Delhi High Court
Sudama Singh & Others vs Government Of Delhi & Anr
HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) Nos.8904/2009, 7735/2007, 7317/2009 and 9246/2009

Judgment reserved on: 17.12.2009

% Judgment pronounced on: 11th February, 2010

1. WP(C) 8904/2009

SUDAMA SINGH & OTHERS ..... Petitioners Through: Mr.Prashant Bhushan,

Mr.Somesh Rattan and Mr.Rohit

Kumar Singh, Advocates.

Versus

GOVERNMENT OF DELHI & ANR. ..... Respondents Through Mr.Najmi Waziri, Standing

Counsel for GNCTD

2. WP(C) 7735/2007

MAYA DEVI & OTHERS ..... Petitioners Through: Ms. Girija Krishan Varma

Advocate.

Versus

GOVERNMENT OF DELHI & ORS. ..... Respondents Through Mr.Najmi Waziri, Standing

Counsel for GNCTD

3. WP(C) 7317/2009

MAJNU ..... Petitioner Through: Mr. S.K.Agarwal with

Ms. Vandana Misra, Advocate.

Versus

COMMISSIONER MCD & ORS. ..... Respondents Through Mr. H.S. Phoolka,

Sr.Advocate with Mr. Ravi Bassi,

Advocate for MCD

Mr.O.P.Saxena,Advocate for Slum &

JJ

WP(C) 8904/09 & connected matters Page 1 of 57

4. WP(C) 9246/2009

MUKANDI LAL CHAUHAN & OTHERS ..... Petitioners Through: Mr. Divya Jyoti Jaipuria,

Advocate.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Mr. H.S. Phoolka,

Sr.Advocate with Mr. Ravi Bassi,

Advocate for MCD

Mr. Najmi Waziri, Standing Counsel

for GNCTD

Mr. O.P.Saxena, Advocate for Slum &

JJ

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local papers be allowed to see the judgment ? y

2. To be referred to the Reporter or not ?y

3. Whether the judgment should be reported in the Digest ?y

AJIT PRAKASH SHAH, CJ

INTRODUCTION

1. The writ petitions have been filed under Article 226 of the

Constitution of India seeking intervention of this Court to

rehabilitate and relocate the petitioners who were residing at

various slum clusters in the Capital city to a suitable place and providing them alternative land with ownership rights pursuant to demolition of their â jhuggiesâ (hutments). The subject matter in these four writ petitions revolves around questions of great importance, inter alia, right to shelter of the petitioners and WP(C) 8904/09 & connected matters Page 2 of 57 those represented by them on one hand, and, on the other, slum cluster being on â Right of Wayâ on which basis the agencies of the State seek to oppose them. Therefore, all of them were taken up together for hearing and are being disposed of by this common judgment.

STATE'S POLICY OF RESETTLEMENT OF JHUGGI INHABITANTS

2. Certain background facts, germane to these writ petitions may be noted at the outset. The Government in the year 1990, decided to resettle the then inhabitants of jhuggies in Delhi and a comprehensive survey was conducted by the Civil Supplies Department of Delhi Administration between January and March, 1990, wherein all jhuggi clusters except those residing on road, footpath etc., were identified with the cut-off date of January 31, 1990, pursuant to which a proposal was submitted to the Delhi Administration and the Planning Commission for its 1990-91 Annual Plan. The Municipal Corporation of Delhi mooted a three pronged strategy in its proposal to the Delhi Administration and Planning Commission for Annual Plan, 1990-91, to solve the problem of eligible dwellers which, inter alia, provided:

Strategy-I: Relocation of these Jhuggi households where land owning agencies are in a position to

implement the projects on the encroached land pockets as per requirements in larger public interest and they submit request to S&JJ Department for clearance the jhuggi cluster for WP(C) 8904/09 & connected matters Page 3 of 57 project implementation and also contribute due share towards the resettlement cost.

Strategy-II: In-situ upgradation of JJ clusters and informal shelters in case of those encroached land pockets where the land owning agencies issue NOCs to Slum & JJ Department for utilization of land. However the utilization of land under this strategy is linked with clearance of the project by the Technical Committee of the DDA.

Strategy-III: Extension of minimum basic Civic amenities for community use under the Scheme of Environmental Improvement in JJ clusters and its component schemes of construction of Pay and Use Janasuvidha complexes containing toilets and baths and also the introduction of mobile toilet vans in the clusters, irrespective of the status of the encroached land till coverage under one of the aforesaid two strategies.

3. The Delhi Government with the approval of Central Government finalized the Rehabilitation and Improvement Scheme, 2000 for Jhuggi Clusters which came into effect from 01.04.2000 and had a cut-off date of 30.11.1998 for the

entitlements. The said Scheme was set aside by this Court in the case of Wazirpur Bartan Nirmata Sangh v. Union of India, reported in 103 (2003) DLT 654 but the Supreme Court WP(C) 8904/09 & connected matters Page 4 of 57 vide its orders dated 19.02.2003 and 03.03.2003 passed in SLP(C) No. 3166-3167/2003 filed by the Union of India stayed the said order of the High Court. Therefore, the policy is still operative today. The policy for relocation of J.J. clusters w.e.f. 01.04.2000, interalia, provided that slums will be relocated only from project sites where specific requests have been received from the land owning agencies and no large scale removal should be resorted to without any specific use. Relocation land will be identified in Delhi and NCR in consultation with DDA and NCRPB so that it is in conformity with the land use policy under the Master Plan and the NCR Plan. Land to be acquired will be identified by DDA/NCRPB in small pockets near existing residential areas so that the cost of peripheral services is minimized. A target of shifting 10,000 Jhuggies in 2000-2001 was laid down which was to be reviewed each year in April by Delhi Government based on requests received from land owning agencies. Cut-off date for beneficiaries was 30.11.1998 and to verify eligibility, ration cards issued prior to 30.11.1998 was to be taken in account, the name of allottee must also figure in the notified voters list as on 30.11.1998. Keeping in view the scarcity and high cost of land, the plot size for single dwelling unit was kept at 20 sqm (those who are eligible before 31.01.1990) and 15 sqm (eligible between 01.02.1990 to

30.12.1998) with 100% ground coverage. The layout plans,

building plans and other development works for relocation

settlement were to be prepared by the executing agency, i.e.

WP(C) 8904/09 & connected matters Page 5 of 57 Slum Department, MCD. Prior to relocation and payment of

subsidy by the land owing agency and Delhi Government, a joint

survey of the slum cluster was to be carried out by the Dy.

Commissioner (Revenue) jointly with the land owning agency

and the executing agency. The figure of jhuggies to be

relocated was to be determined on the basis of this survey

keeping in view the eligibility criteria. A separate revolving fund

was also envisaged with the contribution of the beneficiary, the

subsidy given by Delhi Government and the subsidy given by

the land owing agency which was to be released to the

executing agency based on the project estimates. A steering

committee under the Chairmanship of the Chief Secretary, Delhi

Government was set up for indentifying and prioritizing clusters

to be shifted, shifting of identified clusters and for monitoring

the execution of each project.

MASTER PLAN FOR DELHI - 2021

4. The latest Master Plan for Delhi-2021 (hereinafter referred

to as "the MPD-2021") as notified on 07.02.2007, has already

been enforced. It gives statutory relief to the Slum & JJ Clusters.

The MPD-2021 envisages three fold strategies to deal with

rehabilitation or relocation of the existing squatter

settlements/jhuggi dwellers. One of the strategies is relocation

of the jhuggies dwellers if the land on which their jhuggies exist

is required for a public purpose, in which case, the jhuggi

dwellers should be relocated/resettled and provided alternative

WP(C) 8904/09 & connected matters Page 6 of 57 accommodation. It also provides that Resettlement whether in

form of in situ-upgradation or relocation, should be based mainly

on built-up accommodation of around 25 sq. meters with

common areas and facilities. Paras 4.2.3 and 4.2.3.1 of MPD-

2021 under the heading "Housing for Urban Poor" read as

under:

"4.2.3 HOUSING FOR URBAN POOR

The category of urban poor for purpose of the Plan would mainly comprise the inhabitants of squatter settlements and informal service

providers. Such services could include domestic help, hawkers and vendors, low paid workers in the industrial, commercial and trade/business sectors, etc. These include both existing population and future migrants. In terms of housing requirements of the city, this continues to be the single-biggest challenge and would require a mix of approaches and innovative solutions.

