$~

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

Reserved on: 7th December, 2018
Decided on: 18th March, 2019

\+ **W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17**

AJAY MAKEN & ORS. ..... Petitioners

Through: Mr. Aman Panwar with Mr. S.Kumar, Mr. Mudit Gupta, Mr. Nitin Saluja and Mr. Sangam Kumar, Advocates for Petitioner No.1.
Mr. Colin Gonsalves, Senior Advocate with Ms. Anupradha Singh, Advocate for Petitioner Nos.2 & 3.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Pinky Anand, ASG with Mr. Jagjit Singh, Mr. Om Prakash Ms. Snigdha Mehra, Advocates for Railways.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Advocates for Union of India (MoUD)
Mr. Sanjay Ghose, ASC, GNCTD.
Mr. Ravinder Chauhan, Advocate for DUSIB.
Mr. Sunil Fernandes, Standing Counsel for BSES/RPL with Mr. Aman Vidyarthi, Ms. Anju Thomas & Ms. Priyansha Indra, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

CONTENTS

J U D G M E N T

Dr. S. Muralidhar, J.:

> *A simple vote, without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched. We do*

not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.

~Nelson Mandela (1991)

1. This petition was filed on 13th December 2015, by a two-time Member of Parliament from New Delhi, also a three-time member of the Delhi Legislative Assembly, to seek reliefs in relation to the forced eviction of around 5000 dwellers of a *jhuggi jhopri basti* (JJ *basti*)[1] at Shakur Basti (West) near the Madipur Metro Station in Delhi on the previous day i.e. 12th December, 2015. Originally filed as a Public Interest Litigation, two dwellers of the JJ *basti* were later impleaded as Petitioners 2 and 3.

2. Several officials of the Northern Railway in the Ministry of Railways, Union of India (Respondent No.1) (hereafter 'Railways'), which admittedly is the agency of the government holding the land in question on which the JJ *basti* is located, with a large contingent of the Delhi Police (Respondent No.3) reached the JJ *basti* at around 10am on 12th December 2015 to commence the demolition. Thousands of children, women and men were rendered homeless. The 1200 *jhuggis* in the *basti* were providing shelter to nearly 5000 people.

[1]The word *jhuggi* is defined under Section 2 (f) of the Delhi Urban Slum Improvement Board Act, 2010 (DUSIB Act) to mean a temporary or *pucca* structure built for residential purpose not in conformity with the Delhi Master Plan; and the term '*jhuggi jhopri basti*' is defined under Section 2 (g) of the DUSIB Act to mean a group of *jhuggis* unfit for human inhabitation; or which by reason of dilapidation, overcrowding, faulty arrangement and design of such *jhuggis*, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and is inhabited by at least 50 households as of 31st March 2002.

II

Orders of this Court

Order dated 14th December 2015

3. When the petition was first heard on 14th December 2015, the Petitioners contended that the demolition had taken place in violation of the law explained in various judgments of the Supreme Court and this Court. It was submitted that the displaced persons were "completely helpless and exposed to the extreme cold weather". It was argued that the Delhi Urban Shelter Improvement Board ('DUSIB') (Respondent No.2), a statutory body constituted under the Delhi Urban Shelter Improvement Board Act, 2010 ('DUSIB Act') as well as the Government of the National Capital Territory of Delhi (GNCTD), (Respondent No.4) had been unable to provide the displaced persons with adequate relief and rehabilitation and that without any alternative arrangements, a large number of the displaced persons were being forced to live in the open at the site of the demolition. It was also pointed out that the demolition took place in complete violation of the Master Plan for Delhi (MPD) 2021, notified on 7th February, 2007.

4. Newspaper clippings describing the large-scale demolition were enclosed with the petition. These reported *inter-alia* that a six-month old child had died during the demolition drive after a piece of furniture fell on her head. The Railways, however, contended that the child had died more than an hour before the commencement of the drive. To the journalists who visited the site of the demolition, many residents claimed that they had been residing there for nearly two decades, since 1996.

5. On 14th December, 2015, this Court passed a detailed order after hearing counsel for the Petitioners and the counsel for the Railways, the Union of India, the GNCTD, the Delhi Police and DUSIB. The Court noted that it was not in dispute that "nearly 5000 people have been rendered homeless and continue to remain on the site, facing the extreme cold without any roof over their heads, and having lost their belongings." The Court noted that this was a dire circumstance in which the life and liberty of the homeless residents of Shakur Basti were in grave danger. The Court enquired whether a survey had been conducted in Shakur Basti in order to ascertain how many of its residents were entitled to rehabilitation prior to being evicted. This was in the context of the decision of this Court in ***Sudama Singh v. Government of Delhi (2010) 168 DLT 218 (DB)*** (by a Bench of which one of us, S. Muralidhar, J., was a member), which will be discussed in detail hereafter.

6. In its order dated 14th December 2015, this Court noted the response from the Railways that it was not possible to confirm whether any such survey had been conducted. It was, however, not able to be confirmed that notices were issued to the slum dwellers in advance. The Court then directed the Railways and the Delhi Police to file separate affidavits through responsible officers "placing on record a step by step, date-wise narrative of how the demolition drive came about." The Railways were asked to place before the Court the details of the survey conducted in terms of the judgment in ***Sudama Singh*** "for preparing the comprehensive list of persons, including men, women and children." The details of when the notices were issued to each such person and whether and how the notices served were also to be indicated. The copy of the survey report was also asked to be enclosed with

the affidavit.

7. While the Railways claimed that the task of conducting the survey had been outsourced to the DUSIB, counsel appearing for DUSIB on that date stated that prior to the demolition drive they were not put on notice or even consulted. DUSIB was then asked by this Court to file an affidavit of its Chief Executive Officer ('CEO') of its involvement at any of the stages prior to this demolition drive and to "place on record the relevant documents in that regard."

8. At the hearing on 14th December 2015, the Court was informed that even while the hearing was in progress and the Chief Minister of Delhi and the Union Minister of Railways were meeting to work out "in a co-ordinated manner, the relief and rehabilitation measures that required to be put in place on an urgent basis." The Court noted in its order dated 14th December, 2015 that all counsel requested that the Court should issue directions so that the relief and rehabilitation measures are carried out without let or hindrance. The Court then observed in paras 9 and 10 of the order as under:

> "9. Given the scale of the human tragedy, the Court expects all the parties before the Court to act in co-ordination and in cooperation to ensure that immediate relief for rehabilitation is made available to the persons who have lost their homes. This should happen without prejudice to the respective stands of the Respondents on the issue of the 'legality' of the Shakur Basti slum as it existed.
>
> 10. The Court was informed that the Railways were concerned about the safety of the persons who were living perilously close to the railway tracks and that the forced

> eviction was to ensure that they are not exposed to the attendant risks. The Court cannot help but observe that the action taken has perhaps exposed the displaced persons to a graver risk particularly concerning that it has taken place in the peak winter season, and when one considers that the displaced population comprises children. In fact, there has been an unfortunate demise of one child. The Court has been assured that the authorities are taking prompt action in that regard."

9. The Court was informed by counsel for GNCTD that there were ongoing efforts of distribution of food packets, blankets, and medicines. Facilities were being made available for providing "primary, secondary and tertiary medical treatment to those in dire need." The Railways assured the Court of extending their "unstinted cooperation to the Government of NCT of Delhi in providing relief and rehabilitation to the affected population." The Court observed that it would not like to specify what form of shelter could be provided, but impressed upon the GNCTD and the Railways to "act immediately, in coordination, to ensure that the minimum need of decent shelter is provided to the homeless displaced population at Shakur Basti." It was made clear that the displaced population should not be subjected to any further coercive action. The Court directed the GNCTD and the Railways "to pay particular attention to the needs of shelter, health, food and education of the displaced population." Affidavits were asked to be filed by both Railways and GNCTD through responsible officers not later than 16th December, 2015 by way of compliance with the directions. Each of them was asked to depute "a responsible officer conversant with the facts to remain in the Court with the relevant records on the next date of hearing."

