred the present writ petition assailing the decision rendered *vide* the impugned Minutes of Meeting dated 30th January, 2015 *inter-alia* on the following grounds:

(a) The 2004 survey conducted by the Slum and JJ Department, identified the Petitioners as residents of Jangpura-B area without any indication that they were engaged in any commercial activity. Since this survey is the only documented assessment of the JJ cluster in the DBS Camp area before the demolition action, it should have been given due weightage and consideration by the Respondents in determining the Petitioners' eligibility for rehabilitation.

(b) The grounds relied upon by the Respondents to declare the Petitioners ineligible for rehabilitation are factually incorrect and not applicable to the Petitioners' case. Moreover, the impugned decision contravenes the principles laid down in ***Sudama Singh and Others v. Government of NCT of Delhi & Anr***[12].

(c) DUSIB, in its status report dated 28th January, 2013, and the compliance affidavit dated 10th May, 2013, had already determined the Petitioners to be eligible for rehabilitation after considering the validity of their documents. Moreover, DUSIB's compliance affidavit dated 10th May 2013 explicitly stated that, based on the reports of the FSO and AERO, a total of 43 Petitioners were deemed eligible for rehabilitation. The Petitioners argue that this finding should have been conclusive in determining their eligibility and the later decision taken *vide* the impugned decision to deny them rehabilitation lacks consistency and contradicts the earlier determination.

(d) The Petitioners fulfil all the eligibility criteria as per the prevailing DDA policy (DDA policy, 2004) which governs the rehabilitation of displaced JJ cluster residents from land which is under the ownership of DDA. Therefore, the decision to deny the Petitioners rehabilitation is inconsistent with DDA's own established policy and lacks any sound legal basis.

CONTENTIONS OF RESPONDENTS

(A) RESPONDENT NO. 1– DDA

3. Ms. Kritika Gupta, counsel for DDA, presents the following contentions:

[12] 2010 SCC OnLine Del 612

3.1 The Petitioners are falsely claiming to be residents of DBS Camp, whereas in reality they were engaged in commercial activities on the said land, specifically in the illegal trade of hazardous plastic waste, which disqualifies them from being eligible for relocation under DDA policy, 2004. Consequently, the decision to deny their relocation was in accordance with the applicable policy and was rightly made.

3.2 The writ petition fails to present any valid ground, much less a *bona fide* one, to challenge the impugned decision taken by DDA and DUSIB in their joint meeting. The said decision was based on a thorough assessment of the situation including documented evidence, and is fully compliant with the relevant regulations and policies. Therefore, there is no merit in the Petitioners' challenge to the impugned decision.

3.3 The demolition drive in the area was done in compliance of the Court's interim directions in W.P.(C) 9358/2006[13] which was filed by the Jangpura Residents Welfare Association.[14] The said writ petition raised concerns regarding the likelihood of fires being caused on the bed of the Jungpura drain area where the DBS Camp was located, due to the illegal commercial activities carried out by the Petitioners. The pleadings in the said writ petition make it clear that the Petitioners were not lawful residents but were rather illegally squatting on the bed of the Jangpura drain and engaging in commercial activities involving hazardous plastic waste and polythene bags. This was also substantiated by newspaper reports. Accordingly, the impugned demolition drive was conducted by DDA only in compliance with the directions issued by the Division Bench of this Court

[13] *Titled* Jangpura Residents Welfare Association v. Lt. Governor of Delhi & Ors.
[14] "JRWA"

on 31st July, 2006, and thus the actions taken by the Respondents were fully justified.

3.4 The Petitioners were engaged in commercial activities, particularly the illegal trade of hazardous plastic waste, hence they do not qualify for relocation/allotment under the DDA policy, 2004, since the policy specifically excludes those involved in commercial operations from being eligible for relocation. Therefore, the Petitioners have not established any grounds that would warrant the Court's indulgence in this matter.

3.5 The Petitioners have failed to produce the 2004 survey upon which they seek to rely in order to substantiate their claims. Furthermore, as per the Petitioners' own pleading in paragraphs 5(I) and 5(II) of the writ petition, the said survey was conducted on 24th May, 2004, whereas the demolition took place on 08th November, 2006, rendering the survey inconsequential and irrelevant to the facts of the case. The Petitioners cannot rely on a survey conducted more than two years before the demolition to prove that they were residing in Jhuggies in the area at the time of demolition or that they were not engaged in illegal commercial activities involving hazardous materials.