4.2.3.1 Rehabilitation/Relocation of Slum & JJ Clusters

In so far as the existing squatter settlements are concerned, the present three-fold strategy of relocation from areas required for public purpose, in-situ up-gradation at other sites to be selected on the basis of specific parameters and

environmental up-gradation to basic minimum standards shall be allowed as an interim

measure. Rest of the clusters, till they are covered by either of the first two components of the strategy, should be continued.

During the Plan period 1981-2001, sites and services approach based relocation was employed in which resettlement of squatter slums was done on 18 sqm and 12.5 sqm. plots (transit accommodation) allotted to eligible persons on licence basis. This has led to a number of aberrations and there are several aspects, due to which this approach needs to be progressively abandoned and substituted by an alternate approach. Broadly speaking this

WP(C) 8904/09 & connected matters Page 7 of 57 alternate approach should have the following components:

(i) Resettlement, whether in the form of in- situ up-gradation or relocation, should be based mainly on built up accommodation

of around 25 sq.m with common areas

and facilities, rather than on the model of horizontal plotted development.

(ii) The concept of land as a resource should be adopted to develop such

accommodation with private sector

participation and investment, to the

extent possible.

(iii) Incentives by way of higher FAR, part commercial use of the land and, if

necessary and feasible, Transfer of

Development Rights should be provided.

(iv) A cooperative resettlement model with adequate safeguards may be adopted

with tenure rights being provided

through the institution of Co-operative

Societies.

(v) The provision of accommodation should be based on cost with suitable

arrangements for funding/financing, keeping in view the aspect of affordability and capacity to pay."

PETITIONERS' CASE

5. The petitioners have contended that action of the

government authorities in demolishing the slum clusters without

ensuring relocation of its poor residents ("Urban Poor") in total

violation of their fundamental right to shelter enshrined in right

to life under Article 21 of the Constitution. It is contended that

the demolition of the jhuggies without relocation of the

inhabitants was also in violation of human rights and various

Covenants like Universal Declaration of Human Rights, WP(C) 8904/09 & connected matters Page 8 of 57
International Covenant of Economic, Social and Cultural Rights

and Resolution No.1993/77 adopted by Commission of Human

Rights entitled â Forced Evictions and Human Rightsâ . The

petitioners claim to be mainly from the low income groups

engaged in peripheral activities in the neighbourhood of their

clusters. They are characterized by the term "city service personnel" whose daily chores ensure the health and cleanliness of the households in the neighbourhood where they are employed. There is an element of indispensability of their services for the resident population in the upper-class apartments and households. The petitioners claim to possess various identity proofs such as election i-cards, ration cards etc. issued by the concerned civil authorities. Some surveys have been conducted from time to time for the purpose of identifying persons eligible for rehabilitation and relocation.

6. On the other hand, the main contention of the respondents is that petitioners were occupying land which comes under the category of â Right of Wayâ and, therefore are not entitled for any compensation or alternative land under any policy or scheme of the rehabilitation and relocation.

FACTS

Facts peculiar to the writ petitions may be set out as under:-

WRIT PETITION Nos. 8904/2009 & 7735/2007

7. Writ Petition No.8904/2009 and 7735/2007 involve more or less similar facts and circumstances. The demolition of the WP(C) 8904/09 & connected matters Page 9 of 57 petitionerâ s dwelling was carried out by the concerned government authorities (except for the location of â Right of Wayâ involved). In Writ Petition No.8904/ 2009, the jhuggies of New Sanjay Camp Slum Cluster were demolished on 05.02.2009 for the purpose of constructing an underpass on road no. 13 (Okhla Estate Marg) which goes through Okhla Phase -I and Okhla

Phase II. The respondents to the petition are the Government of NCT of Delhi (hereinafter referred to as GNCTD) through its Secretary, PWD and Municipal Corporation of Delhi (MCD) through its Additional Commissioner - Slum & JJ Department, MCD (hereinafter referred to as â the Slum Department). In Writ Petition No.7735/2007, the demolitions of Nehru Camp slum cluster was carried out for the purpose of the work of widening of existing National Highway-24 (NH-24) from four lanes to eight lanes. The work on NH 24 was started in August, 2006. The respondents in the petition are GNCTD, PWD and the Slum Department.

8. According to the petitioners, they have been residing at their respective jhuggi clusters for the last many years. These slum clusters were situated on both sides of the road. It is the claim of the petitioners that all the residents of the clusters have proper proof of identity and residence. They are all living well below the poverty line and stand covered within the accepted definitions of the term â Urban Poorâ . They also come within the definition as laid down in the MPD-2021 under the heading "Housing for Urban Poor" in Para 4.2.3. They are and eligible WP(C) 8904/09 & connected matters Page 10 of 57 under the Scheme for rehabilitation and relocation. It is submitted that the demolition of the jhuggies was in violation of the Scheme and MPD-2021 which envisages a three-fold strategy to deal with rehabilitation or relocation of the existing squatter/Jhuggi clusters.

9. The petitioners have claimed that the clusters were settled

beyond the area required for widening of the relevant roads and were spread over the stretch in length along the roads in question. The agencies demolished the clusters (jhuggies) not only on the marked area of the road constituting the â Right of Wayâ but even those which were located beyond. Before presenting the writ petitions, the petitioners petitioned various authorities. Lengthy correspondence and communications were exchanged between the petitioners and the respondents regarding the extension of time well as clarifications and information under the provisions of Right to Information Act, 2005. The petitioners in Writ Petition No.7735 of 2007 filed an RTI application with PWD, in response whereof the PWD vide letter dated 21.07.2007 informed them that the total width of land in both sides of the road is called â Right of Wayâ . Whenever any new road is constructed, the Government acquires land on both sides of the road equal to the Right of Way of the road. Thus, the end limits of the lands are fixed at the time of initial construction of road and as per the Government policy, no compensation is payable for the encroachers existing in the WP(C) 8904/09 & connected matters Page 11 of 57 Right of Way of road. Reference was made to letter No. F8(158)/R/PWD-III/2006-07/1362 dated 18.10.2006.

10. The main stand of the agencies concerned is that alternative land is not required to be allotted to the inhabitants of jhuggies as land comes under the â Right of Wayâ in view of the policies governing the relocation and rehabilitation of the slum dwellers. It was submitted on behalf of the petitioners that

the MPD - 2021 and the Scheme have been approved by this Court in the later decisions and there is no mention of any exception, such as â Right of Wayâ where compensation or alternate plots are not to be given to the Jhuggi dwellers who are on the â Right of Wayâ . The petitioners pointed out that the PWD in its reply to RTI Application dated 21.07.2007 has stated that neither the copies of the Policy, Order, Guidelines or Rules indicate what â Right of Wayâ is and where it applies nor any such file relating to the policy of â Right of Wayâ is available with its office. According to the petitioners, the stand of the PWD with regard to non-allotment of alternative accommodation to the inhabitants of land covered under the â Right of Wayâ was completely baseless, arbitrary and discriminatory.

11. During the course of hearing of Writ Petition No.7735 of 2007 this Court vide its order dated 12th November, 2007 appointed a Court Commissioner to visit the area in question and to submit a report after physically verifying the area and the relevant documents, survey reports produced by the respondents.

WP(C) 8904/09 & connected matters Page 12 of 57 WRIT PETITION 9246/2009

12. This writ petition has been filed seeking intervention of this Court to rehabilitate the petitioners belonging to Gadia Lohar Basti at Prem Nagar, New Delhi to a suitable place and providing them with 25 sq.yds. of lands with ownership rights in accordance with the policy of MCD, which is one of the respondents to the present petition.

