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

Date of Decision: 30th January, 2023

+ **W.P.(C) 315/2020 and CM APPL. 929/2020**

SMT. BENI

..... Petitioner

Through: Ms. Aditi Gupta, Advocate.
(M:9811046710)

versus

GOVERNMENT OF NCT DELHI AND ANR. Respondents

Through: Mr. Satyakam, ASC with Ms. Pallavi
Singh, Advocate for R-1.
Mr. Naveen Roheja, Advocate.
(M:9810129691) for DUSBI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Smt. Beni, who was a resident of Jhuggi No.27, Kali Bari Marg, G-Point, Gole Market, New Delhi along with her husband and children, between 2001 till 2010. The case of the Petitioner is that the husband of the Petitioner deserted her in 2009 and the entire JJ cluster is stated to have been demolished in 2010. According to the Petitioner, she is entitled to relocation and rehabilitation, as per the policy of the GNCTD. She, accordingly, along with her jhuggi dwellers filed the *W.P.(C) 1798/2011* titled '*Dharampal Singh & Ors. Vs. GNCT of Delhi and Ors.*'. The said petition was disposed of on 10th October, 2011 with the following observations.

“20. In the circumstances, the petition is disposed

of with the following directions:-

- a. The petitioners to vacate the said site on or before 6th November, 2011;*
- b. If the petitioners or any of them or any other person in occupation fail to vacate the site by the said date, the respondent Hospital shall be entitled to use reasonable force for their removal so that the land is available for the expansion project of the respondent Hospital. The respondent no. 10 SHO, PS - Mandir Marg is directed to ensure that the respondent Hospital has possession of the vacant site as on 7th November, 2011;*
- c. The respondent DUSIB is directed to have the eligibility of all the seventy petitioners for relocation under the Policy determined on or before 15th December, 2011;*
- d. The Electoral Office and the Food Supply Office are directed to immediately respond to the verification sought by the respondent DUSIB;*
- e. The ten petitioners who are stated to have not submitted their documents to the respondent DUSIB to submit the same on or before 31st October, 2011;*
- f. The petitioners to appear before Mr. Harish Vats in the first instance on 17th October, 2011 at 1100 hours and thereafter on subsequent dates as may be required to. The respondent DUSIB to submit its report to the land owning agency i.e. L&DO on or before 20th December, 2011;*
- g. The respondent L&DO is directed to relocate such of the petitioners as are found eligible as per the report and as per the Policy of the Government:*
- h. The petitioners or such of them if remain aggrieved by the said report shall have remedies in law;*
- i. The government schools near to the place where the petitioners are re-located temporarily or*

permanently, to allow the transfer of the children of the petitioners from the government school which they are presently attending to the new school;

j. The CEO of the respondent DUSIB to comply with the direction aforesaid.”

As per the above order, all such dwellers who were found to be eligible were to be relocated, as per DUSIB’s policy.

3. Thereafter, guidelines were issued by the GNCTD titled as ‘*Guidelines for implementation of the Scheme for relocation/rehabilitation and allotment of flats to the Jhuggi Jhopri dwellers under JNNURM-2013*’ (hereinafter, ‘*JJ Scheme*’). The Petitioner applied for rehabilitation under the said scheme. The Eligibility Determining Committee held a camp between 5th January, 2016 to 15th January, 2016, where out of the 85 jhuggi dwellers, who had filed the petition, only 52 were found to be entitled to rehabilitation. The Petitioner was declared ineligible.

4. The Petitioner challenged the declaration of in-eligibility before the Appellate Board of DUSIB. The said Appellate Board rejected the appeal of the Petitioner on the ground that she did not produce the voter ID card for the year 2009 and 2010. The said order reads as under:

“Smt. Beni is present in person. Her appeal is against the decision of the Eligibility Determination Committee to declare her ineligible for allotment of alternative dwelling units for the reason that her name does not exist in the voter list of 2009 and 2010 required as per eligibility criteria to make her eligible.

*She has been heard by the Appellate Authority. **She could not produce document showing her name in the voter list of the year 2009 and 2010. Hence her appeal is rejected and***

the case is closed.”

5. Ld. counsel for the Petitioner submits that as per the scheme, various other documents can be accepted as the proof of residence in the jhuggi. The only ground, which appears for rejection of Petitioner’s appeal is that the voter ID card has not been submitted. This, according to the Petitioner, is contrary to the decision of the Id. Division Bench in ***W.P.(C) 5378/2017*** titled ‘***Udal and Ors. v. Delhi Urban Shelter Improvement Board and Ors***’, where the same issue was being considered by the Court and it was held that the authority would have to take a holistic view in the matter.