Order dated 16th December 2015

10. The next hearing of the case took place on 16th December, 2015. An affidavit in the meanwhile was filed on behalf of the Railways by its General Manager stating that an area of six hectares of land near the cement siding at Shakur Basti Railway Station was under 'soft encroachment'. It was claimed that the area was required to be developed "for passenger amenities like platforms and other facilities" with a view to decongest the New Delhi or Old Delhi Railways Stations.

11. The Railways adverted to the history of removal of encroachments since 25th February, 2006. The Court noted that anti-encroachment drives had been undertaken periodically in May 2008, July 2011 and February, 2013. The affidavit stated that after 9th February 2013, the Railways had proposed removal of the Shakur Basti on several dates from 20th July 2013 till 14th March, 2015. It claimed that ample opportunities have been given to the encroachers to vacate the Railway land by pasting such notices in advance. However, there was nothing placed on record to show that notices were in fact served on or made known to any of the *jhuggi* dwellers.

12. As regards the events of 12th December 2015, the date of the demolition drive, it was stated that Railway officials were deputed to supervise the demolition and reached the site at 9.30 am. It was claimed that on that very date the Railways had removed the 1200 'encroachments.' In perhaps a clear admission that the directions in ***Sudama Singh*** (*supra*) were not complied with, the Railways pointed to the fact that under the DUSIB Act the responsibility for undertaking a survey was that of DUSIB. The Railways

claimed that Rs.11.25 crores had been deposited with the predecessor of DUSIB i.e. the Slum and JJ Wing of the Municipal Corporation of Delhi (MCD) way back in 2003 and that no action had been taken in that regard.

13. During the hearing on 16th December, 2015 Mr. Jagjit Singh, learned counsel for the Railways, was candid that "no survey was ever conducted of the *jhuggi* dwellers at Shakur Basti either before the present demolition which took place on 12th December, 2015 or prior to any of the earlier demolitions." The affidavit of the Railways referred to 'Works Manual' of the Railways, para 8.4 of which dealt with 'removal of encroachments'. The Court noted in its order of 16th December 2015 that the said 'Works Manual' required a certain protocol to be followed and status report to be submitted by Railway officers about the steps taken for removal of encroachments. However, the affidavit was silent on "whether in respect of the JJ cluster at Shakur Basti such report was submitted at any time."

14. In its order dated 16th December 2015, the Court concluded, upon perusing the affidavit of the Railways, as under:

> "10. It appears to the Court that there is a clear admission by the Railways that the binding directions of this Court in *Sudama Singh* (*supra*) were not complied with. The Railways admit that they did outsource the task of removal of encroachments to the DUSIB but went ahead with the demolitions without waiting for the survey to be conducted by DUSIB as statutorily mandated by the DUSIB Act. It is also admitted that the Railways sought and received the assistance of the Delhi Police. The unilateral action of forced eviction of the *jhuggi* dwellers of Shakur Basti on 12th December2015 by the Railways, with the assistance of

> the Delhi police, resulted in a grave violation of the rights of life and liberty of the *jhuggi* dwellers, comprising children and adults, including the loss of shelter and personal belongings and being subjected to grave risk to their life and liberty in peak winter. The demolition exercise undertaken by the Railways on 12th December 2015 was contrary to the requirements of the law and the Constitution."

15. The Court conveyed to the Railways through the standing counsel that the Railways "should by way of apologising to the *jhuggi* dwellers make immediate amends by offering relief measures on its own, independent of the relief measures being undertaken by other agencies."

16. At the hearing on 16th December 2015, three issues were highlighted by counsel for the Petitioner as well as the two residents of the Shakur Basti who were seeking impleadment. First concerned the inadequate distribution of food packets; second, the medical relief and third, the insufficient lighting in the area. As far as food and medical relief were concerned, the Court observed that "the Railways can and should provide immediate relief to the affected persons on an emergency basis." Counsel for the Railways on instructions assured the Court "the Railways will not be found wanting in that regard."

17. The Delhi Police filed an affidavit through its Commissioner stating that the Railways had sent them a request by letter dated 3rd November, 2015 for providing adequate Police force in order to ensure maintenance of law and order during the encroachment removal drive. The Court noted that the

affidavit was silent on whether any advance intimation was given to the *jhuggi* dwellers of the possibility for removal although the Railways had in the letter dated 3rd November, 2015 proposed 12th December, 2015 as the date for the removal drive. According to the Delhi Police, Intelligence reports had been obtained from various internal departments to decide on the kind of force required. Two companies of male forces and two platoons of female forces equipped with anti-riot equipment were made available. The further details disclosed by the Delhi Police were noted by the Court in its order as under:

> "13. It is claimed that the programme of demolition was planned to be carried out at 11am under the supervision of the Station House Officer (SHO), Punjabi Bagh. At 10.30 am a call was received from the West District Control Room that the *jhuggis* were being demolished and in the course of the same, one baby had died and that help was needed. It is stated that an emergency response vehicle was sent for verification with one Head Constable Naresh who confirmed the death of a six months' old female child. It was claimed that the father, uncle and a neighbour were contacted. Reference is made to the post-mortem report which gives the cause of death as "due to shock as a result of chest and head injury due to blunt force impact. All injuries are ante-mortem in nature and possible in manner as alleged." It is stated that despite statements given by the father and uncle that they have no suspicion about anybody, FIR No. 1291/2015 under Section 304A IPC was registered."

18. This Court further noted as under:

> "15. The affidavits of both the Railways and the Delhi Police, even while purporting to give a step-by step account of the events preceding the demolition, are silent on which agency or agencies were actually engaged/involved in the

> demolition of the *jhuggis*; or whether JCBs (bulldozers/heavy equipment excavators) were deployed and if so how many and for what purpose and what precautionary steps were taken if any for ensuring the safety of the *jhuggi* dwellers and their belongings. In the further affidavits that will be filed by the Railways and the Delhi Police in the matter, explaining the steps they plan to take for providing relief and rehabilitation to the dwellers of the Shakur Basti JJ Cluster, these aspects will be addressed."

19. Counsel appearing for Delhi Police and the learned Additional Solicitor General of India (ASG) conveyed the apology of the Delhi Police for the demolition action and stated that they would hereafter draw up a detailed protocol to be followed whenever asked by State agencies to be associated in any demolition drive keeping in view legal, and constitutional and international human rights obligations of the State.

20. The GNCTD, at the hearing on 16th December 2015, handed over an affidavit enclosing photographs of the current status of the site. It was stated that the GNCTD was providing food, drinking water, medicines, blankets and material for tents. It had deployed four mobile toilets and seven rickshaw toilets at the site. Six light towers had been placed at the site. According to the GNCTD, two quick response teams and 90 civil defence volunteers were posted to provide assistance to the affected persons. A CAT Ambulance was also stated to be stationed at the site round the clock. A mounted tanker had been deployed for refilling two water tankers deployed by the Delhi Jal Board (DJB).

21. Turning to the affidavit of the DUSIB, the Court in its order dated 16th December 2015 noted that under Section 9 of the DUSIB Act, DUSIB had to mandatorily undertake a survey of the concerned *jhuggi* cluster. It was clear that till then no survey had been formally undertaken by the DUSIB. The Court then observed as under:

> "Till date, therefore, there is no authentic information on how many dwellers resided in the Shakur Basti JJ cluster prior to demolition and how many are required to be resettled/rehabilitated."

22. The Court then issued the following directions in the order dated 16th December 2015:

> "Considering that there is an immediate need to enumerate a complete list of persons whose *jhuggis* were demolished in the drive that took place on 12th December 2015, the Court directs that the DUSIB will immediately nominate one senior officer to remain at the site from 8 am to 8pm daily, along with such number of support staff as is thought necessary, till such time that a comprehensive survey, under the directions and supervision of DUSIB is completed. It is directed that the Railways and the Departments of the GNCTD, including the Food and Civil Supplies Department and the concerned District Magistrate, will work in coordination with DUSIB in enabling it to prepare the list of the persons whose *jhuggis* were demolished on 12th December 2015. This will include providing information and documents that may be asked for by DUSIB. If any request is made by DUSIB to the Railways for deployment of additional personnel for carrying out the survey, the Railways will immediately address that requirement."