13. The petitioners are the residents of Gadia Lohar Basti which is a nomadic and scheduled tribe often referred as â Khanabadoshâ who migrated from Rajasthan to Delhi in 1965. The respondents are MCD, the GNTCD and the Slum Department, an implementing agency which initiates action for shifting / relocation of eligible jhuggi clusters upon the receipt of specific request from the concerned land owning / project implementing agency. The Gadia Lohar Basti came into existence in 1965 and the petitioners were residing there since more than 40 years. The petitioners aver that the MCD on 12.01.2009, without prior notice demolished the house structures / jhuggies and irresponsibly displaced more than 200 people without giving them a chance to take their belongings at safe place. The petitioners have strongly relied upon a Resolution dated 12.2.2009 passed by the MCD for rehabilitation of the Gadia Lohar community, pursuant whereto they are eligible to allotment of 25 sq.yds. plots of land along with ownership rights. The petitioners have claimed that such demolitions have resulted in various health hazards and WP(C) 8904/09 & connected matters Page 13 of 57 hardships and the demolition of the slum is contrary to the mandate of Draft National Slum Policy, 2001, Resettlement Policy of 1990 and MPD - 2021 and relevant international covenants. Part B, Paragraph 1 of Draft National Slum Policy, 2001 has been quoted which says that "the Policy does not advocate the concept of slum clearance except under strict guidelines set down for resettlement and rehabilitation in

respect of certain slums located on untenable sites." The term â untenable slums/informal settlementsâ has been defined in Part C para 4 to say that " A site shall not be declared as untenable unless existence of human habitation on such sites entails undue risk to the safety or health or life of the residents themselves or where habitation on such sites is considered contrary to "public interest". Reliance is also placed on Draft National Urban Housing and Habitat Policy, 2005. The decision of the Supreme Court in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 121 has also been relied upon wherein the Court observed that "though it is correct to say that roadways and pathways should be kept free of encroachers, should it not be held, in cases where the poor have resided in an area for a long time, that the State ought to frame schemes, and allocate land and resources, for resettling and rehabilitating the urban poor."

14. The MCD in its response to the petition submitted that many development projects were being undertaken in order to facilitate the holding of the Commonwealth Games, 2010. In WP(C) 8904/09 & connected matters Page 14 of 57 pursuance thereof, a Road Under Bridge (RUB) is being constructed connecting Jawaharlal Nehru Stadium to Tyagraj Stadium under a Joint Venture between the MCD, Railway Department and Central Government. In view of the upcoming Commonwealth Games, it was necessary to connect both the venues. The distance of road between the two stadiums is 1.5 Kms. The existing road connecting the two stadiums is 7 mts.

wide which was sought to be widened to 14 mts. and for the purpose, it was necessary to remove all the jhuggies and slum clusters on the pavements which constitute â Right of Wayâ of the road. It was pointed out by the MCD that the Gadia Lohar Basti consisted only of 15/16 jhuggies that were removed whereas altogether around 1000 jhuggies were removed in whole length of the road between the two stadiums. It is the stand of the MCD that the demolition was carried out after receiving prior no-objection certificate from the Slum Department and the jhuggi clusters were not notified and covered under any rehabilitation programme of Delhi Government. According to the MCD, there is no existing rehabilitation policy in MCD for rehabilitation of the people removed from encroachments on public land. The present clusters of jhuggies under consideration in this petition constitute encroachment on â Right of Wayâ . Therefore, no statutory and constitutional right can be said to have been violated. Responding to the reliance of the petitioners on Resolution passed by the MCD, it was submitted that the Resolution was a private resolution raised by a Councilor,

WP(C) 8904/09 & connected matters Page 15 of 57 passed by MCD and have no legal sanctity and cannot be legally enforceable. A resolution passed on the basis of a proposal by a Councilor is of no legal consequences unless the Commissioner, MCD adopts or formulates a policy on that resolution. Consequently, the petitioners have no right to claim an allotment of an alternative land based on resolution dated 12.2.2009. In support of this contention reliance was placed on

a decision of this Court in WP(C) No. 1662/1988 titled: Nirmal Kumar Jain v. MCD, wherein the Court observed that the MCD Act does not contain any provision which makes it incumbent upo the Commissioner to carry out all the dictates of the Corporation. The entire executive power for the purpose of carrying out the provisions of Delhi Municipal Corporation Act vests with the Commissioner. The petitioners being encroachers on â Right of Wayâ were not entitled to any prior notice before demolition action. Reliance was also placed on the decision of this Court in Pitampura Sudhar Samiti v. Govt. of NCT of Delhi, (Writ Petition Nos.4125/95 and 531/90 decided on 27.9.2002) and Wazirpur Bartan Nirmata Sangh v. UOI, 103(2003) DLT 654.

15. A short reply was filed on behalf of the Slum Department, wherein it was submitted that a survey was conducted by the Department determining the eligibility of persons entitled to alternative accommodation on removal of clusters from Kushak Nallah, Prem Nagar. Accordingly, 610 jhuggi units were identified by the concerned land owning agencies out of which

WP(C) 8904/09 & connected matters Page 16 of 57 none was found eligible or having a mandatory document as per

policy of the Government. It was further submitted that as per the survey none of petitioners had shown ration cards as required to be eligible under the 1990 or 1998 category year of the Scheme for allotment of alternative plots. Out of the 18 petitioners, only the names of 11 petitioners had been recorded in the survey, which were placed on record. Consequently, none

of the petitioners were eligible and could be considered for allotment of alternative place under the Scheme.

16. The petitioner in its rejoinder to the reply of respondent - MCD has relied upon various schemes and resettlement policies pertaining to nomadic tribes such as Gadia Lohars. The petitioners have placed on record an unofficial survey of the 92 points by the Slum Department in the year 1990. It is the claim of the petitioners that the respondents erroneously did not cover the Gadia Lohars of Prem Nagar and the petitioners could not be considered for the resettlement schemes.

WRIT PETITION 7317 of 2009

17. In WP(C) 7317 of 2009, the petitioner has prayed for similar reliefs as in WP(C) 9246/2009. In this petition, earlier the petitioner had sought reliefs for himself and for 17 other families of his community though they were not arrayed as petitioners in the petition. However, during the course of hearing, the petitioner confined the relief prayed only to himself and not to the other families.

WP(C) 8904/09 & connected matters Page 17 of 57

18. The petitioner was residing at Prem Nagar, New Delhi for more than 45 years. The petitioner amongst other reliefs has prayed for directing the respondents to prohibit demolition activity at the aforesaid Jhuggi cluster and a temple erected by the community and relocate him on an alternative plot of equal size. MCD, the Slum Department and Tantia Constructions are arrayed as respondents in the petition.

19. Petitioner has placed reliance on a resolution dated 23 rd January, 2009 passed by the MCD to resettle Gadia Lohar community by allotting them 25 sq. yards plots along with ownership rights. Though the petitioner sought a direction to stop the demolition activity by the respondent as he along with many others of the community is living in the temple premises situated at Prem Nagar, Lohar Basti, New Delhi, but he could not place on record any document to establish ownership of the land where the temple is situated.

20. In reply to the petition, MCD has submitted that neither the petitioner nor other jhuggi dwellers were able to establish their existence on the land under their illegal possession prior to 1998 and, therefore, they are not eligible for rehabilitation as per Rehabilitation Policy of the Slum Department. So far as reliance on resolution dated 23rd January, 2009 is concerned, it was submitted that there is no provision in the MCD Act which binds the Commissioner to give effect to every resolution passed by the Corporation. It was further submitted that the temple in question existed on public land and all other encroachments

WP(C) 8904/09 & connected matters Page 18 of 57 existed on the site were removed on 12th January, 2009 so as to complete the project of construction of RUB connecting the two Stadiums. During the course of hearing, the respondent MCD stated that on the request of the petitioner, the construction work was stalled so as to enable the petitioner to remove the deities in the temple, which were not removed even thereafter.

By order dated 4th March, 2009 the Court acceded to petitionerâ s

request for time to remove the deities from the temple and granted one weekâ s time. The Slum Department has stated that they are only implementing/executing agency and as per the policy of the government they initiated action for shifting/relocation of those jhuggi clusters who have got ration cards of 1990 category or 1998 category and are eligible for 18.0 sq.mtr or 12.5. sq.mtr plot. So far as the petitioner is concerned, he has no ration card of 1990/1998 category. An additional affidavit has also been filed by the Slum Department wherein, as regards the resolution dated 23rd January, 2009, it was stated that the Department cannot enforce this resolution as under the MCD Act there is no provision for relocating jhuggi dwellers who are found squatting on the â Right of Wayâ . It was further stated that Commissioner MCD is the statutory authority who acts under the MCD Act in accordance with the powers conferred on him by virtue of the MCD Act. All the resolutions passed by the MCD Deliberative Wing are not binding on the Commissioner. So far as relocation/rehabilitation of the petitioner is concerned, as per the policy framed by the Delhi

WP(C) 8904/09 & connected matters Page 19 of 57 Government, the resolution of the MCD Deliberative Wing cannot overrule the policy framed by the Delhi Government and, therefore, relocation/rehabilitation of the petitioner is not possible under the policy framework.