6. On the other hand, on behalf of the Respondents, it is highlighted that the guidelines clearly state that the voter ID card is mandatory and other documents would be in addition to the voter ID card only.

7. A perusal of the scheme shows that for any jhuggi dweller to be considered for rehabilitation under the JJ Scheme, the following documents are sought by the authorities.

“7. In order to ensure that no eligible JJ dweller (s) is left out from the Rehabilitation Scheme, the following documents will be considered for the purpose of proof of residence:

a. The name of the JJ dweller should be in the list of electors maintained by the Office of the Chief Electoral Office as per the instructions of the Election Commission of India on or before the proposed cut off date i.e. 4.6.2009 and also in the year of survey.

b. In addition to above the JJ dweller shall submit any one of the following documents, issued on or before 4.6.2009 to substantiate the proof of residence:

- (i) *Passport*
- (ii) *Ration Card with photograph*
- (iii) *Driving License*
- (iv) *Identity Card/Smart Card with photograph issued by State/Central Government and/or its autonomous bodies/agencies like PSU/Local Bodies.*
- (v) *Passbooks issued by public sector Bank/Post Office with photograph.*
- (vi) *SC/ST/OBC Certificate issued by the Competent Authority with photograph*
- (vii) *Pension document with photograph, such as Ex-servicemen's Pension Book, Pension payment order, Ex-servicemen's widow/dependents certificate, old age pension order or widow pension order.*
- (viii) *Freedom fighter's identity card with photograph.*
- (ix) *Certificate of physically handicapped with photograph issued by Competent Authority.*
- (x) *Health Insurance Scheme Smart Cards with photograph (Ministry of Labour's Scheme).*
- (xi) *Identity Card with photograph issued in the name of the descendants of the slum/JJ dweller from a Government School.*
- (xii) *The JJ cluster dweller shall have to file an affidavit duly sworn before the Notary Public about the authenticity and veracity of the documents submitted by him/her.*

In the case of minor legal heirs the above said prescribed documents/requirement can be relaxed by the CEO, DUSIB. In addition to above prescribed procedure, if any genuine case(s) is/are still left out, then the CEO, DUSIB may decide the genuineness of the same on case to

case basis.”

8. This scheme was considered by the Id. Division Bench in *Udal (supra)* where the Court held that the parties would be permitted to place on record other documents including ration card, school records, driving license, aadhar card etc for being considered eligible of the rehabilitation scheme.

9. The mere fact that the parties cannot produce the name featuring electoral roll, would not be enough for disqualification of jhuggi jhopri dwellers for rehabilitation. The observations of the Court in *Udal (supra)* are as under:

“14. It is trite that the right to housing is an essential part of Right to Life and a fundamental right ensured by Article 21 of the Constitution of India. It has also been held that the right to life is not right to merely an animal existence but an entitlement to reasonable accommodation (Ref. : MANU/SC/0286/1996 : (1996) 2 SCC 549, Chameli Singh & Ors. v. State Of U.P. & Anr. and MANU/SC/0115/1990: (1990) 1 SCC 520, M/s. Shantistar Builders v. Narayan Khimalal Totame). The contours of this right were further expanded by a pronouncement of the Supreme Court reported at MANU/SC/0051/1997 : (1997) 11 SCC 123, Ahmadabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors. wherein the court held that when slum dwellers have been residing at a place for some time, it became the duty of the government to make schemes for housing these jhuggi dwellers. Relying on the principles laid down in these judgments, this court in MANU/DE/0353/2010 : 168 (2010) DLT 298, Sudama Singh & Ors. v. Government of Delhi & Anr. has relied upon the provisions of the Delhi

Master Plan and emphasized in-situ rehabilitation of the slum dwellers.

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17. The documents of the petitioners and these 28 persons were scrutinized by the DUSIB which rejected them as being ineligible primarily for the reason that their names did not feature in the electoral rolls of the years 2012, 2013, 2014, 2015 and 2016. Additionally, some of the petitioners were unable to produce any of the 12 documents mentioned in Clause 2 of Part-B of the R&R Policy, 2015. The ineligibility letters were issued by the Deputy Director (Rehabilitation) of the respondent no.1 to the petitioners and were handed over to them w.e.f. 20th December, 2016.