23. The Court appointed DUSIB as the nodal agency "to receive all the complaints/requests from the displaced population and then pass on that

information to the agencies so that immediate targeted relief can be provided by the agencies." The Court was informed that many of the dwellers had lost their *jhuggis* and their belongings, and were reluctant to leave the place. It was noted by the Court as under:

> "This is understandable. It is stated that some tarpaulins have been provided to them for their immediate need for shelter. The Court would nevertheless like the agencies to explore the possibility of ensuring further safe and secure means of dwelling for the displaced population including providing an option of occupying some temporary shelter at the nearest possible location. The Court expects the agencies to act in a coordinated fashion so that there is no duplication of efforts and at the same time relief is provided to every affected person. The agencies must be able to identify, within the displaced population, those that are most vulnerable and in need of immediate relief and ensure that they are not denied such relief."

24. The National Human Rights Commission ('NHRC') was requested by the Court to depute one senior official to visit the site and submit a report to the Court "on the extent of relief and rehabilitation that is being provided to the dwellers and to give suggestions as to how this can be further improved." The NHRC official could "take the assistance of the DUSIB in carrying out this task." This was "with a view to having an independent assessment of the relief and rehabilitation measures since a grievance has been expressed by learned counsel for the Petitioner that the measures taken at present are inadequate."The officer of the NHRC was requested to submit a report on the next date. Each of the Respondents before the Court was asked to file in coordination and consultation with each other, a proper comprehensive plan for relief and rehabilitation of the displaced population

at Shakur Basti.

25. Pursuant to the above order Mr. A.K. Parashar, Joint Registrar Law NHRC visited the site, interacted with the officials of the DUSIB, and submitted a detailed report dated 21st December 2015 before this Court on specific aspects of food distribution, medical assistance and lighting arrangement.

26. DUSIB also undertook a joint survey with the Railways and placed a report before the Court. A total of 1362 families were surveyed of which 237 could not give any documentary evidence of having stayed at the JJ cluster. As regards the actual number of persons affected, the break-up of the total of 4968 was given as children (below 18 years)-1890, men-2147, women-885 and (men and women) older than 60 years-46.

Hearing on 22nd December 2015

27. The Court was informed at the hearing on 22nd December 2015 that the detailed survey was still ongoing and would be completed within 4 weeks. Steps were to be taken to notify the JJ *basti* where the demolition took place on 12th December 2015 at the Shakur Basti cement siding area as a '*Basti*' under the DUSIB Act. Counsel for the DUSIB informed the Court that "some identity paper will be issued to each of the persons whose names have been included in the list of the surveyed persons so that the relief measures are able to be properly targeted."

28. The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 (the

2015 Policy) was also enclosed with the survey report. It was noticed by the Court in its order dated 22nd December 2015 in para 12 that under the caption, 'Who is eligible for rehabilitation and relocation', the 2015 Policy stated as under:

> "JJ Clusters which have come up before 01.01.2006 shall not be removed (as per NCT of Delhi laws (Special Provisions) Second Act, 2011) without providing them alternate housing. *Jhuggis* which have come up in such JJ Clusters before 14.2.2015 shall not be demolished without providing alternate housing; (this is in supersession of the earlier cut-off date of 04.06.2009 as notified in the guidelines of 2013)"

29. No new *jhuggis* were to be allowed in Delhi after 14th February 2015. As regards in-situ rehabilitation, it was stated that DUSIB would provide alternate accommodation to those living in JJ Clusters, either on the same land or in the vicinity. The terms and conditions of such alternate accommodation were being separately notified. It was further stated that subject to DUSIB receiving cooperation from all the land owning agencies, the task of rehabilitation of all the JJ Clusters in Delhi was expected to be completed in the next 5 years. As far as the present case was concerned DUSIB sought the cooperation of the Railways "in drawing up a proper plan for rehabilitation or in-situ rehabilitation of the affected population of dwellers in Shakur Basti." DUSIB referred to Section 10 of the DUSIB Act on the aspect of "Removal and resettlement of *jhuggi jhopri Bastis*". This will be discussed in some detail hereafter.

30. The Court at the hearing on 22nd December 2015 noted that the Ministry of Urban Development (MoUD), Government of India, which had been

impleaded as a party (Respondent No.5) undertook to file an affidavit before the next date, "placing on record the stand of the MoUD in the matter of recognition of entitlements of *jhuggi* dwellers to relief, in-situ rehabilitation or to resettlement in the event of removal." In its order dated 22nd December 2015, the Court clarified that the affidavit "should also state if there is any separate policy that is being followed in this regard as far as JJ *bastis* on lands belonging to the Central Government or its agencies are concerned and if so, whether it is proposes to bring it in line with the DUSIB Act."

31. DUSIB undertook to issue a clarification that the expression 'JJ Clusters' used in the 2015 Policy would be read as 'JJ *Basti*' as defined in Section 2(g) of the DUSIB Act. Counsel for the DUSIB informed the Court that the amendment of Section 2 (g)(iii) of the DUSIB Act to substitute the words and figures '31.03.2002' with '1.1.2006' had already been passed by the Delhi Assembly and was awaiting notification of the Lieutenant Governor (LG) of Delhi.

32. The GNCTD presented an affidavit setting out steps taken by it for providing relief to the dwellers of Shakur Basti, who were affected by the demolition on 12th December 2015. This report stated that the Director of Education had on 21st December 2015 sent a report stating that 461 students attended Government schools and 4 MCD schools in and around the affected sites. The letter from the DoE addressed to the Addl. District Magistrate (ADM) West *inter alia* stated as under:

> "3. After prolonged interaction, the following inputs have been received:

a. A total of 467 students of six Govt. & four MCD schools belong to the area where the eviction took place.

b. After eviction process, most of the affected families have relocated to an adjoining vacant area.

c. Over 70% of the students are attending their classes uninterruptedly and in proper uniform.

4. Instructions were passed on to the HOSs concerned to monitor the attendance of the students coming from the affected area on regular basis and extend relaxations in attendance, uniform and books/writing material etc. They were also asked to identify such students who have lost their books, uniform etc. during the eviction and arrange to provide the same to them on urgent basis. SMC Members and NGOs were also requested to extend necessary help to the schools.

5. All the HOSs and other looked very concerned and assured that they would do their best to see that the studies of the affected students are not hampered in any way.

6. The Officers also visited the concerned MCD schools and interacted with a few students coming from Shakur basti area. They were asked to spread a message around in the area that if any child had stopped attending school for want of books, uniform etc., he should report back as the desired articles would be provided by the school concerned free of cost. Similar request was also made to the SMC Members and the NGOs."

33. The Court noted in its order dated 22nd December 2015 that it was also informed that:

"many of the dwellers in Shakur Basti whose *jhuggis* were demolished on 12th December 2015, were construction workers who were required to be registered under Section

> 12 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 (BOCW RE & CS Act) read with the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules 1996 (Delhi BOCW RE & CS Rules)."

34. The Court was assured that "by the next date steps will be taken to have the construction workers residing at the site in Shakur Basti where the demolition took place registered under the aforementioned Act and Rules."

35. The Railways filed a separate affidavit stating that in the demolition drive undertaken on 12th December 2015, 3 JCBs and 1 truck were deployed. Counsel for the Railways, on instructions, stated that:

> "no further demolition drive will be undertaken by the Railways to remove the JJ *bastis* and *jhuggis* in any of its other lands without first consulting DUSIB and the Delhi Administration. He further states that as far as dwellers of the JJ *Basti* in the cement siding area of Shakur Basti are concerned, the Railways will cooperate with DUSIB in drawing up a proper plan/scheme for in-situ rehabilitation or resettlement consistent with the requirements of the DUSIB Act."