SUBMISSIONS OF PETITIONERS

21. On behalf of the petitioners it was submitted that the decision of the authorities for the demolition of their jhuggi

cluster in violation of the government policy / Master Plan Delhi 2021 without making any provision for rehabilitation / relocation for the jhuggi dwellers was clearly arbitrary and discriminatory and has rendered the residents of those jhuggies homeless, seriously affecting their human rights as well as the Fundamental Rights as guaranteed under the Constitution.

22. It was submitted that the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the â Right of Wayâ is completely contrary to the 2000 Scheme framed by the Delhi Government for rehabilitation of the slum dwellers. In the 2000 Scheme there is no mention of any exception, such as â Right of Wayâ , to deny the eligible slum dwellers allotment of alternative plots for their rehabilitation. Moreover, the policy of not relocating those who are found on â Right of Wayâ may be applicable for those who encroach upon the road, footpath etc. but the same principle cannot be applied to the persons who are residing on a place for several decades and are completely unaware that the

WP(C) 8904/09 & connected matters Page 20 of 57 place where they are living is earmarked for some road which has to be developed or expanded in future. As long as they were not on existing road / footpath, they cannot be denied the benefit of rehabilitation / relocation. The demolition of jhuggi cluster is also in violation of MPD 2021 which has come into force and has given statutory relief to the Slum & JJ Clusters. The MPD 2021 envisaged three-fold strategies to deal with rehabilitation or relocation of the existing squatter settlement /

jhuggi dwellers. One of the strategies is relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for public purpose and in such cases jhuggi dwellers should be relocated / resettled on alternative plot. It further provides that resettlement whether in form of in situ upgradation or relocation, should be based mainly on built-up accommodation of around 25 sq. mtr. with common areas and facilities. In view of this clear provision of relocation in the present Master Plan, it was submitted that the demolition of the petitionersâ jhuggies before eligible jhuggi dwellers were relocated or resettled on alternative accommodation was illegal, arbitrary and in clear violation of the MPD-2021.

23. It was submitted that these slum dwellers do not have any other alternative place to live in Delhi as neither do they own any land nor they can afford any rented accommodation in Delhi. All of them had shifted to Delhi to earn their livelihood as there is no work opportunity in their respective native villages and now, the demolition of their jhuggies with no hope for any

 resettlement will leave them without any shelter. It was submitted that the petitioners have got constitutional right and moreover, they are fully covered under the resettlement policy of the government. In these circumstances, removal of the jhuggi cluster without ensuring proper relocation of its residents would amount to gross violation of their human rights as well as the fundamental right to life guaranteed under Article 21 of the Constitution of India.

SUBMISSIONS OF RESPONDENTS

24. On behalf of the respondents it was contended that jhuggi and slum dwellers were on the Right of Way and constituted encroachment on public land. There can be no legal right vested in any person on a Right of Way. The petitioners were encroachers on public land and as such they are liable to be removed, especially in view of the project for Common Wealth Games that has to be completed expeditiously. Even otherwise, it was submitted that it is the function of the statutory authority to remove encroachers on public land especially on the right of way. Unauthorised occupants on the right of way have no legal right to continue. Such unauthorised occupation on public land that constitutes Right of Way cannot create the right in their favour to be allotted alternative site. In support of their submissions, the respondents placed reliance on decision of this Court in Pitampura Sudhar Samiti & Another v.

WP(C) 8904/09 & connected matters Page 22 of 57 Government of NCT of Delhi & Others and Wazirpur Bartan Nirmata Sangh v. UOI & Ors.,(supra). It was claimed that these decisions categorically held that no alternative sites are to be provided in future for removal of persons, who are squatting on public land. It has been specifically directed that encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before encroachment is removed or cleared. The encroachers on public land / Right of Way are not entitled to any statutory notices before their eviction from such

public land / Right of Way. The relocation policy framed by the

State Government is not applicable to the petitioners, who are

encroachers upon the Right of Way.

THE ISSUES

25. In the light of the above submissions made at the Bar,

following points falls for consideration and determination:

ï ¶ Whether the State Governmentâ s policy for

relocation and rehabilitation excludes the persons

living on Right of Way, although they are otherwise

eligible for relocation / rehabilitation as per the

Scheme?

ï ¶ If there is any policy regarding the persons living on

Right of Way then what could be the true import of

such policy?

WP(C) 8904/09 & connected matters Page 23 of 57 ï ¶ Whether the manner in which the alleged policy is

being implemented by the respondents is arbitrary,

discriminatory and in violation of Articles 14 and 21

of the Constitution and various international

covenants to which India is signatory?

RIGHT TO SHELTER

26. The housing problem can be considered to be universal,

since, to date, no country has yet managed to completely meet

this basic human need. Adequate housing serves as the crucible

for human well-being and development, bringing together

elements related to ecology, sustained and sustainable

development. It also serves as the basic unit of human

settlements and as an Indicator of the duality of life of a city or a country's inhabitants. It reflects, among other things, the mobilization of resources and the distribution of space, as well as varied social and organizational aspects of the relationship between Government and society. Unfortunately, in spite of its importance, there exists an enormous housing deficit throughout the world. According to the United Nations, more than one billion people are living in precarious shelter conditions, including those who are "homeless.

WP(C) 8904/09 & connected matters Page 24 of 57 INTERNATIONAL CONVENTIONS

27. International concern over the world housing situation has been expressed by Governments themselves in numerous international declarations, conventions and agreements.

28. Nations General Assembly in 1948 made explicit reference to housing as a fundamental human right. Article 25(1) states:

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services."

29. Future international declarations on the implementation of housing rights would include emphasis on the physical structure such as the provision of drinking water, sewer facilities, access to credit, land and building materials as well as the de jure recognition of security and tenure and other relates issues.

30. Thus the process of recognizing human rights began 60 years ago. The rights enshrined in the Universal Declaration became binding obligations in 1966. Article 11 of the International Covenant on Economic, Social and Cultural Rights

expanded on Article 25(1) of the Universal Declaration. It

further codified the right to housing by stating:

"The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."

WP(C) 8904/09 & connected matters Page 25 of 57

31. In 1987, the International Year of Shelter for the Homeless,

the United Nations spoke of the right of all individuals to:

"a real home ... one which provides protection from the elements; has access to safe water and sanitation; provides for secure tenure and personal safety; and within easy reach of centres for employment, education and health care; and is at a cost which people and society can afford."

32. The Covenant indicates that priority should be given to

social welfare and the level of effort should increase over time.

These obligations apply to any State that has ratified the

Covenant regardless of the Stateâ s economic resources. Of

course, the States would devise their own steps for the

realization of these rights in accordance with their own

resources. India has signed and ratified this Covenant and the

State is under an obligation to give effect to its provisions.

33. The General Comment 7 dated 20th May 1997 on the right

to adequate housing (Article 11.1) by the Commission on

Economic, Social and Cultural rights reads as follows:

"(1) In its General Comment No.4, (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirement of the

Covenant.

(2) The international community has long

recognized that the issue of forced evictions is a serious one. In 1976, the United Nations

Conference on Human Settlements noted that special attention should be paid to ?undertaking major clearance operation should take place only when conservation and rehabilitation are not feasible and relocation

measures are made. In WP(C) 8904/09 & connected matters Page 26 of 57 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its neighbourhoods, rather than damage or

destroy them was recognized. Agenda 21 stated that people should be protected by law against unfair eviction from their homes or land. In the Habitat Agenda Governments committed themselves to protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided. The Commission on Human Rights has also indicated that forced evictions are a gross violation of human rights."

34. The recognized importance of the right to housing over

time has led to its ratification and reinforcement through other

international declarations, conventions and conferences, in

which more precise and complex objectives have been

developed. Of these declarations, special note should be made

of The Habitat I Vancouver Declaration (1976), the International

Year of the Homeless (1987).