3.6 The impugned decision/minutes of the meeting clearly state that the Petitioners were involved in commercial activities, specifically in the illegal trade of hazardous plastic waste. As such, they are not entitled to the benefits of relocation, as they were illegal squatters rather than lawful residents.

(B) RESPONDENT NO. 2– DUSIB

4. While the impugned order is primarily defended by Respondent No. 1– DDA, nonetheless, in order to further assist the Court on legal issues

raised during the course of arguments, Mr. Parvinder Chauhan, counsel for DUSIB, makes the following submissions:

4.1 The present writ petition has not been sworn by Petitioners No. 2 to 43, which raises questions about the validity and genuineness of the claims being made on their behalf.

4.2 DUSIB is empowered under Section 10 of the Delhi Urban Shelter Improvement Board Act, 2010,[15] to prepare a scheme for the removal of JJ Bastis and their resettlement, but this power is limited only to land belonging to GNCTD. In cases where the land belongs to the Central Government or its organizations, the removal or rehabilitation can only be carried out with the consent of the Central Government, as stipulated in the proviso to Section 10(3) of the DUSIB Act, 2010.

4.3 In the present case, the disputed land in question owned by the DDA, which falls under the jurisdiction of the Central Government. Therefore, DDA's own policy for the removal and rehabilitation of JJ clusters would be applicable, - i.e., the relevant policy in force at the time of the demolition - DDA policy, 2004. Therefore, DUSIB's role in the demolition and relocation of the displaced Petitioners is limited to this context, with the policies of the DDA governing the actions taken on the subject land. Pertinently, it is the admitted case of DDA that the entire exercise of removal/demolition of the JJ cluster was carried out by them. At no stage was the predecessor of DUSIB – Slum and JJ Department consulted or taken into the loop while carrying out the said removal/demolition.

4.4 The reason for declaring the Petitioners ineligible for rehabilitation was due to their involvement in commercial activities related to hazardous

[15] "DUSIB Act, 2010"

plastic waste, which disqualifies them under the DDA policy, 2004. The policy expressly stipulates that no alternative plot should be provided to commercial JJ dwellers. Thus, the decision to deny rehabilitation was in accordance with the eligibility criteria under the policy.

4.5 In terms of the housing provided by DUSIB, currently as per DUSIB's policy, the rehabilitation is no longer carried out by providing plots; instead, eligible persons are now being allotted built-up flats in line with the relevant policy applicable to them.

4.6 This Court, in W.P.(C) 7889/2011[16], through judgment dated 01st September, 2015 has held that "*rehabilitation has a sense and element of urgency attached thereto; the whole purpose thereof being to immediately provide alternative accommodation to persons who are dispossessed from their houses, though unauthorizedly made over public land. If it is to be found that the person so dispossessed has not acted with promptitude and has settled himself elsewhere with his own resources, then that person cannot belatedly attempt to capitalise from the allotment. A distinction has to be carved out between a rehabilitative allotment and an allotment made in pursuance to some housing scheme*"[17]. The said judgment has been upheld by the Division Bench of this Court in LPA No. 271/2016[18]. In view of the above stated legal position, Petitioners' right of rehabilitation is not an inherent right which crystalises on a particular date.

4.7 In ***Howrah Municipal Corporation and Ors. v. Ganges Rope Co. Ltd. & Ors***[19], the Supreme Court has held that for claiming a 'vested right'

[16] *Titled* Dayachand v. Union of India, 2015 SCC OnLine Del 11774
[17] Supra, Para No. 10
[18] Titled *Dayachand v. Union of India & Ors.*
[19] (2004) 1 SCC 663

over a property under the applicable rules and policies, the date of compliance has to be considered as the date when the sanctioning order was passed and not the date when the application was made. Reliance is placed on Paragraph no. 37 of the judgment which is extracted hereinbelow as under:

> ***"37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived****. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right" [see K.J. Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.].* ***The context in which the respondent Company claims a vested right for sanction*** *and which has been accepted by the Division Bench of the High Court,* ***is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction.*** *True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rulemaking power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such* ***a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest*** *and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."*

[Emphasis added]

4.8 In the present case, despite the fact that no survey was conducted before the demolition of the Jhuggies purportedly occupied by the Petitioners, their eligibility must be evaluated at the time of allotment. The date of removal or demolition of the Jhuggies is relevant only for the purpose of considering the Petitioners' request for rehabilitation, not for creating any vested rights.