36. In para 27 of the order dated 22nd December 2015, the Court noted as under:

> "27. In a rough sketch plan enclosed with the affidavit of the Railways, the locations of the five clusters on the cement siding of Shakur Basti which were demolished have been marked with letters A to E. It is stated that the dwellers have since returned to the said locations. Mr Jagjit Singh states that while the Railways would not disturb any of the said locations, i.e., at A,B,C,D &E there are other vacant stretches in the area which require to be cordoned

> off immediately to prevent further encroachment. He states that steps in this regard will be taken without in any manner disturbing any of the dwellers and in consultation with the NHRC. The said statement is taken on record. The Railways will place on record a further affidavit by the next date of hearing explaining what steps have been taken to cordon off the vacant areas."

37. The Delhi Police informed the Court that investigations into the death of the 6 month-old baby was at an advanced stage, and would be completed in 15-20 days.[2] On the issue of a need for a protocol, the Court in its order dated 22nd December 2015 noted as under:

> "29. One aspect that has been highlighted in the previous orders is the need for a detailed protocol to be drawn up for the steps to be taken prior to, during and after for removal of *jhuggis* and JJ *bastis*. Under the DUSIB Act, the responsibility for conducting surveys, ascertaining which of the JJ *Bastis* and *jhuggis* would be entitled for in-situ improvement/development or resettlement and rehabilitation vests with DUSIB.
>
> 30. Inasmuch as the admitted position is that the present demolition of the *jhuggis* at the JJ *Basti* in the cement siding of Shakur Basti took place without consulting DUSIB or the GNCTD, and without conducting a survey, it has become imperative for a proper protocol to be drawn up. The Court is of the view that such a protocol should prepared by DUSIB, which is the nodal agency, entrusted with the statutory responsibility under the DUSIB Act, in consultation with all the land owing agencies and civil society organisations in the area of housing rights (who

[2]A separate PIL seeking an inquiry into and compensation for the death of the child being W.P. (C) 11697 of 2015 (*Premsagar Pal v. Union of India*) was dismissed on 16th December 2016, when despite opportunities the child's parents did not come forward to get impleaded as co-petitioners. Later, by an order dated 17th March 2017, in an application seeking revival of the petition, the parents of the child were permitted to file a separate substantive petition for the said reliefs.

would represent the interests of the *jhuggi* dwellers). It is essential that a uniform approach is adopted as regards all the *jhuggis* and JJ *Bastis* in the NCT of Delhi.

31. The protocol should list out the various stages, beginning with a comprehensive survey, the drawing up of list of persons eligible for the various proposed measures in terms of the scheme prepared under the DUSIB Act, the actual provision of the relief by way of in-situ upgradation or resettlement and rehabilitation measures as the case may be, the precautions to be taken in the event of removal and the measures to be taken post removal. This protocol shall be followed by all agencies including the Delhi Police in the event of any action for removal of JJ *Bastis* in the future.

32. It is directed that DUSIB will convene a meeting of all the land owning agencies in the NCT of Delhi, as well as the Delhi Police, who shall, irrespective of their stand in relation to the DUSIB Act, participate in such meeting in a spirit of co-operation and give their suggestions for what should go into the protocol. The protocol will be drawn up keeping in view the requirements of the Constitution, the DUSIB Act as well as India's international human rights obligations flowing from the International Covenant on Economic Social and Cultural Rights, 1966 which has been ratified by India and the provisions of which form part of 'human rights' as defined under Section 2(d) read with Section 2 (f) of the Protection of Human Rights Act, 1993.

33. The meeting for the above purpose shall be convened by DUSIB not later than four weeks from today and a draft protocol prepared not later than four weeks thereafter. The written suggestions from all the land owning agencies, the Delhi police, the civil society organizations working in the area of housing rights, and any of the *jhuggi* dwellers shall be taken into consideration while preparing the draft protocol. The said draft protocol will be placed before the Court by DUSIB. Any irreconcilable differences that may

> arise among the agencies can be brought to the attention of the Court.
>
> 34. It is clarified that the nodal agency for the relief and rehabilitation measures will continue to be DUSIB. All the Respondents are directed to continue to extend their complete co-operation to DUSIB."

Hearing on 27th January 2016

38. The case was next taken up for hearing on 27th January 2016. On the question of water supply and distribution of ration, the Court impleaded the BSES Rajdhani Power Ltd. (BRPL), the DJB and the Department of Food and Supply (DFS) GNCTD as party Respondents. As regards the lighting, the Court was assured by the Railways that additional halogen lamps had been installed on the existing street lights to enhance the lighting in the area. The Court further directed as under:

> "7. The Railways should make the necessary arrangements to have adequate number of mast lights for the common areas of the five jhuggi clusters keeping in view the needs of safety and security of the residents. Apart from replacement of the mast lights that were provided by the DMA (which appear to have been removed) the Railways will provide without unnecessary delay such additional number of mast lights, which will be assessed in coordination with the nodal agency, i.e., DUSIB."

39. The Court was of the view that the system of BRPL supplying electricity upon payment of the requisite charges should be resumed. It is asked to coordinate from the DUSIB. The Court further directed that BRPL will coordinate with DUSIB and take necessary steps to revive the system of supply of electricity to the dwellers in the 5 clusters in the Shakur Basti area "on the same basis as it was being prior to the demolition."

40. The Court then discussed the survey report of DUSIB, which after the draft list was put up by the DUSIB was inspected by as many as 915 dwellers and 84 had submitted their objections. It was pointed out by learned counsel for the DUSIB "that the draft list of *jhuggi* dwellers was inspected by as many as 950 dwellers and 84 have submitted objections to it." The Court directed the agencies to respond to the draft protocol prepared by DUSIB not later than 12th February 2016.

Orders Re: Draft Protocol

41. On 25th February, 2016 the Court was informed by the DUSIB that comments from some of the agencies including the MoUD had been received and that the DUSIB was in the process of drawing up the Draft Protocol, which exercise would be completed within 4 weeks. At the hearing on 25th February 2016 another affidavit of DUSIB was handed over in which it was mentioned that after examining the objections received after 29th January 2016 the total units affected by the demolition was determined as 1568 involving 5650 persons. Another list of 252 heads of families/persons were said to be left out. DUSIB was asked to verify these details and include the eligible names in the list. On the aspect of the BOCW Act, a further affidavit was asked to be filed by the GNCTD.

42. At the hearing on 9th May 2016, the DUSIB placed the Draft Protocol on record. The Court permitted all parties to file their responses to the said Draft Protocol by way of an affidavit within 4 weeks.

43. At the hearing on 11th November 2016, the ASG appearing for Railways offered to hold meetings of the Respondents/agencies to sort out the differences concerning the Draft Protocol. This assurance was held out again at the following hearing on 13th January 2017.

Order dated 12th May 2017

44. The issue of providing toilet facilities and electricity engaged the attention of the Court at the hearing on 12th May 2017. The order passed by it on that date reads thus:

> "1. There is an additional affidavit dated 9th May, 2017 filed by the Delhi Urban Shelter Improvement Board ('DUSIB') where *inter alia* on the issue of provision of toilets it is stated that at present there are five Mobile Toilet Vans ('MTVs) having seventy toilet seats in the area. It is stated that as per the norms, there is an additional need of 120 toilet seats. The DUSIB is willing to provide prefab cubical toilet complex in addition to the existing 70 seats in 5 MTVs at its own cost. It is stated that prefab cubical toilet seats are more efficient and hygienic. It is further stated that the Railways have not agreed to the installation of such prefab cubical toilet seats or to increase the number of MTVs.
>
> 2. After hearing the submissions of learned counsel for the parties, the Court is of the view that the provision of a toilet is a very basic human need which ought not to be denied. Considering the impending summer followed by the monsoon, this is an issue on which there should be no reservation expressed by the Railways as it concerns sanitation of the area and health of the dwellers. In that view of the matter, the Court directs that DUSIB will be permitted by the Railways to install the prefab cubical toilet seats as proposed by DUSIB subject to the understanding that this will be ultimately removed at the cost of DUSIB

subject to the orders of the Court. The work be started within a period of two weeks from today and be completed before the onset of the monsoon.