SPECIAL RAPPORTEUR'S GUIDELINES ON RELOCATION OF DISPLACED

35. Annexure-I of the Report of the Special Rapporteur on

Adequate Housing lays down basic principles and guidelines on

development based evictions and displacement. Insofar as

relocation of the displaced is concerned, the guidelines provide:

"52. The Government and any other parties

responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, WP(C) 8904/09 & connected matters Page 27 of 57 competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common

property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or

community are not separated as a result of evictions.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically elevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children,

including access to female health-care providers where necessary, and to services such as

reproductive health care and appropriate

counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical

treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of

contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: (a) security of tenure;

(b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency

WP(C) 8904/09 & connected matters Page 28 of 57 services, and to natural and common resources, where appropriate;

(c) affordable housing;

(d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and

(g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of

resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

(a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;

(b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally

protected, including their right to property ownership and access to resources;

(c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;

(d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and

WP(C) 8904/09 & connected matters Page 29 of 57 affected persons, groups and communities subjected to forced eviction;

(e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;

(f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income

households;

(g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;

(h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous

peoples, minorities, the landless, women and children are represented and included in this process;

(i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities.

States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;

(j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 daysâ notice prior to the date of the

resettlement; and

(k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

WP(C) 8904/09 & connected matters Page 30 of 57

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading

treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host

communities at relocation sites."

UN COMMITTEE'S OBSERVATIONS ON INDIA

36. The UN Committee on Economic, Social and Cultural Rights

in May, 2008, in its Concluding Observations on India, called

upon the Indian government to address the issue of rising

homelessness, including the need for disaggregated data on the

homeless. In particular, it mentioned:

"30.The Committee is concerned about the lack of a national housing policy, which particularly addresses the needs of the disadvantaged and marginalized individuals and groups, including those living in slums who are reportedly growing in numbers, by providing them with low-cost housing units. The Committee also regrets that sufficient information was not provided by the State party on the extent and causes of

homelessness in the State party.

The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing,

disaggregated by, inter alia, sex, caste, ethnicity and religion.

70.The Committee urges the State party to

address the acute shortage of affordable housing

WP(C) 8904/09 & connected matters Page 31 of 57 by adopting a national strategy and a plan of action on adequate housing and building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums. In this connection, the Committee reminds the State party of its obligations under article 11 of the Covenant and refers to its General Comment No. 4 on the right to adequate housing (1991) to guide the Governmentâ s housing policies. The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing,

disaggregated by, inter alia, sex, caste, ethnicity and religion.

71.The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and / or offered alternative accommodation, in

accordance with the guidelines adopted by the Committee in its General Comment No. 7 on

forced evictions (1997). The Committee also recommends that, prior to implementing

development and urban renewal projects,

sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws

the attention of the State party to its General Comment No. 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.

RIGHT TO SHELTER - CONSTITUTIONAL PERSPECTIVES

37. In a catena of decisions, the Supreme Court has enlarged

the meaning of life under Article 21 of the Constitution to

include within its ambit, the right to shelter. In some of the

WP(C) 8904/09 & connected matters Page 32 of 57 cases upholding the right to shelter the Court looked at

differentiating between a man animal-like existence and a

decent human existence thereby emphasizing the need for

respected life.

38. Upholding the importance of the right to a decent

environment and a reasonable accommodation, in Shantistar

Builders v. Narayan Khimalal Totame, (1990) 1 SCC 520 the

Court held that, (para 9)

"The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference

between the need of an animal and a human

being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a

suitable accommodation, which would allow

him to grow in every aspect - physical,

mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable

home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation."

39. In PG Gupta v. State of Gujarat and Ors, 1995 Supp.

(2) SCC 182, in 1994, the Court went further holding that the

Right to shelter in Article 19(1) (g) read with Articles 19(1) (e)

and 21 included the right to residence and settlement.

Protection of life guaranteed by Article 21 encompasses within

its ambit the right to shelter to enjoy the meaningful right to life.

The right to residence and settlement was seen as a

WP(C) 8904/09 & connected matters Page 33 of 57 fundamental right under Article 19(1)(e) and as a facet of

inseparable meaningful right to life as available under Article 21.

40. In Chameli Singh V. State of U.P., (1996) 2 SCC 549 a

Bench of three Judges of Supreme Court had considered and

held that the right to shelter is a fundamental right available to

every citizen and it was read into Article 21 of the Constitution

of India as encompassing within its ambit, the right to shelter to

make the right to life more meaningful. It has been held thus:

(para 8)

"In any organized society, right to live as a human being is not ensured by meeting only the animal need of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions, which inhibit his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and

shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be

exercised without these basic human rights."

41. Emphasizing further on the right to shelter, the Court in

this case held that, (para 8)

"Shelter for a human being, therefore, is not a mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over oneâ s head but right to all the WP(C) 8904/09 & connected matters Page 34 of 57 infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been

guaranteed as a fundamental right. As is

enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civic community one should have permanent shelter so as to a

physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultural being. Want of decent residence, therefore, frustrate the very object of the constitutional animation of right to equity, economic justice, fundamental right to residence, dignity of person and right to live itself."

42. In Ahmedabad Municipal Corporation v. Nawab Khan

Gulab Khan (supra) (relevant paras 10, 12, 25) Supreme Court

observed:

"... It would, therefore, be clear that though no person has a right to encroach and erect

structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful ..... The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but if would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the constitutional objectives."

WP(C) 8904/09 & connected matters Page 35 of 57 INDIA: URBAN POVERTY REPORT-2009

43. The Ministry of Housing and Urban Poverty Alleviation,

Government of India, with the support of the United Nations

Development Programme (UNDP) have launched Indiaâ s first-of-

its-kind report on the nature and dynamics of urban poverty in

the country. The report, "India: Urban Poverty Report-2009",

brings together inputs from eminent researchers, academics

and civil society representatives.

Key Messages from the Report

The urban population of India is increasing but not as fast as other Asian countries

India has shared the growth pattern with some of the fastest growing regions in Asia. The country has witnessed around 8 percent growth in GDP in the last couple of years. Indiaâ s urban population is increasing at a faster rate than its total population. Urbanisation has been recognized as an important component of economic growth. At 28 percent, the pace of urbanisation, however, has been slow and lower than the average for Asia. The absolute number of people in urban cities and towns, however, has gone up

substantially. The researchers expect rate of urbanisation to also increase in the coming years. With over 575 million people, India will have 41 percent of its population living in cities and towns by 2030 from the present level of 286 million.

But this success has been accompanied by poverty in urban areas

Urban poverty in India remains high, at over 25 percent. Over 80 million poor people live in the cities and towns of India.

WP(C) 8904/09 & connected matters Page 36 of 57 This has resulted in the 'Urbanisation of Poverty'

A large number of states report poverty figures in urban areas much above that in rural areas. At the national level, rural poverty is higher than poverty in urban areas but the gap between the two has decreased over the last couple of decades. The incidence of decline of urban poverty has not accelerated with GDP growth. As the urban population in the country is growing, so is urban poverty.

The nature of urban poverty poses different problems Urban poverty poses the problems of housing and shelter, water, sanitation, health, education, social security and livelihoods along with special needs of vulnerable groups like women, children and aged people.

An increase in the slum population is one example

As per 2001 census report the slum population of India in cities and towns with a population of 50,000 and above was 42.6 million, which is 22.6 per cent of the urban population of the states / Union Territories reporting slums. This could also roughly be the size of Spain or Columbia.

11.2 million of the total slum population of the country is in Maharashtra followed by Andhra Pradesh (5.2 million), and Uttar Pradesh (4.4 million). Although the slum population has increased, the number of slums is lower (National Sample Survey Organisationâ s 58th Round), which makes them more dense. There is higher concentration of slum population in the large urban centres (Census 2001).

Poor in slums do not have access to basic services like sanitation or water

Poor people live in slums which are overcrowded, often polluted and lack basic civic amenities like clean drinking water, sanitation and health facilities. Most of them are involved in informal sector activities where there is constant threat of eviction, removal, confiscation of goods and almost non-existent social security cover. A substantial portion of the benefits provided by public agencies are cornered by middle and upper income households. 54.71 percent of urban slums have no toilet facility. Most free community toilets built by state government or local bodies are rendered unusable because of the lack of maintenance.