4.9 Even if the Petitioners are found to be occupants of the JJ cluster on the date of their removal, they must also meet other conditions stipulated in the DDA policy, 2004, including: (a) being a citizen of India; (b) not owning any residential property anywhere in Delhi, either individually or jointly with family members; and (c) not having previously been allotted any residential accommodation by DDA, MCD, or any other government agency. Reliance in this regard, is placed on Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981, which are statutory rules governing such allotments.

ANALYSIS AND FINDINGS

5. The present case has a complex and protracted legal history, beginning with W.P.(C) 9358/2006 filed by the JRWA. Through the said writ petition, JRWA sought the eviction of the JJ dwellers who were allegedly engaged in hazardous activities involving plastic waste and polythene bags at the Jungpura drain area where the DBS Camp was located. In compliance with the interim directions of the Court in the said writ petition, DDA and MCD conducted a demolition drive and cleared the area of all the Jhuggies. This demolition action is substantiated by the Demolition Report dated 8th November, 2006, however the copy of the Demolition

Report provided to this Court does not appear to record anything on the residential status of the Jhuggies that were demolished.

6. Significantly it is an admitted case of the Respondents that the aforementioned demolition exercise was carried out without any prior survey conducted to ascertain the identity and status of the residents in the JJ clusters and neither were any rehabilitation efforts undertaken before the demolition. This omission, in the Court's view, is critical to the Petitioners' claim for rehabilitation, as it directly impacts their right to be considered for resettlement under the prevailing policies.

7. When the Petitioners filed writ petitions seeking direction to the Respondents to rehabilitate them on the grounds of their status as JJ dwellers, relying on the only survey conducted before the demolition (the Slum and JJ Department survey of 2004), the DDA objected to their relocation asserting that the Petitioners were not genuine residents of the DBS Camp but were instead engaged in hazardous commercial activities involving plastic waste and polythene bags. The DDA asserted that the Petitioners had been displaced pursuant to orders of this Court, and therefore, were not entitled to rehabilitation. However, after considering the submissions of both the DDA and DUSIB, this Court, on 15th November, 2010, disposed of the writ petitions by issuing specific directions to address the matter, as detailed below:

> *"8. Considering the stand of the respondent DDA, this Court on behalf of DDA* ***instructs the Board to carry out the survey of the petitioners to determine whether the petitioners are eligible for re-location or not. The said survey to obviously to deal with the pleas aforesaid of the respondent DDA that the petitioners were not residents of the said Jhuggi Jhopris but were only carrying on hazardous commercial activity therein.***
>
> *9.* ***The petitions are therefore disposed of with the direction to the Delhi Urban Shelter Improvement Board to carry out the survey of the***

> ***petitioners***. *The petitioners to appear before the Board first on 6th December, 2010 at 1100 hours and on such other dates as may be directed. The survey be completed preferably within six months thereafter.* ***Needless to state that if the petitioners or any of them are found eligible for re-location, they be re-located in terms of the policy.***
> ***The petitions are disposed of. No order as to costs.****"*
>
> ***[Emphasis added]***

8. In compliance with the aforementioned directions, a joint inspection of the disputed site was also conducted. However, since the Jhuggies had already been demolished, nothing was found at the site. For this reason, the Petitioners contended that their claim for rehabilitation was not properly considered and filed the first contempt petition. In the said proceedings, DUSIB first submitted that since no survey could be conducted, the Petitioners' eligibility could not be established. However, subsequently in the second contempt petition, DUSIB prepared a status report dated 28th January, 2013, noting that 37 Petitioners who possessed ration cards issued prior to 31st December, 1998 (*as required by the DDA policy, 2004*) were eligible for rehabilitation. Later, through an affidavit dated 10th May, 2013 DUSIB, on the basis of the reports of the FSO and AERO, submitted that a total of 43 Petitioners were deemed eligible. The relevant portions of these two submissions of DUSIB are as follows:

Status report dated 28th January, 2013

> *"It was also intimated in the letter dated 10.9.2012 that on 31.7.2012, the petitioners have again submitted fresh set of documents which have been sent to the concerned FSO for verification and final determination of eligibility would be possible only on receipt of report of FSO. As per report of FSO, Circle 41, only 37 ration cards submitted by the petitioners are of prior to 31.12.1998.*
>
> *DDA has its own policy for rehabilitation/relocation to the jhuggie dwellers who are/were on DDA land. DDA has been allotting plots to the eligible jhuggie dwellers located on their land, however, as per Relocation policy prevailing in this Department at the time of demolition of jhuggie*

cluster, i.e. in 2006, the person having ration card prior to 31.12.1998 were eligible for allotment of 12.50 Sq. Meters residential plot. As mentioned above, as per report of FSO Circle 41, 37 petitioners have ration cards prior to 31.12.1998 and DDA may consider their cases for allotment subject to production of original documents. The copies of verification report and subsequent clarifications received from FSO are enclosed herewith."

Affidavit dated 10th May, 2013

"5. That, as a result of verification 37 persons were found eligible for rehabilitation, however, 26 persons were not found eligible. A Status Report to the said effect was filed before this Hon'ble Court, cognizance of which was taken by this Hon'ble Court in its order dated 1.02.2013.

6. xx ... xx ... xx

7. That it is pertinent to mention herein that, subsequent to the filing of the said Status Report, 6 more persons have been found to be eligible. The Answering Respondent has prepared a table mentioning the names of each of aforesaid 26 persons who were, initially, found ineligible. The said table mentions the reason, against the name of each person, for which such person has been found to be ineligible. The said table is annexed herewith as ANNEXURE-R-4/A."

9. As per the aforementioned report and the subsequent affidavit evidently 43 Petitioners were eligible for rehabilitation. Despite this acknowledgement, their claims were thwarted by the objections raised by the DDA who challenged the survey on the grounds that it was completed without adequately addressing their objections concerning the alleged commercial use of the Jhuggies for hazardous plastic waste. The DDA relied upon paragraph 8 of the Court's order dated 15th November, 2010, which states as follows:

"8. Considering the stand of the respondent DDA, this Court on behalf of DDA instructs the Board to carry out the survey of the petitioners to determine whether the petitioners are eligible for re-location or not. ***The said survey to obviously to deal with the pleas aforesaid of the respondent DDA that the petitioners were not residents of the said Jhuggi Jhopris but were only carrying on hazardous commercial activity therein.****"*

[Emphasis added]

10. Noticing the conflicting positions taken by DDA and DUSIB, in the second contempt proceedings, the Court directed both parties to jointly resolve the matter and to submit separate affidavits. The said directions issued on 16th December, 2014[20] read as follows:

> *"5. Let both, the officials of the DDA and the Board meet and sort out the matter and both of them shall file a separate affidavit in this regard within a period of six weeks from today.*
> *6. Needless to say that if any evidence is produced by the DDA against any particular petitioner or any individual who has been found eligible for the purpose of relocation by the Board, before any further action is taken against him, an appropriate notice will be served on him also. Let the exercise be done within six weeks."*

11. In compliance with the above directions, when both DDA and DUSIB attempted to resolve the matter, they passed the impugned decision rejecting the claims of Petitioners, although admitting them to be ration card holders. This impugned decision reads as under:

> ***"MINUTES OF MEETING HELD ON 30.01.15.***
> *In pursuance of High Court order in Contempt petition No. 296/2012 in the matter of Mohd. Zia-Ul-Haq & Others to sort out the issue a meeting held in the chamber of DLM(HQ) on 30/01/2015. The list of officers present in the meeting is annexed here with. The policy for re-location was perused by officers from both the departments which inter-alia provides for certain conditions and relevant conditions are reproduced:*
> 1) *Prior to demolition a list of eligible JJ dwellers/Persons will be displayed at site for information and knowledge of the residents*
> 2) *The persons in occupation of vacant/demolished/unoccupied will not be considered as eligible.*
> 3) *The persons/JJ dwellers sitting on the right of way, road berm and footpath etc will not be considered as eligible.*
> 4) *The name of the JJ dwellers must exist in the survey record for considering eligibility.*
> 5) *JJ dwellers cannot claim allotment as a matter of legal right.*
> 6) ***No alternative plot should be given for commercial JJ dweller.***
> 7) ***During the meeting the officers of DUSIB and DDA both perused the demolition report read with Newspaper report, photographs and***

[20] Contempt Petition No. 296/2012

demolition report and come to clearly the conclusion that all material evidence brings out that jhuggies were used for storage of plastic and similar hazardous material.
The jhuggies were demolished in pursuance of high court order dated 31 july 2006, 15 Nov. 2006 and the compliance report of the said directions of the high court was also noted by Hon'ble high court. Vide order Dt. July 09, 2008.