3. As regards electricity, the affidavit explains that the estimate now given by the BSES for giving connections to the dwellers of the Shakur Basti, which was earlier projected as Rs. 66.98 lakhs, has been revised by it to Rs. 4.24 crores. It is stated by DUSIB that electrification is not an issue that falls within its mandate. Learned counsel for the Petitioners state that the Petitioners will suggest viable alternatives to the DUSIB as the need of the JJ dwellers is dire. A meeting will be held by the DUSIB with a representative group of the dwellers within the next ten days at a mutually convenient time and date. A further affidavit on this aspect be filed by the DUSIB before the next date after discussing the proposal with BSES.

4. On the other issues, Ms. Pinki Anand, learned Additional Solicitor General of India, states that the stand of the Union of India is still under consideration. She requires some more time to file an affidavit spelling out the stand of the Union of India on the draft protocol prepared by DUSIB.

5. List on 7th July, 2017."[3]

45. The issue of the Draft Protocol was still to be resolved. At the hearing on 27th July 2018, the Court passed the following order:

"1. The issue concerning the draft protocol has been engaging this Court for over two years now. Counsel for the Ministry of Urban Development (MoUD), Government of India, refers to an affidavit dated 17thAugust, 2017 in which it is stated by the MoUD that the comments of the Delhi

[3]This order dated 12th May 2017 was carried by the Railways to the Supreme Court by way of SLP (C) 16802 of 2017. While disposing of the said SLP on 16th November 28, the Supreme Court noted that "toilets had already been installed and had become functional" and, therefore, "nothing would survive" in the SLP.

> Urban Slum Improvement Board (DUSIB) are awaited. Learned counsel for DUSIB states that he will have to seek instructions in this regard.
>
> 2. Ms. Pinky Anand, learned ASG of India states that she will examine the matter so that the final position of the Government of India on the draft protocol is made explicit by way of an affidavit at least one week prior to the next date of hearing.
>
> 3. List on 31st August, 2018 at 2.15 pm.
>
> 4. Order *dasti* under the signatures of Court Master."

46. This was followed by hearing on 12th October 2018. The issue of the applicability of the DUSIB Act to land of the Central Government was raised. The Court was shown a copy of the order dated 11th December 2017 issued by the Department of Urban Development (DoUD), GNCTD, notifying the 2015 Policy under Section 10(1) of the DUSIB Act, with the approval of the LG of the NCT of Delhi. The Court noted the contention on the part of the Petitioners that "since DUSIB had been identified as Single Nodal Agency to implement the Scheme under Section 10(1) of the DUSIB Act", this, from the point of view of the Petitioners, would mean that "for removal of JJ clusters on any land in the NCT of Delhi, the Scheme notified by the DUSIB and the protocol to be devised by the DUSIB should apply".

47. In its affidavit dated 17th August 2017, the MoUD had stated that the Central Government "should invariably, except on rare occasions where the circumstances so require, follow the Scheme approved by the LG."In its order dated 12th October 2018 the Court noted the submission of Mr.

Kirtiman Singh, learned Central Government Standing Counsel, that "if all agencies including those of the Central Government, agree on a protocol to be followed either for removal and/or rehabilitation of JJ clusters in the NCT of Delhi, it would smoothen out the issues that arise between agencies when such exercises are undertaken."The Court noted that more than two years had elapsed in getting the parties to agree on the Draft Protocol. The Court was informed that more than 80% of the lands on which JJ Clusters were located in the NCT of Delhi belonged to the Central Government. The Central Government Standing Counsel sought one more opportunity to clarify its stand on the Draft Protocol. The ASG appearing for the Railways undertook to file an affidavit of the Railways before the next date of hearing, indicating clearly the stand of the Railways. The Railways thereafter filed an affidavit on 5th November 2018.The MoUD/Central Government filed a separate affidavit on 6th December 2018.

48. The hearing concluded on 7th December 2018 and parties were permitted to file their respective submissions. Mr. Colin Gonsalves, learned Senior Counsel appearing for the Petitioners stated that they may have some objections to some aspects of the 2015 Policy, but they would be satisfied if at this stage the Court left it open to the Petitioners to raise such objections as and when the situation arose in future. Written submissions were filed on 21st December 2018 on behalf of the Petitioners. A brief note has been submitted on 20th December 2018 by the Central Government. The Railways too have filed written submissions.

III

Statistics on Slum Populations

49. Before beginning to examine the key issues that arise for consideration, it is necessary to refer to the empirical data in relation to the slum population in Delhi to understand the background and perspective in which the issues arise. Over the years, there has been progressive growth of the slum population in the country and, in particular, in Delhi. The Ministry of Housing and Urban Poverty Alleviation, Government of India, brought out a report titled ***India Urban Poverty Report – 2009*** which noted that urban poverty in India remains at 25%, with 80 million poor people living in the cities and towns of India.[4] It noted that as per the 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 was 22.6% of the urban population of States and Union Territories reporting slums. Delhi had 3.1% of the total urban homeless population. The Report noted that in Delhi, for over 100 thousand homeless people, the Government runs 14 night shelters with a maximum capacity of 2937 people, who constitute only 3% of the homeless people in Delhi.

50. A report released by the Delhi Urban Environment and Infrastructure Improvement Project (a collaboration between the Planning Department of the GNCTD and the Ministry of Environment of Forests, Government of India) estimated Delhi's population in 2000 as 139.64 lacs, of which only

[4]"Fact Sheet", *India: Urban Poverty Report,* Ministry of Housing and Urban Poverty Alleviation, Government of India, 2009, 1

23.7% were in the planned colonies.[5]14.8% of the population lived in JJ clusters; 19.1%in slum designated areas and 12.7% in JJ resettlement colonies. Thus, as of 2000, nearly 46.6% of Delhi's population lived in slums.

51. The 2011 Census of India estimated the population in India inhabiting slums to be over 6.5 crores.[6] Of this, those inhabiting notified slums[7] was over 2.25 crores; those inhabiting 'recognised slums'[8] 2.01 crores, and those inhabiting 'identified slums'[9] 2.28 crores. The 2011 Census estimated the population of Delhi inhabiting slums to be 17,85,390, of which 7,38,915 lived in notified slums and 10,46,475 in unidentified slums.

52. The data collected during the 69th NSSO survey conducted between July and December 2012 was published by the Directorate of Economic and Statistics of the Government of Delhi in February 2015. This showed that there were 6343 slums in existence in Delhi in 2012 with a total of 10.2 lakh

---

[5]"Categorization of Settlement in Delhi", *Cities of Delhi*, Centre for Policy Research, May 2015, 1

[6]*Primary Census Abstract for Slums*, Census of India, 2011, 12

[7]"All notified areas in a town or city notified as 'Slum' by State, Union territories Administration or Local Government under any Act including a 'Slum Act' may be considered as 'Notified slums'". Definition at ibid. 5

[8]"All areas recognized as 'Slum' by State, Union territories Administration or Local Government, Housing and Slum Boards, which may have not been formally notified as slum under any Act may be considered as *Recognized slums".* Definition at ibid. 5

[9]"A compact area of at least 300 population or about 60-70 households of poorly built congested tenements, in unhygienic environment usually with inadequate infrastructure and lacking in proper sanitary and drinking water facilities. Such areas should be identified personally by the Charge Officer and also inspected by an officer nominated by Directorate of Census Operations. This fact must be duly recorded in the charge register. Such areas may be considered as 'Identified slums'" Definition at ibid. 5

households.[10] The survey also revealed the lack of basic resources in slums. In 86.5% of the slums, taps were the major source of drinking water; 39% were on plot area of less than 0.5 hectares; 83.7% had no underground sewerage system and only 19% were within half a kilometre of a government hospital or health centre.