WP(C) 8904/09 & connected matters Page 37 of 57 The homeless live an even more precarious life As per the 2001 census, the total urban homeless population is 7,78,599 people. Delhi had 3.1 percent of the national level, and Bihar and Tamil Nadu had 1.6 percent and 7.3 percent respectively. Many people interviewed chose the streets because paying rent would mean no savings and therefore no money sent back home and hence the street was the only option for them. Their condition is chiefly linked to their lack of adequate shelter. In Delhi, for over a 100,000 homeless people, the government runs 14 night shelters with a maximum capacity of 2,937 people, which is only 3 percent of the homeless people in the city. Outside, in the walled city of Delhi, private contractors called thijawalahs rent out quilts (winter) and plastic sheets (monsoon) for five rupees a night. Iron cots are rented for 15 rupees a night. 71 percent said they had no friends. In a study of homeless populations, homeless men, women and children in four cities reported that they were beaten by the police at night and driven away from their make- shift homes/shelters.

Proposed solutions to urban poverty

1. There should be greater equity in the provision of

basic services as interstate and intercity disparity has acquired

alarming proportions.

2. Small and medium towns, particularly in backward

states, should get special assistance from the central / state

government as their economic bases are not strong enough to

generate adequate resources.

3. Constitutional amendments for decentralization

should be backed up by actual devolution of powers and

responsibilities and their use by the municipal bodies.

4. As much of the subsidized amenities have gone to

high and middle income colonies, the restructure of these

programmes and schemes is needed to ensure that subsidies

WP(C) 8904/09 & connected matters Page 38 of 57 are made explicit through strict stipulations, targeted through

vulnerable sections of population.

5. There is good potential for organising slum

communities as the average size of slum is small.

6. To improve sanitation standards, it is suggested to

construct community toilets where individual toilets are not

possible, to extend sewerage networks to slum areas and

connect toilet outlets with that, and community management of

toilets in common places.

7. Solar, bio-gas and non-conventional energy needs to

be promoted for street lights as well as in household energy use

wherever possible and feasible. Complete coverage of slum

households through electric connections should be ensured.

JHUGGIES & JJ CLUSTERS IN DELHI

44. In the last four decades, on account of pressure on agricultural land and lack of employment opportunities in the rural areas, a large number of people were forced to migrate to large cities like Delhi. However, in cities, their slender means as well as lack of access to legitimate housing, compelled them to live in existing jhuggi clusters or even to create a new one. They turned to big cities like Delhi only because of the huge employment opportunities here but then they are forced to live in jhuggies because there is no place other than that within their means. These jhuggi clusters constitute a major chunk of the

WP(C) 8904/09 & connected matters Page 39 of 57 total population of the city. Most of these persons living in the slums earn their livelihood as daily wage labourers, selling vegetables and other household items, some of them are rickshaw pullers and only few of them are employed as regular workers in industrial units in the vicinity while women work as domestic maid-servants in nearby houses. Their children also are either employed as child labour in the city; a few fortunate among them go to the municipal schools in the vicinity. The support service provided by these persons (whom the Master Plan describes as â city service personnelâ) are indispensable to any affluent or even middle class household. The city would simply come to halt without the labour provided by these people. Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted.

Even though their jhuggi clusters may be required to be legally

removed for public projects, but the consequences can be just

as devastating when they are uprooted from their decades long

settled position. What very often is overlooked is that when a

family living in a Jhuggi is forcibly evicted, each member loses a

â bundleâ of rights - the right to livelihood, to shelter, to health, to

education, to access to civic amenities and public transport and

above all, the right to live with dignity. In this regard, comments

of Professor Bundy on the large number of forced evictions in

South Africa, may be noted:

"There is a sense in which these appalling figures have been cited so often that we are used to them: that we cease to realize their import, their

WP(C) 8904/09 & connected matters Page 40 of 57 horror - what they mean in terms of degradation, misery, and psychological and physical suffering.

Bundy makes the point that "trauma, frustration, grief, dull

dragging apathy and [the] surrender of the will to live" are

indeed some of the effects of forcible evictions on the human

condition. And, the consequences span over multiple areas of

social life: frequently it is the case that families are left

homeless, their social support structures severed and their

welfare services, jobs and educational institutions, rendered

inaccessible. [Occupiers of 51 Olivia Road, Berea Township, and 197 Main

Street, Johannesburg v. City of Johannesburg and Others (2008) ZACC 1:2008 (3) SA

208 (CC):2008(5) BCLR 475 (CC) at para 17]

DELHI GOVERNMENT'S INITIATIVE FOR RELOCATION OF SLUM DWELLERS

45. The Delhi Government vide Cabinet Decision No.510 dated

10th May, 2000 framed Policy Guidelines for implementation of

the Scheme for relocation of JJ clusters and the Policy Guidelines

inter alia reads as follows:

"Government of NCT of Delhi

URBAN DEVELOPMENT DEPARTMENT

VIKAS BHAVAN: NEW DELHI

Sub : Policy guidelines for implementation of the Scheme for Relocation of JJ clusters.

.....

1. Jhuggies will be relocated only from project sites where specific requests have been received from the land owning agencies for cleaning of the project lands.

WP(C) 8904/09 & connected matters Page 41 of 57 No large scale removal of jhuggis should be resorted to without any specific use for the cleared site.

2. Land for relocation of jhuggies will be identified in Delhi and NCR in consultation with the DDA and NCRPB so that it is in conformity with the land use policy laid down under the Master Plan, and the NCR Plan. Land pockets in NCR well connected with the transport system should also be utilised for relocation of JJ dwellers in Delhi.

3. Land will be acquired at the sites identified by the DDA/NCR in small pockets not exceeding 10 acres (4 hectares) near existing residential areas so that cost of provision of peripheral services is minimised.

4. A target of shifting 10,000 jhuggies in 2000-2001 is laid down. This target will be reviewed each year in April by Delhi Govt. based on requests received from land owning agencies.

5. Land will be acquired under the scheme of "large Scale Acquisition for Planned Development of Delhi". Its development and disposal will also be governed by the conditions laid down under Govt. Of India Orders No. F.37/16/50-Delhi(1) dated 2.5.1961 read with GOIâ s Order No. J-20011/12/77-L.II dated 14.2.92 making it compulsory for conversion of plots below 50 sqm. from leasehold to freehold. (Copies enclosed). After acquisition, the land will be placed at the disposal of the Executing Agency by the Lands Deptt. Of Delhi Government. The ownership of the land acquired for relocation will vest with the Delhi Govt. Requests for acquisition will be routed by the Executing Agency through the Urban Development Department of Delhi Government.

6. Cut-off date and eligibility criteria : Cut-off date for beneficiaries would be 30.11.98. To verify eligibility, Ration Cards issued prior to 30.11.98 will be taken into account. The name of the allottee must also figure in the notified Votersâ List as on 30.11.98. Jhuggies who come up after 30.11.98 will be removed without any alternative allotment by the project Executing Agency.

WP(C) 8904/09 & connected matters Page 42 of 57

7. Size of Plot : Keeping in view the scarcity and high cost of land, the plot size now approved for JJ dwellers will be as under :

Size of plot JJ dwellers JJ dwellers who who were have become

eligible before eligible between

31.1.90. 1.2.90 and

30.12.98.

Size of plot 20 Sqm. 15 sqm. for a single

dwelling

unit with

WC.

Ground 100% 100% coverage

8. Layout Plans : The layout plans for the relocation settlement will be prepared by the Executing Agency and proper approval taken from the concerned local body / DDA as the case may be. Executing Agency will follow the ISI Code 8888 for preparing the layout. 50% of gross area will be used for residential plots, 30% for services and 20% for other social infrastructure such as schools, dispensary, community hall and local shopping area and other utility sites.

9. Building Plans : The Executing Agency will also prepare standard building plans for each relocation settlement which are duly approved by the local bodies / DDA. The sanction shall be given to the beneficiary along with the allotment letters / conveyance deed.