8) Pursuance to the directions of Hon'ble high court dated, 15 Nov.2010 DUSIB examined the ration cards and found 37 ration cards in order. ***However it does not confirm the eligibility rights as stated in the forgoing paras. Both the department agreed with the same views. Thus there is no violation or willful disobedience of the Hon'ble court order dated 15, Nov 2010.***

Meeting ended with vote of thanks to the chair."

[Emphasis added]

12. In the opinion of this Court, the afore-noted decision is completely arbitrary, unreasonable and unjust for the reasons discussed in the succeeding paragraphs. However, before elaborating on the reasoning, it must be noted that the present case is governed by the DDA Rehabilitation Policy of 2004, rather than the more recent and well-defined DUSIB Policy of 2015. Under the DUSIB 2015 policy, there is a clear requirement for the relevant land-owning agency to submit a proposal for the removal of Jhuggies to DUSIB and DUSIB, in turn, is mandated to determine the eligibility of the residents for rehabilitation through a comprehensive survey. The 2015 policy sets out a detailed protocol, stipulating that if a JJ Basti was in existence prior to 1st January, 2006, and had not already been notified, DUSIB would notify the said Basti under Section 2(g) of the DUSIB Act, 2010, if it meets the eligibility criteria. This DUSIB policy also contemplates, conducting a detailed survey prior to the eviction; drawing up a rehabilitation plan in consultation with the JJ bastis and jhuggis dwellers.

13. In contrast, these procedural safeguards were not as well defined in the DDA policy, 2004, which is the applicable policy in the present case. Nonetheless, the policy did delineate certain protections for the dwellers, and its underlying purpose was the same: the rehabilitation of displaced JJ dwellers. For this purpose, it is important to take note of the following clauses of the said DDA policy, 2004:

> *"DELHI DEVELOPMENT AUTHORITY*
> *OFFICE OFCOMMISSIONERE (LM)-I*
>
> *No. I2(1) 2001/I/MC/PLA/86* *Dated 30.02.04.*
>
> *Sub: POLICY GUIDELINMES FOR RELOCATION OF THE JHUGGIS CLUSTERS IN DELHI.*
>
> *In suppression of all previous guidelines on the abovementioned subject, the following board guidelines for the purpose of relocation of the jhuggis clusters in Delhi are issued.*
>
> ***SURVEY**:-*
>
> *In the first instance, the JJ Clusters to be shifted are to be identified following which the survey should be caried out of those clusters by the concerned zonal offices with the approval of the competent authority. The survey or the joint survey shall be conducted on the prescribed proforma affixing the joint photographs of the JJ dwellers. The name of the women head of the household should be invariably included in the survey. In case a jhuggie is found locked, 2 days notice may be pasted at the door to know the details of the occupier of the jhuggi. This should be followed up by a re-survey at the locked jhuggis prior to demolition.*
>
> ***ELIGIBILITY CONDITIONS**:-*
>
> *1. The JJ Dwellers must be a citizen of India.*
> *2. The JJ dwellers can not claim the allotment as a matter of legal right.*
> *3. The name of the JJ dwellers should figure in the survey record conducted by the DDA.*
> ***4. The JJ dwellers should posses documentary evidence showing his existence prior to 31.01.1990 or post 1990 but before 31 December 1998 till the date of removal.***

5. *The JJ dwellers will be entitled to one residential plot only even if he is occupying more than one Jhuggi.*
6. ***No alternative plot should be given for commercial JJ dwellers.***
7. ***The Jhuggie being used for both residential and commercial purposes can be considered allotment of one residential ploy only. In case, the ground floor of the Jhuggie is being used for commercial purposes and other floors for residential purposes, that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person.***
8. *In case of multistoreyed jhuggie occupied by the same person or different persons, the allotment may be considered for the occupant of ground floor only.*
9. *Allotment should be made in the joint name of the husband and wife occupying a jhuggie.*
10. *The allotment of plots to the JJ dwellers will be subject to the result of pending decision and outcome of the SLP (Civil) No. 3166-3167/2003 (from the judgment and order dated 29.11.2002 in CWP 4441/94 and CWP 2112/02 of the High Court of Delhi) in Supreme Court of India.*