53. As regards the broad types of habitation in Delhi, there are (i) the 'planned colonies' which are located on land earmarked in the MPD as 'development area'. Then we have 'Slum Designated Areas (SDAs), i.e. 'slums' notified as such under the Slum Areas (Improvement and Clearance) Act 1956 ('SAIC Act').[11] Those not officially designated as slums, are non-notified slums and are categorised as JJ clusters (JJCs). They are invariably on public land i.e. land of the DDA or the central government, or held by agencies of the central government like the CPWD or the Railways or a department or agency of the GNCTD. According to a study conducted by the Centre for Policy Research:

---

[10]"Urban Slums in Delhi", *NSSO 69th Round Survey (July 2012-Dec 2012),* Directorate of Economics and Statistics, Government of NCT Delhi, (i)

[11]Section 3 of the SAIC Act provides for "Declaration of slum areas" and reads thus:

(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area—

(a) are in any respect unfit for human habitation; or

(b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals,

it may, by notification in the Official Gazette, declare such area to be a slum area

(2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say—

(a) repair; (b) stability; (c) freedom from damp; (d) natural light and air; (e) water supply; (f) drainage and sanitary conveniences; (g) facilities for storage, preparation and cooking of food and for the disposal of waste water; and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

> "In 2011, the Delhi Urban Shelter Improvement Board (DUSIB), which is responsible for governing JJCs estimates there to be 685 JJCs in the city, containing 418,282 *jhuggis*. In 2014, the DUSIB released another set of data based on the socio-economic survey carried out across all JJCs in the city, containing 4,18,282 *jhuggis*. In 2014, the DUSIB released another set of data based on the socio-economic survey carried out across all JJCs in Delhi. The latest dataset identified 72 JJCs with 3,04,188 *jhuggis*, amounting to about 10 per cent of Delhi's population and covering a land area of 8.85 square kilometres, about 0.6 per cent of Delhi's area."[12]

54. Then there are the JJ Resettlement colonies, of which there are at least 55 including those at Bawana, Narela, Savda Ghevra, Holambi Kalan, Pappan Kalan, Rohini. According to a September 2013 estimate of the GNCTD, approximately 1.25 million residents live in the 44 resettlement colonies.[13] Further, there are the unauthorised colonies - some of which have been regularised - and rural and urban villages.

55. The official reason given by the GNCTD for the unmitigated growth of informal settlements and slums in Delhi is "lack of adequate developed land at affordable prices to different categories of residents on the one hand and continuous flow of migrants on the other." A study undertaken by the International Growth Centre drawing upon surveys conducted in Delhi in 2010 observed:

---

[12]*Categorization of Settlement in Delhi*, Centre for Policy Research, May 2015, 2.

[13]ibid. 3. In a reply given by DUSIB to a query under the RTI Act in September 2018, it was stated that there were 757 'listed JJ *bastis*' in Delhi in which there were 3.22 lakh *jhuggis*. 16.10 lakh residents were living in these *bastis. The Hindu* (Delhi Edition), October 13, 2018 [https://www.thehindu.com/news/cities/Delhi/less-than-1-of-slum-dwellings-rehabilitated-reveals-rti plea/article25216969.ece]

> "Slums are often the first destination of rural-urban migrants. Failure to solve problems in urban slums is not only an issue of human deprivation but also an impediment to India's continuing growth for several reasons. First, poor urban living conditions might explain the relatively slow urbanization in India and in particular the presence of large numbers of temporary migrants. For example, a survey of households in rural North India documents that 58 percent of the poorest families reported that the head of household had migrated, with the median length of a completed migration being only one month (Banerjee and Duflo2006). Temporary migration means temporary work and limits the scope for on-the-job skill formation. Second, poor access to good education and health facilities in slums limits human capital formation among the slum-dwellers and especially their children. This is particularly unfortunate because India, like many developing countries, does a poor job of supplying public services in rural areas (Chaudhury etal 2006) and emigrating to the city is one way to access better healthcare and schooling for one's children. Low-quality services for slum-dwellers limit the value of this option and may even discourage parents from trying to move their families to the city. Finally, it might create disaffection among the slum-dwellers, which has the potential to destabilize both the economy and the polity."[14]

IV

International law on the right to adequate housing

56. The legal regime, both international and domestic, in relation to the right to adequate housing and the right against forced evictions is examined next. The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 is a multi-party treaty, ratified by India in 1976.

[14]Abhijit Banerjee et.al, "Delhi's Slum-Dwellers: Deprivation, Preferences and Political Engagement among the Urban Poor", *International Growth Centre Working Paper*, October 2012, 2

India being a country that adopts the principle of 'dualism', the ICESCR is not enforceable straightway. However, with the enactment of the Protection of Human Rights Act, 1993 (PHRA), and in particular Section 2 (f) thereof,[15] the ICESCR is one of the human rights covenants recognised by the Indian Parliament to be enforceable. Consequently, the obligations under the said covenant are enforceable in India.

57. Under Article 2 (1) of the ICESCR, each State party has undertaken to take steps, "individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."Under Article 2(2), ICESCR every State party, including India, has undertaken to guarantee "that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

58. Article 11 (1) ICESCR, which is immediately relevant for the present purposes, reads as under:

> "The States 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

[15]Section 2 (f) PHRA defines "International Covenants" to mean "the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966."

> conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

59. The Committee on Economic, Social and Cultural Rights (CESCR), a body of experts formed by the Economic and Social Council to assist it in the consideration of the reports submitted by the State parties, has produced 'General Comments' which explain in some detail the substantive and procedural aspects of the ICESCR. Two of these are relevant for the present purposes. General Comment No. 4 is on the 'Right to Adequate Housing' and was adopted at the Sixth Session of the CESCR on 13th December, 1991.

60. Paragraph 7 of General Comment No. 4 expresses the view of the CESCR that:

> "The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing."

61. In terms of General Comment 4, among the aspects of the right to adequate housing were: (i) legal security of tenure (ii) availability of services and materials, facilities and infrastructure (iii) affordability (iv) habitability (v) accessibility (vi) location and (vii) cultural adequacy. The CESCR emphasised that the right to adequate housing cannot be viewed in isolation from other human rights contained in the two international covenants i.e. the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. Emphasising the indivisibility of rights it observed:

> "the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing."[16]

62. The CESCR identified the steps to be taken immediately and underscored that the State parties "must give due priority to those social groups living in unfavourable conditions by giving them particular considerations". Among the steps that each party was expected to take was to adopt 'a national housing strategy' which should reflect:

> "extensive genuine consultation with, and participation by,

[16]UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.4: The Right to Adequate Housing, (Art. 11 (1) of the Covenant)*, 13 December 1991, para 9

> all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant."

63. This is particularly relevant in the context of Delhi, where there is a multiplicity of agencies dealing with the issue of slums on both public and private lands. In Delhi, most of the slums are on public land, and the agencies involved include, among others, the Central Government, the Government of the NCT of Delhi, the DDA, the MCD, the NDMC and, now the DUSIB. The Central Government itself is comprised of several ministries and departments. The Railways and the Public Works Department (PWD) are some of the major departments which are identified as 'land holding agencies'. What General Comment No. 4 emphasises is that there should be coordination between all ministries and local authorities in order to reconcile the related policies with the obligation under Article 11 of the ICESCR. Among the remedies that Article 11 of the ICESCR envisages is the provision of "legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions." They would also include "legal procedures seeking compensation following an illegal eviction, complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance and racial or other forms of discrimination".

64. Specific to the issue of 'forced evictions', the CESCR produced General

Comment No. 7 in their 16th Session in 1997. The CESCR took note of the fact that the expression 'forced evictions' seeks to convey "a sense of arbitrariness and of illegality".[17] It pointed out that to many observers, however,

> "the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all."

65. The CESCR, therefore, chose to define the expression 'forced evictions' as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." The CESCR added that "the prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights."