10. Construction of Dwelling Units : The construction of dwelling units on the plots will be carried out by the allottee in accordance with the sanctioned lay out plans / building plans within a period of one year from the actual date of shifting. Till completion of the project and handing over of the services to the concerned local bodies, the Executing Agency will exercise the necessary building controls and ensure that the construction activities go on as per the approved plans and building plans. In case, the allottee fails to build even a single floor with WC within a period of one year

WP(C) 8904/09 & connected matters Page 43 of 57 the allotment be cancelled and plot resumed by the Executing Agency.

11. Handing of the services for maintenance to the local bodies : After two years from the date of actual shifting of the cluster to the Resettlement site, the settlement shall stand transferred to the concerned local body for maintaining services, and for exercising of building controls.

12. Cost of land :

Cost of land at Rs.16.00 lakhs per acre or Rs.400 per sqm. Cost of Internal Development : Rs.600 Sqm.

Total Rs.1000/- per sqm. of gross area, or Rs.2000/- per sqm of net area.

13.....

14. Recovery of electricity and water : Charges for consumption of electricity and water be recovered from allottees for community toilets and common water hydrants. Fixed charges shall be recovered by the Executing Agency from each allottee to cover the cost of maintenance and consumption of water for the first two years, during which period metered supply will be provided by DVB / DJB.

15. Water Supply : Individual metered water connections will be given to each allottee within a period of two years of shifting. The reduced norm for supply of water as in the case of unauthorised colonies will be adopted. The work of laying of internal water and sewer lines at the resettlement site shall be executed by the DJB from funds to be provided by the Executing Agency. No departmental charges will however be leviable by DJB for such works. Peripheral and trunk services will be provided by DJB as in the case of other settlement at its own cost.

Water harvesting : The DJB will adopt innovative technology for water harvesting and ground water recharge at the relocation site.

16. Electricity : Individual metered connections will be provided to each allottee. The work of internal electrification as in the case of unauthorised colonies

WP(C) 8904/09 & connected matters Page 44 of 57 will be carried out by DVB. No departmental charges will be levied by DVB for executing the work. Peripheral and trunk services will be provided by DVB at its own cost as in the case of unauthorised colonies.

17. Other developmental works : Other developmental works like laying of roads, drains, developmental of parks, etc. Will be carried out by the Executing Agency. The services shall be transferred to the local bodies / DDA after a period of 2 years from the date of shifting, for maintenance.

18. Density and size of each dwelling unit : Keeping in view the high cost of land in Delhi and the reducing availability, density shall be as follows :

Size Density

15 sqm plot 300 dwelling units per hectare.

20 sqm plot 250 dwelling units per hectare

.

19. Terms of allotment : The grant of freehold plots to JJ dwellers at the relocation site has been agreed to, in principle by Delhi Government subject to clearance by Government of India. Separate instructions with regard to nature and tenure shall be issued shortly.

20. Public Utility sites : Sites for putting up sub- stations by DVB, tubewells and other water related infrastructure as also for primary school, community hall and dispensary will be transferred on a token charge of Re.1/- to the concerned government agency, since cost of such land has already been paid for by other departments of the Government / Delhi Government.

21. Survey of clusters : Prior to relocation and payment of subside by the land owning agency and Delhi Government, a joint survey of the slum cluster will be carried out by the DC of the revenue district, jointly with the land owning agency and Executing Agency.

WP(C) 8904/09 & connected matters Page 45 of 57 The figure of jhuggies to be relocated should be determined on the basis of this survey keeping in view the eligibility criteria.

22. Issue of Laser Cards: - Each allottee of a site and services plot shall be issued a Laser Card by the DC of the revenue district. This card will carry all relevant details of the allottee and his family members. This Laser Card will be used by the District authorities to check allotment of more than one plot to a family.

23. .....

24.....

25.....

Sd/-

(SUMAN SWARUP)

Principal Secretary (UD)

BINDING NATURE OF MPD-2021

46. The Master Plan for Delhi (MPD) - 2021 envisages rehabilitation or relocation of the existing squatter settlement/jhuggi dwellers. It provides for relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for public purpose, in which case, the jhuggi dwellers should be relocated/resettled and provided alternative accommodation. It also provides that resettlement whether in form of in-situ upgradation or relocation should be based mainly on built-up accommodation of around 25 sq.mtrs. with common facilities.

47. It is now well settled that a plan prepared in terms of a statute concerning the planned development of a city attains a statutory character and is enforceable as such. In Bangalore WP(C) 8904/09 & connected matters Page 46 of 57 Medical Trust v. B.S.Muddappa, (1991) 4 SCC 58, the Supreme Court in regard to the scheme prepared under the Bangalore Development Act, 1976, observed :

"The scheme is a statutory instrument which is administrative legislation involving a great deal of general law making of universal application, and it is not, therefore, addressed to individual cases of persons and places. Alteration of the scheme must be for the purpose of improvement and better development of the city of Bangalore and adjoining areas and for general application for the benefit of the public at large."

48. In Delhi Science Forum v. DDA, 2004 (112) DLT 944,

the Division Bench of this court declared the proposed project at Sultangarhi to be illegal and stressed the need to strictly adhere to the MPD provisions by the DDA.

49. A Full Bench of this Court in Joginder Kumar Singh v. Government of NCT of Delhi, AIR 2004 Delhi 258, in the context of clear violations of the Zonal Development Plan (ZPD) under the Delhi Development Act, 1957 by impermissible commercial use of residential areas, went as far to suggest (para 37) that ".....any act or attempt amounts to nothing but mischief with the Planned Development and is violative of Article 21 of the Constitution of India". We may add that the previous plan, i.e. MPD-2001, also made similar provisions for resettlement or in-situ upgradation of JJ clusters.

WP(C) 8904/09 & connected matters Page 47 of 57 SO-CALLED POLICY OF 'RIGHT OF WAY'

50. In our opinion, the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the "Right of Way" is completely contrary to the Stateâ s policy which governs relocation and rehabilitation of slum dwellers. Stateâ s policy for resettlement nowhere exempts persons, who are otherwise eligible for benefit of the said policy, merely on the ground that the land on which they are settled is required for "Right of Way". The respondentsâ have failed to produce any such policy which provides for exclusion of the slum dwellers on the ground that they are living on "Right of Way". We find force in the submission of the petitioners that even if there is any such

policy, it may be for those jhuggi dwellers, who deliberately set up their jhuggies on some existing road, footpath etc, but surely this policy cannot be applied to jhuggi dwellers who have been living on open land for several decades and it is only now discovered that they are settled on a land marked for a road under the Master Plan though when they started living on the said land there was no existing road.

51. Learned counsel representing the respondents fairly conceded that there is no written policy of "Right of Way" but made a faint attempt to justify their stand on the basis of a letter of the Principal Secretary, Urban Development, Government of the NCT of Delhi, which is reproduced below:-

WP(C) 8904/09 & connected matters Page 48 of 57 "R. Narayanaswami

Principal Secretary

Urban Development

Government of the National Capital Territory of Delhi Urban Development Deptt,

Vikas Bhawan, IP Estate New Delhi.

Dated 3/10/2001

Dear SP,

Kindly refer to your note dated 20th August 2001 inFile No.11/DC(S&JJ)/S/2001 seeking advice of the Urban Development Department on the matter regarding status of jhuggis on roads, pavements and berms. In this connection, I am directed to convey Honâ ble Lt. Governorâ s instructions to the effect that encroachers on the right of way of roads (even if they reside there) are not entitled to alternate land. In this regard, the Honâ ble Lt. Governor has categorically observed that this has been explicitly stated in all previous orders and there is no ambiguity about it. He had made these observations on file on 26th September, 2001 following a discussion with you on 25th September, 2001.

You are therefore requested to kindly proceed accordingly to deal with any encroachments, in the manner provided under the DMC Act in so far as roads, pavements and berms are concerned.

This letter issues with the prior approval of the Chief Secretary.

Yours sincerely,

Sd/-

(R.NARAYANASWAMI)

Shri S.P. Aggarwal

Commissioner MCD

Town Hall

Delhi."