DISPLAY OF ELIGIBILITY LIST AT SITE

Prior to demolition, a list of eligible JJ dwellers/ persons will be displayed at the site for the information and knowledge of the residents of the JJ clusters. The list shall be displayed in the office of the concerned zonal office as well for a reasonable period prior to the demolition so as to give fair chance for objections/representations to be filed with DDA's zonal office.

Non ELIGIBILTY

No allotment will be made in case of:-

1. *Vacant/ demolished/ unoccupied jhuggis*
2. *The persons/ JJ Dwellers sitting on the right of the way, road berm and footpath etc.*
3. *To the owners of Jhuggis who have rented out/ sold out the jhuggie and are not in possession of the jhuggie at the time of removal.*
4. *The jhuggie dwellers who do not have sufficient proof/ documents and are not covered by the above eligibility norms.*

xx ... xx ... xx

[Emphasis added]

14. A holistic reading of the DDA Policy of 2004 reveals that it was designed to ensure that displaced individuals, particularly those genuinely

residing in Jhuggies, are provided with alternative housing. The policy upholds the mandate of providing adequate safeguards to residents of Jhuggie clusters before they are evicted from the land they occupy. Notably, the DDA Policy of 2004 mandates that once a JJ cluster is identified for relocation, a survey of the clusters must be conducted in a prescribed format, along with photographs. In cases where a Jhuggie is found locked during the survey, a two-day notice should be pasted at the door to verify the occupants, followed by a re-survey of such locked Jhuggies before any demolition action is undertaken. This clearly indicates that the scope of the policy hinges on the aspect of determining the eligibility for lawful relocation and rehabilitation of the JJ clusters dwellers to another place, in order to prevent their displacement without alternative accommodation.

15. Keeping the above core objectives in view, the impugned decision, which primarily relies on purported newspaper reports, the demolition report, and photographs, is unsustainable. There is no substantial or credible evidence to refute the Petitioners' residential status. The DDA's argument revolves around the allegations that the Petitioners were mere squatters engaged in the illegal activities of storage of plastic and similar hazardous materials thereby rendering them ineligible for rehabilitation. However, this argument overlooks the fundamental purpose of the DDA Policy, 2004, which was specifically framed to provide relief even to those residing on public lands without authorization, provided they fulfil the prescribed eligibility criteria. The term 'squatters' in this context does not automatically imply disqualification unless it is established that the occupants were engaged solely in commercial activities, without any residential use of the premises. Notwithstanding, the policy explicitly contemplates rehabilitation

even for those who used their dwellings for both residential and commercial purposes. The relevant portion of the policy states as follows:

> "*7. The jhuggie being used for both residential and commercial purposes can be considered allotment of one residential plot only. In case, the ground floor of the jhuggie is being used for commercial purposes and other floors for residential purposes, that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person"*

16. While the emphasis by the DDA and DUSIB on the use of the Jhuggies for storing hazardous plastic waste and other materials, thereby suggesting commercial activity, is a valid concern since rehabilitation should not extend to those engaged in illegal or hazardous activities; the DDA policy, 2004 does not automatically exclude those who might have engaged in minor commercial activities, provided these activities were incidental to their residential use. Rather, the policy makes a distinction between purely commercial use, which disqualifies a dweller, and dual use, which does not. Therefore, the strict focus on alleged commercial use by the Respondents fails to adequately consider the full scope of the rehabilitation policy in force at the relevant time.

17. Furthermore, there is no direct or documented evidence, such as a contemporaneous inspection or survey, showing that hazardous waste was stored in these Jhuggies as a **primary** activity. Without such evidence, the Court cannot conclude that the Petitioners' use was exclusively commercial or that they should be automatically disqualified for rehabilitation under the policy. The only evidence relied upon by the Respondents—newspaper reports, photographs, and the demolition records—fails to categorically prove that the primary purpose of the Petitioners' occupation was either commercial, residential or was there dual usage.