66. Paragraph 13 of General Comment 7 reads as under:

> "13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or

[17]UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, para 3

> procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

67. The procedural protections identified by the CESCR as being applicable in situations of forced evictions include:

> "(a) an opportunity for genuine consultation with those affected;
> (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
> (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
> (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
> (e) all persons carrying out the eviction to be properly identified;
> (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
> (g) provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts."[18]

[18]There are other international covenants, ratified by India, which touch upon the right to housing of children and women. Article 27 (3) of the Convention on the Rights of Child which calls on state parties to assist parents and guardians in providing the child with proper food, clothing and housing and Article 16 (1) which protects the child from unlawful or arbitrary interference with his or her privacy, family, home or correspondence. Also Article 16 of the Convention on Elimination of Discrimination Against Women (CEDAW) speaks of the State's obligation to ensure equality of access for both men and women to property rights of ownership and administration.

68. The provisions of the ICESCR have been noticed in some of the early decisions of the Supreme Court of India on the right to shelter, which will be discussed in a separate section hereafter. The discussion of General Comments 4 and 7 of the CESCR in the context of both the right to adequate housing and the right against forced evictions forms a central part of the decision of the Delhi High Court in ***Sudama Singh***, which again will be discussed at some length later. That decision also referred to the jurisprudence developed by the Constitutional Court of South Africa, which is proposed to be examined next.

V

South African Jurisprudence on the Right to Adequate Housing

69. Among the recent written constitutions that have adopted the language of the CESCR in incorporating provisions that recognize the right to adequate housing is the Final Constitution of the Republic of South Africa (hereafter the 'Final Constitution': FC). The jurisprudence developed by the South African Constitutional Court around the right to adequate housing is instructive and helps understand the expanding horizons of the right.

70. To begin with, it is necessary to briefly touch upon the background to the drafting of the Final Constitution (FC). The South African Law Commission (SALC) had submitted a report stating that the socio-economic rights should receive protection, either in the form of Directive Principles of State Policy or through specific tailor-made legislation.[19] When the exercise

[19]Sandra Liebenberg, *Socio-Economic Rights: Adjudication Under a Transformative Constitution,* Juta & Co. Ltd, 2010, 12

of drafting the Bill of Rights in the 1996 South African Constitution was undertaken, one of the issues that arose was whether socio-economic rights should be included as justiciable rights in the Constitution. Nelson Mandela, the then President of the African National Congress, expressed his expectation of the role of the judiciary in the enforcement of socio-economic rights thus:[20]

> "We leave it to the judiciary to determine which rights are directly enforceable at the instance of individuals. We shall be surprised if such rights as the right to clean water, to minimum nutrition and to adult education cannot be enforced by courts".

71. Apart from the spectrum of political parties being in favour of socio-economic rights in some form, there was strong civil society support for including them as fully justiciable rights in the Bill of Rights. An alliance named 'Ad Hoc Campaigning for Socio-Economic Rights' presented a petition to the Constituent Assembly and stated:

> "[I]t is useful to see the constitution as a mirror…If this mirror does not show protection from shelters being demolished, does not show protection from being chased out of school or hospital queues, then it does not reflect the lives to which we aspire for all South Africans. If it is only a mirror that reflects the image of a more privileged sector of society then it is a constitution for only those people and not all the people"[21]

72. There was consensus that socio-economic rights should be drafted in a

[20]Nelson R Mandela 'Address: On the occasion of the ANC's Bill of Rights conference' in *A Bill of Rights for a Democratic South Africa: Papers and Report of a Conference Convened by the ANC Constitutional Committee,* May 1991, 9-14 at 12. Citied in Liebenberg (*supra*) 8.
[21]*Petition to the Constitutional Assembly by the Ad Hoc Campaign for Social and Economic Rights,* 19 July 1995, cited in Liebenberg (*supra*), 18

way that:

> "(a) they do not place an obligation on the state which cannot be fulfilled in terms of its resources and capacity; (b) they preserve the distinction between the roles of the judiciary and the legislature. This entails ensuring that the legislature is given the main responsibility for elaborating and implementing the rights, with the Courts possessing the necessary powers of review; (c) the main duty on the State is to provide opportunities and remove constraints which prevent access to social and economic rights in South Africa".[22]

73. The influence of the ICESCR in the drafting of the provisions concerning socio-economic rights in the FC is perceptible. The qualified positive duty of the State to take "reasonable legislative and other measures within its available resources" and the concept 'progressive realization' in the FC was a borrowing of the language of Article 2 of the ICESCR. The Constitutional Court of South Africa, which had to certify the draft Constitution, had to deal with an objection that the socio-economic rights were not fully universally accepted fundamental rights; their inclusion was inconsistent with the doctrine of separation of powers and that they were not justiciable. While the Constitutional Court disposed of the first objection on the basis that Constitutional Principle II,[23] permitted the Constituent Assembly to supplement the universally accepted fundamental rights with other rights not universally accepted, it acknowledged that the inclusion of

---

[22]Constitutional Assembly, Constitutional Committee Sub-Committee Draft Bill of Rights, Volume I, Explanatory Memoranda 9 October 1995, 1-285 at 154, cited in Liebenberg (*supra*)18-19

[23]"Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter 3 of the Constitution"

socio-economic rights within a Bill of Rights did not confer upon Courts a task "so different from that ordinarily conferred upon them by Bill of Rights that it results in a breach of separation of powers."[24] As regards the justiciability objection, it was observed that the mere fact that socio-economic rights have budgetary implications "is not an automatic bar to the justiciability", and that "at the very minimum, socio-economic rights can be negatively protected from improper invasion". Accordingly, Sections 26, 27, 28 (1) (c) and 29 continued in the FC as such.

73.1. One of the earliest decisions of the South African Constitutional Court on the scope of Section 26 of the FC was ***Government of the Republic of South Africa v. Irene Grootboom [2000] ZACC 19***. The Applicant Irene Grootboom was one of a group of 510 children and 390 adults. They had been living in appalling circumstances in the Wallacedene informal settlement and, therefore, came to occupy nearby land earmarked for low-cost housing. The Municipality forcibly evicted them: their shacks were bulldozed and their possessions were burnt and destroyed. Subsequent to their eviction, they were forced to settle on a sports field adjacent to Wallacedene, awaiting their turn to be accommodated in low-cost housing.

73.2 The Constitutional Court had to determine whether the measures taken by the Municipality were reasonable. After briefly discussing the debate surrounding the justiciability of socio-economic rights, the Court outlined the scope of the state's obligations under Section 26 of the FC:

[24]*Ex parte Chairperson of Constitutional Assembly: In re Certification of the Constitution of Republic of South Africa* (*First Certification* Judgment), para 77, cited in Liebenberg (*supra*) 20

> "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 positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing".

73.3 Significantly, the Court also sketched the contours of the reasonableness requirement under Section 26 (2) of the FC:

> "…a court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met."

73.4 The Court concluded that in the given circumstances the Municipality's housing programme did not constitute taking "reasonable legislative and other measures" under Section 26 (2) of the FC, as the programmes did not make any provision for emergency relief for those desperately in need.

74.1 While in ***Grootboom*** the Constitutional Court was concerned with determining the "reasonableness" of the State's housing programme, in ***Port Elizabeth Municipality v. Various Occupiers [2004] ZACC*** 7, it had to consider the obligations of the state under Section 26 (3) of the FC in the context of forced evictions. The residents of a certain area had petitioned the Port Elizabeth Municipality. The Municipality sought an eviction order against a number of persons living in shacks on privately owned land.

74.2 The issue before the Constitutional Court was whether it would be 'just and equitable' under Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998[25] ('PIE Act') read with Section 26 of the FC to evict the occupants. The Court held that the PIE Act had to be interpreted and applied within a "defined and carefully calibrated constitutional matrix".

74.3 Dismissing the Port Elizabeth Municipality's application for leave to appeal, the Constitutional Court observed as under:

> "In sum, the Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal ownership rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather it is to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case."

74.4 The Court held that the rights in Section 26 (3) of the FC were

[25]Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, Section 6—Eviction at instance of organ of State: (1) An organ of State may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances.

"defensive rather affirmative in nature". Reading Section 26 (3) of the FC along with Section 6 (3) of the PIE Act, the Constitutional Court noted that although there is no "unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available", the Court "should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme."