WP(C) 8904/09 & connected matters Page 49 of 57

52. We fail to appreciate how the above letter of the Principal Secretary spells out any policy decision on â Right of Wayâ . The letter merely records oral instructions of the Lt. Governor that the jhuggi dwellers on the â Right of Wayâ will not be entitled to relocation. It is also not clear from the letter as to what constitutes â Right of Wayâ . When the petitioners set up their jhuggies several decades ago there was no road. It may be that in some layout plan the land was meant for a road but when they started living there, they could not anticipate that the land will be required in future for a road or for the expansion of an existing road. As long as they were not on an existing road, they cannot be denied the benefit of rehabilitation/relocation. The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their jhuggies without ensuring their relocation would amount to gross violation of their Fundamental Rights. The decision in Wazirpur Bartan Nirmata Sangh v. Union of India relied upon by the respondent has been stayed by the Supreme Court. In

Pitampura Sudhar Samiti v. Govt. of NCT of Delhi (supra),

the Court expressly observed: "No doubt the Government has

been formulating the policies for relocation of JJ clusters keeping

in view the social and humane aspects of the problem. As

already mentioned above, we are not concerned with this aspect

of the matter in the present case which is being attended to by

the Division Bench-II."

WP(C) 8904/09 & connected matters Page 50 of 57 JUDGMENTS IN GROOTBOOM CASE AND JOE SLOVO CASE

53. On behalf of the petitioners reliance was placed on the

judgments of the South African Constitutional Court in Irene

Grootboom case and Joe Slovo Case. On October 4, 2000 the

Constitutional Court of South Africa delivered the decision in the

case of Government of the Republic of South Africa v.

Irene Grootboom and others in respect of housing rights of

persons who were forced to live in deplorable conditions while

waiting for their turn to be allotted low cost housing. In this

case, the Constitutional Court held (relevant paras 19-26, 41-45

and 884) that "everyone has a right to have access to adequate

housing. .....The state must take reasonable legislative and

other measures, within its available resources, to a progressive

realization of this right. .....The state is obliged to take a positive

action to meet the needs of those living in extreme conditions of

poverty, homelessness or intolerable housing".

54. In the case of Residents of Joe Slovo Community,

Western Cape v. Thubelisha Homes and Others [CCT

22/08(2009)ZACC 16(10 June 2009)]. The Constitutional Court

held:

"Any government decision taken and consequent order made regarding the forced eviction of a group of people cannot ignore the enormous impact that a potential forced removal will have on the individual, family, and community at large. No matter how commendable the governmentâ s intentions are regarding the intended use of the land from which the

WP(C) 8904/09 & connected matters Page 51 of 57 community has been removed without the solid promise of alternative housing, evictions may turn out to be a method of brutal state-control and a far cry from the progressive realisation of the socio-economic rights our Constitution guarantees. Courts must remain vigilant to ensure that when the government seeks to evict a community in pursuit of commendable housing plans, the plans must include the guarantee that those who are evicted and relocated have a reasonable opportunity of accessing adequate housing within a reasonable time in relation to the housing projects concerned."

The Court directed the respondents to engage meaningfully with

the residents on the timeframe of the relocation. The Court

further directed the respondents to consult with the affected

residents on each individual relocation specifically. Specifically,

the engagement was to take place one week before the

specified date for relocation. The Court went as far as specifying

some of the issues to be included in the engagement, clearly

pointing out that these were not exhaustive. The respondents

were to engage with the residents on:

ï · ascertaining the names, details and relevant personal circumstances of those affected by each relocation;

ï · the exact time, manner and conditions under which the relocation would be conducted;

ï · the precise TRUs to be allocated to those relocated;

ï · the provision of transport for those to be relocated and for their possessions;

ï · the provision of transport facilities to those affected from the temporary accommodation

to amenities such as schools, health facilities and places of work; and the prospect of the subsequent allocation of permanent housing to those relocated to temporary accommodation, including information on

WP(C) 8904/09 & connected matters Page 52 of 57 their current position on the housing

waiting list and the provision of assistance to those relocated in the completion of housing subsidy application forms (para 7(11)).

55. We find no difficulty in the context of the present case, and

in the light of the jurisprudence developed by our Supreme Court and the High Court in the cases referred to earlier, to require the respondents to engage meaningfully with those who are sought to be evicted. It must be remembered that the MPD-2021 clearly identifies the relocation of slum dwellers as one of the priorities for the government. Spaces have been earmarked for housing of the economically weaker sections. The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction.

56. The respondents in these cases were unable to place records to show that any systematic survey had been undertaken of the jhuggi clusters where the petitioners and others resided. There appears to be no protocol developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation etc.

WP(C) 8904/09 & connected matters Page 53 of 57

57. This Court would like to emphasise that the context of the MPD, jhuggi dwellers are not to be treated as â secondaryâ citizens. They are entitled to no less an access to basic survival needs as any other citizen. It is the Stateâ s constitutional and

statutory obligation to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller is not worse off. The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such jhuggi dweller.

58. It is not uncommon to find a jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the jhuggi dweller resided at that place. These documents are literally a matter of life for a jhuggi dweller, since most relocation schemes require proof of residence before a â cut-off dateâ . If these documents are either forcefully snatched away or destroyed (and very often they are) then the jhuggi dweller is unable to establish entitlement to resettlement. Therefore, the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility keeping in view the desperate need of the jhuggi dweller for an alternative accommodation. A separate folder must be preserved by the agency or the agencies that are involved in the survey for each jhuggi dweller with all relevant documents of that jhuggi dweller in one place. Ideally if these documents can be digitalized then there will be no need for WP(C) 8904/09 & connected matters Page 54 of 57 repeated production of these documents time and again whenever the jhuggi dweller has in fact to be assigned a place at the relocated site.

59. Each member of the family of the jhuggi dweller is

invariably engaged in some livelihood from morning to night. It is, therefore, not uncommon that when a survey team arrives at a jhuggi camp, some or the other member may not be found there. By merely stopping with that single visit, and not finding a particular member of that family, it may not be concluded that no such member resides in that jhuggi. Such an exercise, if it has to be meaningful, has to be undertaken either at the time when all the members of the family are likely to be found. Alternatively there should be repeated visits by the survey team over a period of time with proper prior announcement. If jhuggi dwellers are kept at the centre of this exercise and it is understood that the State has to work to ensure protection of their rights, then the procedure adopted will automatically change, consistent with that requirement.

60. The further concern is the lack of basic amenities at the relocated site. It is not uncommon that in the garb of evicting slums and â beautifyingâ the city, the State agencies in fact end up creating more slums the only difference is that this time it is away from the gaze of the city dwellers. The relocated sites are invariably 30-40 kilometers away from a city centre. The situation in these relocated sites, for instance in Narela and Bhawana, are deplorable. The lack of basic amenities like

 drinking water, water for bathing and washing, sanitation, lack of access to affordable public transport, lack of schools and health care sectors, compound the problem for a jhuggi dweller at the relocated site. The places of their livelihood invariably

continue to be located within the city. Naturally, therefore, their lives are worse off after forced eviction.

61. Each of the above factors will have to be borne in mind before any task for forceful eviction of a jhuggi cluster is undertaken by the State agencies. It cannot be expected that human beings in a jhuggi cluster will simply vanish if their homes are uprooted and their names effaced from government records. They are the citizens who help rest of the city to live a decent life they deserve protection and the respect of the rights to life and dignity which the Constitution guarantees them.

CONCLUSION

62. It is declared that :

(i) The decision of the respondents holding that the petitioners are on the â Right of Wayâ and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.

(ii) In terms of the extant policy for relocation of jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the petitioners will be considered for relocation.

WP(C) 8904/09 & connected matters Page 56 of 57 (iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021 subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a â meaningfulâ manner, as

indicated in this judgment.

(iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at the site of relocation.

63. With the above directions, these petitions are allowed.

64. A certified copy of this order be sent to the Member Secretary, Delhi Legal Services Authority (DLSA) with the request that wide publicity be given to the operative portion and directions of this judgment in the local language among the residents of jhuggi clusters in the city as well as in the relocated sites. The DLSA will also hold periodical camps in jhuggi clusters and in relocated sites to make the residents aware of their rights. A copy of this order be also sent to the Chief Secretary, Government of National Capital Territory of Delhi, for compliance.

Chief Justice

February 11, 2010 S. Muralidhar, J "v/nm"

WP(C) 8904/09 & connected matters Page 57 of 57