

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

Date of decision: 17th MARCH, 2023

IN THE MATTER OF:

+ **LPA 117/2023 & CM APPLNs. 7779-7781/2023**

KESHAW SANYASI GAWO SHEWASHARAM... Appellant

Through: Mr. Mimansak Bhardwaj, Advocate

versus

GOVT OF NCT AND ANR

..... Respondents

Through: Mr. Anuj Aggarwal, Advocate for
R-1/ GNCTD
Mr. Parvinder Chauhan, Advocate
for R-2/ DUSIB

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Appeal has been filed against Order dated 10.02.2023 passed by the Ld. Single Judge in W.P.(C) No. 1726/2023. The dispute in the instant case relates to an eviction notice issued by the Respondent No. 2, i.e., Public Welfare Department, for the land occupied by the Appellant herein, i.e., Keshaw Sanyasi Gawo Shewasharam.

2. The Appellant herein is a Trust established for the purpose of maintaining a Shiv Temple and Gaushala and is located at Shiv Hanuman Mandir, Bhairo Road, New Delhi ('said premises'). It is stated that the Petitioner looks after ailing, old and abandoned cows. Apart from the Shiv Temple, and said cow shelter, the said premises are also home to certain jhuggis dwellers.

3. It is stated that on 28.01.2023, the Respondent No.2/Department pasted Eviction Notices on all such premises located at Bhairo Road, New Delhi directing the occupants to vacate the premises within 15 days. The Eviction Notice states that their failure to do so would result in their removal. The notice also states that they would be relocated at the Shelter Home at Dwarka, Geeta Colony where they could reside for a period of 3 months.

4. As the Gaushala of the Appellant is also located at the said premises, the Appellant was aggrieved by the Eviction Notice and filed the W.P.(C) No.1726/2023 seeking quashing of the Impugned Notice and the issuance of appropriate directions prohibiting the Respondents from carrying out demolition/evacuation proceedings in the said premises.

5. The learned Single Judge, while disposing of W.P.(C) No.1726/2023, *vide* Order dated 10.02.2023, found that the premises in question do not come within the jhuggi cluster which has been notified as per the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015. The learned Single Judge, therefore, held that the occupants of the premises were not entitled to protection from demolition. It was also found that since the Impugned Notice provides for an alternate accommodation, no orders were needed to be passed. Further, the Ld. Single Judge directed the Respondents to allot an alternate accommodation for the cow shelter within a week, and further that such alternate cow shelter would be exempt from the maximum stay period of three months.

6. Aggrieved by the Impugned Order dated 10.02.2023, the Appellant filed the instant appeal.

7. In sum and substance, the Ld. Counsel for the Appellant has argued that cow shelter, and temple have been present in the said premises for more

than 15 years and that the Impugned Notice is illegal and arbitrary. It is the contention of the Appellant that the area in question where the Gaushala is situated is near a notified cluster area and, therefore, the Appellant is also entitled to the protection of the Policy.

8. *Per Contra*, the Ld. Counsel for the Respondent has defended the Impugned Order by bringing to the attention of this Court that the place where the premises exist do not come within any notified cluster as notified under the Delhi Slum and JJ Rehabilitation Relocation Policy, 2015. Hence, the demolition cannot be stayed for the said premises.

9. Heard learned Counsel for the Appellant and learned Counsel for the Respondents, and perused the material on record.

10. Pursuant to the directions issued by a Division Bench of this Court in Sudama Singh v. Government of Delhi, **168 (2010) DLT 218**, a policy titled the Delhi Slum and JJ Rehabilitation Relocation Policy, 2015 ('said Policy'). Prior to the said Policy, the Government had formulated the Delhi Urban Shelter Improvement Board Act, 2010 ('said Act') for the rehabilitation of Jhuggi dwellers. Chapter II of the Act establishes the Delhi Urban Shelter Improvement Board (DUSIB), while Chapter III lays down its duties which include *inter alia* the preparation of a scheme for resettlement, improvement and redevelopment of the jhuggi dwellers. DUSIB was designated as the nodal agency for the implementation of the said Policy.

11. A perusal of the DUSIB Act read with the said Policy indicates that in order to get the benefit of the said Policy, a jhuggi jhopri basti cluster defined under the Act, ought to have been in existence prior or 01.01.2006 and the person should have constructed his jhuggi within the cluster prior to 01.01.2015. A survey was conducted to identify various clusters which were entitled to get the benefit of the said Policy. The issue as to whether clusters

which have not been identified are entitled to the benefit of the said Policy or not has been decided by a Division Bench of this Court in Vaishali Through Next Friend and Others v. Union of India and Others, 2022 SCC OnLine Del 2086, which summarises and deals with previous decisions rendered by this Court in the following manner:-

“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.” (emphasis supplied)

12. The judgment of Vaishali Through Next Friend and Others (supra) has been followed in *inter alia* Jhuggi Jhopri Vikas Samiti Netaji Nagar vs. Suresh Kumar and Ors., CONT. APP. (C) 21/2022 & CM APPLs.45897-45900/2022.

13. It appears that in case a jhuggi was not notified under the Act, the same did not exist before 01.01.2006, and hence, individuals residing at such jhuggis cannot claim in-situ rehabilitation. The statement that the subject premises are near a notified cluster by itself is not sufficient to attract the DUSIB Policy, 2015 for the purpose of rehabilitation. For getting the benefit of the said Policy, the jhuggi should be in a jhuggi jhopri basti which has

come up before 01.01.2006 and the jhuggi should be in existence prior to 01.01.2015 inside the jhuggi jhopri basti which has come up before 01.01.2006 and has been identified by the DUSIB as one of the clusters which is entitled to the benefit of rehabilitation under the DUSIB Policy. If it is the case of the Appellant that they are within the cluster, then the Appellant has to take remedies under civil law and substantiate their assertion by leading evidence and writ would not be the appropriate remedy in such a case. The Appellant has not placed anything on record to contradict the position of the Respondent that the jhuggis at the said premises did not exist prior to 01.01.2006. Furthermore, in terms of the Policy, the Respondent has already provided alternate housing to the individuals affected by the Impugned Notice as well.

14. The Appellant has made a passing reference to the fact that cow shelter and temple have existed in the said premises since 15 years, and 30 years respectively. As this is a pure question of fact to be proven by leading evidence, the same cannot be adjudged by this Court in its Writ jurisdiction. Further, a perusal of the Impugned Notice indicates that it is simply directed towards jhuggi dwellers. Nonetheless, it has already been directed that alternate shelter should be provided to cows residing at the said premises. This alternate shelter is not for the limited period of three months, as directed by the Ld. Single Judge. In light of this, this Court finds no reason to interfere with the Order dated 10.02.2023 passed by the Ld. Single Judge in W.P.(C) No. 1726/2023.

15. Although the Government of Delhi has sought to make efforts to rehabilitate jhuggi dwellers on paper, the ground reality is far from desirable. Due to this, this Court finds it necessary to reiterate that the right to housing being a part and parcel of right to livelihood, health, food, clean

drinking water, sewerage and transport facilities, such facilities must be provided to individuals who will be relocated to Geeta Colony, Dwarka.

16. In light of this, the instant appeal stands dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 17, 2023

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