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32. So far as the petitioner nos.2,3,4,5 and 10 are concerned, it has been observed that they have been able to inter alia produce the documents, including the National Food Security Card, Ration Card, Gas/Oil Bill, Electricity Bill, BSES Meter Change Report, School Leaving Certificates, School Progress Report of Children, Report Cards of Children, Aadhar Cards, Driving Licences, Passbooks, PAN Card, Death Certificate of the Spouse of one of the parties, LIC Policy, etc. for broadly the period between 2002- 2017. Additionally, these petitioners were able to produce documentation from the schools where their children were studying. Therefore, even though these petitioners could not produce the record of their names featuring in the electoral rolls over the period prescribed in the policy, however, if an holistic view is undertaken of the documentation as produced, it would amply establish the residence and existence of these persons at the Rajiv Camp for the periods from 1998 till 2016.

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36. Mr. Parvinder Chauhan, Id. Standing Counsel for respondent no.1 has staunchly contended that the requirement of Clause 1(iii) of Part-B of R& R Policy to the effect that the name of the person must feature in the electoral roll for any of the prescribed five years, is mandatory and the failure for the name to appear in such electoral roll must be fatal so far as consideration for allotment of alternative flat for rehabilitation under the R&R Policy is concerned. In the given facts and circumstances, we are unfortunately unable to agree with this submission. The records placed by these persons include National Food Security Cards, Ration Cards, Oil/Gas Bill, SC/ST Certificates, Electricity Bill, LIC Policies, Gas Connection Records and Bills, Driving Licences, Passbooks, Birth Certificate of Children as well as records of School Admission of Children, their Progress Report Cards, all of which show their continued existence on the spot. A realistic view has to be taken in this regard. We find that the persons who were found ineligible were in possession of public identification including Voter ID - cards. The failure of the names of such persons to feature in the electoral roll could be for any number of reasons. The same could happen, if the person was not at home at the time the Booth Level Officer visited Jhuggi of the person concerned. This could be on account of the occupation of the person or for the person and adults of the family having left the Jhuggi for work. Obviously, the Booth Level Officer or any persons conducting the survey would not have met the adult members of the family. There would thus not be any adult members of the family to give the information for names to be included in the electoral rolls.

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39. We find that as per Clause 2 of PART - B of the R&R Policy, 2015, it has been mandated that the Jhuggi Jhopri dwellers **must possess "any one" of the 12 documents**. In the above cases, the Jhuggi Jhopri dwellers have produced multiple records ranging to periods in the late 1990s till date. In this view of the matter, the persons detailed in paras 37 and 38 above are clearly entitled to the benefit of the policy. We are of the view that the ineligibility letter dated 22nd December, 2016 by the respondents have been issued to these persons because of a disjoint reading of Clause 1(iii) and Clause 2 of PART - B of the policy. The same ought to be read together and a conclusion has to be drawn on a holistic consideration of the documents which are required to be filed detailed at Clause 1(iii) and Clause 2 of Part-B of the R&R Policy, 2015."

10. In the present case, the Petitioner relies upon various school records of her two daughters to establish that she was resident of the said jhuggi. She also relies upon her own bank records, bank passbook etc. for the said purpose.

11. Ld. Counsel for the Respondents has raised various objections and shows contradictions in the documents of the school records of her daughter Kavita.

12. A perusal of the order passed by the Appellate Board shows that the only ground on which she has been disqualified, is because of her name not being in the voter list of 2009 and 2010. Considering the decision in *Udal (supra)*, the Appellate Board would have to consider all other documents as well before arriving at a conclusion as to whether the Petitioner is entitled to

rehabilitation or not. The Petitioner's case cannot be rejected merely on the ground that the voter ID card was not produced. The decision of the Ld. Division Bench is clear and categorical that other documents which may establish residence at the said Jhuggi would have to be considered holistically. The purpose of these policies is to ensure rehabilitation and relocation to economically weaker sections and would have to be interpreted in a broader and beneficial manner rather than a narrow and pedantic manner.

13. Accordingly, let the Appellate Authority under the DUSIB Act, look afresh into the Petitioner's case considering all other documents produced by her and take a decision on the same **within 4 months**.

14. The Appellate Authority may also look into and enquire as to whether the Petitioner's husband has been allotted any alternative accommodation or not. The Petitioner shall appear before the Appellate Authority for hearing on **20th February, 2023 at 11:30 am**. A reasoned speaking order shall be passed by the Appellate Authority after giving proper hearing to the Petitioner.

15. The writ petition is disposed of along with all pending applications in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 30, 2023/dk/am