18. The paragraph 4 of the DDA policy, 2004 lays down the criteria for eligibility. The JJ dweller must produce documentary evidence showing their existence before the Cut-off Date 31st December, 1998 till the date of removal. In this regard, the Petitioners have produced valid ration cards and voter IDs, which have been duly verified by the FSO and the AERO. DUSIB, in its own status reports dated 28th January, 2013 and affidavit 10th May, 2013, has also conclusively held the Petitioners to be eligible for rehabilitation on the basis of this fact. Thus, the Petitioners have proved their residential status at the time the demolition action as per the DDA policy, 2004, thereby establishing the entitlement to seek rehabilitation under the said policy. In absence of a prior survey by DDA, the benefit of the doubt ought to be given to the Petitioners who have proven their eligibility for rehabilitation. The lack of clear and convincing evidence to establish that the Petitioners were solely engaged in illegal hazardous waste activities, the Petitioners should be granted their right of rehabilitation as per the prevalent DDA policy, 2004.

19. We must also address DUSIB's reliance upon the case of ***Howrah Municipal Corporation and Ors. v. Ganges Rope Co. Ltd. & Ors.*** DUSIB contends that since no 'vested right' was created in the present case, Petitioners' eligibility must be assessed as of the date of the final sanction order. Their objection focuses on the conditions of allotment, which require the applicants to confirm that they do not own any residential property in Delhi, either individually or jointly with family members, and have not previously been allotted any residential accommodation by the DDA, MCD, or any other government agency. DUSIB argues that these conditions must be verified at the time of the final sanction, rather than at an earlier date.

20. In ***Howrah Municipal Corporation***, the Supreme Court held that the claim of a 'vested right' based on the Building Rules as they existed at the time of the application was misconceived. The Court reasoned that the term 'vested right' refers to an immediate, fixed right in relation to the ownership or enjoyment of property, or an absolute and indefeasible right. In the context of that case, the 'vested right' asserted by the respondent company was merely a 'settled expectation' based on the rules in force at the time of their application for sanction of plans, which was negated due to a subsequent change in law. The Court emphasized that such a 'settled expectation' does not equate to a vested right, particularly when new statutory provisions or amendments come into force that alter the original conditions under which the expectation was formed. The claim to a 'vested right' or 'settled expectation' was dismissed because it could not be upheld against the amended statutory provisions that were introduced in the public interest. In contrast, in the present case, there has been no change in law or policy. The DDA Policy, 2004, remains the applicable policy, and there has been no amendment that would affect the Petitioners' rights under it. The Petitioners' claim for rehabilitation arises from their eligibility under the prevailing policy, as they have provided the required documentation and met all other criteria specified in the DDA Policy, 2004. Therefore, their eligibility must be determined based on the date they applied for rehabilitation, under the terms of the unchanged policy. Therefore, the ***Howrah Municipal Corporation*** case is distinguishable on these facts, as there has been no legal change here that could defeat the Petitioners' entitlement to be considered for rehabilitation, although they shall

nonetheless comply with other requirement and furnish the requisite documents.

CONCLUSION:

21. In the present case, the Respondents' approach in evaluating the eligibility of the Petitioners has been unduly narrow, focusing primarily on alleged commercial activities while neglecting substantial evidence supporting the Petitioners' residential status. The verified ration cards, voter ID cards, and the 2004 survey conducted by the Slum and JJ Department—all of which confirm the Petitioners' longstanding residence at the disputed site—were either dismissed or inadequately considered. The Court finds that a comprehensive evaluation of all available evidence is essential in such cases, ensuring that no single factor, such as the presence of commercial activity, unduly prejudices the overall assessment of eligibility. The rehabilitation policy in place clearly provides for a pre-demolition survey and also acknowledges the possibility of dual usage. The Respondents' failure to account for these provisions, alongside the verified documentation of residence, represents a significant oversight that warrants correction.

22. In view of the above, the present writ petition deserves to be allowed and disposed of with following directions:

(i) The impugned decision of Respondents taken in their joint meeting on 31st January, 2015 is set-aside.

(ii) The Respondents are directed to rehabilitate the 43 Petitioners who fulfil the eligibility criteria as per the DDA rehabilitation policy dated 03rd February, 2004, as clarified above and in accordance with law.

23. Accordingly, the writ petition is disposed of in the above terms.

SANJEEV NARULA, J

SEPTEMBER 17, 2024
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