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

+ W.P.(C) 9628/2022

MANOJ GUPTA & ORS.

..... Petitioners

Through: Mr. Kaoliangpou Kame, Mr Japi Y
Chisho, Mr. K.R. Shiyas, Advocates.
Ms. Vrinda Bhandari, Ms. Karuvaki
Mohanti and Ms. Yamina Rizvi,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents

Through: Ms. Shobhana Takiar, Standing
Counsel for Respondent No.1/ DDA.
Mr. Anuj Aggarwal, Addl. Standing
Counsel, GNCTD along with Ms.
Ayushi Bansal, Advocate for
respondent No.2 and 4.
Mr. Sushil Dixit and Mr. Parvinder
Chauhan, Advocates for Respondent
No.3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **28.06.2022**

CM APPL NO. 28730/2022

1. A Writ Petition under Article 226 of Constitution of India has been filed for appropriate directions to protect the petitioners against the arbitrary and illegal demolition or eviction from T-Huts, Gyaspur Basti, Sarai Kale Khan, Nizamuddin East, South East Delhi, New Delhi.

2. It is submitted in the petition that the petitioners are the residents of two Gyaspur Basti clusters which are located on either side of the road in Sarai Kale Khan, Nizamuddin East, South East Delhi, New Delhi. The two clusters house 100 families and a total of over 459 residents are residing there. Settlement A on one side of the road is 100 meters away from Settlement B adjacent to the Kalindi Gaushala. It is asserted that on 18th June, 2022 about 15-16 persons professing to be the representative of Respondent No.1 Delhi Development Authority visited Gyaspur Basti cluster and orally informed the residents that they would be demolishing the Basti on 23rd June, 2022. Thereafter on 23rd June, 2022 15-20 representative of Respondent No.1 again visited Gyaspur Basti cluster equipped with 8-9 bulldozers and threatened to demolish the jhuggis immediately and went to demolish the farms adjacent to the jhuggis. On the representations and requests of the residents, respondent No.1 agreed to wait till 27th June, 2022 to conduct the demolition drive. The DDA's proposed action at the time when COVID-19 cases are rising on exponential basis and there is impending monsoon season in Delhi which could disproportionately affect and render the residents of this cluster homeless. No Notice of the demolition was ever served upon the petitioners.

3. It is further submitted that the Basti was established about forty years ago and petitioners have documents to demonstrate their residence here at least since 2005 i.e. for more than 17 years. Most of the residents migrated to Delhi from interiors of Uttar Pradesh and 95% of the residents belong to Scheduled Caste (primarily Dhobi caste) or other backward class. They are daily wagers living below the poverty line and are primarily engaged in unskilled or semi-skilled informal labour and are otherwise vulnerable to

COVID-19 and are now facing the prospect of illegal eviction and demolition of their houses.

4. A prayer is, therefore, made that the respondents particularly respondent No.1 be restrained from carrying out any eviction or demolition or from taking any coercive measures for harassing the petitioners who are the residents of T-Huts, Gyaspur Basti cluster marked as A & B on the Site Plan Ex.P1. It is further requested that respondent No.4 (Delhi Police) may be restrained from assisting Respondent No.1 to 3 in carrying out the demolition and the evictions. Further, Respondent No.3 Delhi Urban Shelter Improvement Board (DUSIB) be directed to conduct the survey of the jhuggis in Gyaspur Basti clusters in accordance with the directions issued by the Supreme Court in *Sudama Singh & Ors v. Government of Delhi & Ors*, (2010) 168 DLT (DB) and *Ajay Maken & Ors v. Union of India*, 2019 SCC OnLine Del 7618. Further, directions are sought to be given that respondents be directed to comply with the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 and Draft Protocol and provide for in situ upgradation/rehabilitation to the Petitioners.

5. Issue Notice.

6. Notice is accepted by the learned counsels for the respondents.

7. Learned counsel for the petitioners has vehemently argued that there are about 32 families residing in the T-Huts in Sarai Kale Khan at least from 2005 which can be verified from the Aadhar Cards and Voter's Identity Cards and other documents which have been placed on record. It is further submitted that in terms of the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015, the DUSIB is required to conduct a survey and thereafter workout a rehabilitation or relocation programme before carrying

out the demolition. None of the procedures have been followed and this arbitrary and illegal action of the respondents would not only render the petitioners homeless and jobless, but would also be in violation of the Government policy and the directions given by the Supreme Court of India in Ajay Maken & Ors v. Union of India (supra). Interim protection is, therefore, sought from such illegal demolition.

8. Learned counsel on behalf of **Respondent No.1 (DDA)** has vehemently argued that what have been termed as jhuggi clusters by the petitioners, are in fact sporadic jhuggis which have come up in the area. They do not qualify as a Basti or cluster and therefore, the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 is not applicable. It is further submitted that the petitioners had been informed on 18th June, 2022 about the demolition drive, despite which no action has been taken till the filing of this petition on 24th June, 2022. It is argued that the judgments relied upon pertain to Jhuggi Basti/ clusters and are not applicable to the facts in hand and petitioners are not entitled to any protection. It is also submitted that the demolition drive is being carried out pursuant to the directions of the Hon'ble Supreme Court and National Green Tribunal in various areas.

9. Learned counsel **on behalf of DUSIB** has submitted that as per the Notifications taken out by DUSIB from time to time, the alleged jhuggi clusters in respect of which Writ Petition has been filed do not qualify as clusters/basti and are not covered by Delhi Urban Shelter Improvement Board Act, 2010. The petitioners being encroachers are not entitled to any protection.

10. Submissions heard.

11. The primary ground on which the protection from arbitrary

demolition and dispossession has been sought by the petitioners is that no prior survey has been conducted by DUSIB in terms of the decisions of this court in Ajay Maken & Ors v. Union of India (supra). In the said judgments it has been observed that in recognition of the constitutional right of the citizens of this country to shelter, the courts once approached by such persons complaining about forced eviction should not be viewed as encroachers and illegal occupants of land, whether public or private, but must require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. Forced eviction of jhuggi dwellers, unannounced, in co-ordination with the other agencies and without compliance of the requisite procedures, would be contrary to law.

12. The documents filed by the petitioners prima facie show that they are occupying the premises since 2005. Considering the long possession of the parties and their assertions that it is a Jhuggi cluster having more than 32 jhuggis, the respondents are directed to maintain *status quo* till 11th July, 2022.

13. The reply be filed by the respondents within five days and the rejoinder thereto, if any, within five days thereafter.

NEENA BANSAL KRISHNA, J
(VACATION JUDGE)

JUNE 28, 2022
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