74.5 The Constitutional Court concluded that it would not be 'just and equitable" to order the eviction of the occupiers in view of the following factors:

> "the lengthy period during which the occupiers have lived on the land in question, the fact that there is no evidence that either the Municipality or the owners of the land need to evict the occupiers in order to put the land to some other productive use, the absence of any significant attempts by the Municipality to listen to and consider the problems of this particular group of occupiers, and the fact that this is a relatively small group of people who appear to be genuinely homeless and in need..."

74.6 A proposition of considerable significance that emerges from the judgment in ***Port Elizabeth Municipality*** (*supra*) is that even when unlawfulness of occupation is established, "the eviction process is not automatic", and the Courts will have to exercise broad judicial discretion in deciding what is 'just and equitable' in the particular circumstances.

75.1 In ***Occupiers of 51 Olivia Road, Berea Township v. City of Johannesburg [2008] ZACC 1***, the Constitutional Court while dealing with another forced eviction, delineated the "meaningful engagement" requirement and the legal basis for the same. The factual context was that the city municipality had sought to evict the residents of six buildings for the reason that based on its inspection; the buildings had become unsafe for habitation as per the South African Building Regulations. The Municipality filed an eviction application in the Witwatersrand High Court, which interdicted the Municipality from evicting without providing alternative accommodation. The Municipality appealed to the Supreme Court of Appeal, which ordered the eviction on the basis that the buildings had become unsafe to occupy. It, however, ordered that the Municipality assist those "desperately in need of housing assistance with relocation to a temporary settlement area".

75.2 The issue for determination before the Constitutional Court was whether the order for the eviction of the residents ought to have been granted, and whether the City's housing programme complied with the obligations imposed upon it by Section 26 (3) of the FC. The Constitutional Court passed an interim order directing that the Municipality and the residents meaningfully engage and arrive at a settlement.

75.3 In laying down the need for meaningful engagement, the Constitutional Court relied on the observations in ***Grootboom*** (*supra*) on the relationship between reasonable state action and human dignity, and the observations in ***Port Elizabeth Municipality*** (*supra*) on the inextricable link between

procedural and the substantive aspects of justice. The Constitutional Court also noted that a municipality "that ejects people from their homes without first meaningfully engaging with them acts in a manner that is broadly at odds with the spirit and purpose of the constitutional obligations…taken together". It laid down that the failure of a municipality to meaningfully engage "would ordinarily be a weighty consideration against the grant of an ejectment order".

75.4 On the specifics of what meaningful engagement entailed, the Constitutional Court observed that the requirements would be context-specific. However, it noted that meaningful engagement would require that the "parties engage with each other reasonably and in good faith. Intransigent attitudes or the 'making of non-negotiable, unreasonable demands undermined the deliberative process". In the circumstances, the Constitutional Court found that the Municipality had made no effort to "meaningfully engage" either at the time of, or before the eviction proceedings were initiated in the High Court. It, however, approved the comprehensive settlement agreement between the parties, which included steps for rendering safer and more habitable buildings and detailed provisions for relocation of the occupiers.[26]

76.1 In 2009, the Constitutional Court in ***Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes [2009] ZACC 16***, had to

[26]According to a report by the South African Economic Rights Institute (SERI), despite the comprehensive settlement between the Municipality and the Residents, the residents face numerous issues in respect of the habitability of the building they were relocated to. Furthermore, till date, no permanent accommodation plans have materialized. See, "From San Jose to MBV1", *Community Practice Notes,* South African Economic Rights Institute, 2016.

consider whether it would be 'just and equitable' for the Municipality to evict the occupants of an informal settlement for it to be able to undertake reconstruction of the settlement. The government adopted a national policy aimed at eliminating informal settlements. The Joe Slovo Informal Settlement was targeted for reconstruction in terms of that policy and accordingly, the Respondents launched an application in September 2007 in terms of the PIE seeking the eviction of Applicants. The Western Cape High Court granted an eviction order, without issuing a declaratory order that the residents of the Joe Slovo Informal Settlement were entitled to any percentage of the permanent houses to be built in the location that they were vacating. The residents of Joe Slovo appealed to the Constitutional Court.

76.2 Five concurring judgments of the learned Judges of the Constitutional Court, on divergent legal bases, held that in seeking the eviction of Applicants, the Respondents (particularly the national Minister for Housing and the Minister for Housing in the Western Cape) had complied with their obligations to act reasonably in attempting to promote the right of access to adequate housing under Section 26 of the FC. However, a common judgment, also containing the order of eviction, was prepared. There are three significant features of the order of eviction. First, the order of eviction was made 'conditional upon and subject to' the applicants being relocated to temporary housing; second, it stipulated specifications on the quality of the temporary accommodation in which the occupiers would be housed after their eviction[27]; third, the order required an "ongoing process of meaningful

[27]The stipulated requirements were: The temporary residential accommodation unit must—10.1 be at least 24m^2 in extent; 10.2 be serviced with tarred roads; 10.3 be individually numbered for

engagement between the residents and the Respondents concerning various aspects of the eviction and relocation process."

77.1 In ***City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd. [2011] ZACC 33***, the Applicant Municipality challenged the order of the Supreme Court of Appeal, declaring its policy to be unconstitutional to the extent that it did not provide alternative housing for persons who were subject to eviction from land by private landowners.The occupiers in the instant case- many of whom were workers in the informal sector - inhabited a building in Johannesburg. The Respondent property developer, upon purchasing the said building, sought to evict the occupiers and, therefore, initiated eviction proceedings against the occupiers.

77.2 Following ***Grootboom*** (*supra*), the Constitutional Court opined that a reasonable housing programme has to account for those most in need and held that the policy of the Municipality was unconstitutional:

> "By drawing a rigid line between persons relocated by the City and those evicted by private landowners, the City excludes from the assessment, whether emergency accommodation should be made available, the individual situations of the persons at risk and the reason for the eviction…Once an emergency of looming homelessness is created, it in any event matters little to the evicted who the evictor is. The policy does not meaningfully and reasonably

---

purposes of identification; 10.4 have walls constructed with a substance called Nutec; 10.5 have a galvanised iron roof; 10.6 be supplied with electricity through a pre-paid electricity meter; 10.7 be situated within reasonable proximity of a communal ablution facility; 10.8 make reasonable provision (which may be communal) for toilet facilities with water-borne sewerage; and 10.9 make reasonable provision (which may be communal) for fresh water.

> allow for the needs of those affected to be taken into account."

77.3 The Constitutional Court concluded that in the circumstances the eviction would not be 'just and equitable' unless the City provided the occupiers with alternative accommodation. Further, the Court noted that,

> "[although] Blue Moonlight cannot be expected to be burdened with providing accommodation to the Occupiers indefinitely, a degree of patience should be reasonably expected of it and the City must be given a reasonable time to comply."

77.4 The Court, thus, ordered that the date of eviction be linked to the date on which the City provided accommodation.

78. The principles evolved in the above decisions of the South African Constitutional Court provide useful guidance to Courts on developing the jurisprudence around the right to adequate housing. One is the refusal by the South African Constitutional Court to rigidly separate civil and political rights from socio-economic rights. It acknowledged that both these sets of rights entail positive obligations that can have budgetary implications without resulting in breach of separation of powers. It explained that the model of judicial enforcement of socio-economic rights was premised on "negative constitutionalism" i.e. ensuring that the actions of the State do not interfere with people's liberties. It held that effective protection of socio-economic rights entails imposing a duty on the State to refrain from interfering with people's existing access to socio-economic resources. The other important facet is the emphasis placed by the Constitutional Court on

deliberative democratic practices through the device of 'meaningful engagement' with the affected groups. In this model, the Court becomes both a democratic space where such dialogue can take place and also the Constitutional authority that facilitates it. The State is obliged to take into confidence the affected groups about the schemes for rehabilitation it proposes for them and is prepared to review and re-shape them based on their inputs.[28]

79. The idea mooted in ***Sudama Singh*** and the exercise facilitated in the present case, of getting all interested and affected parties to engage in dialogue and discussion towards building the Draft Protocol for operationalising the 2015 Rehabilitation Policy of the GNCTD could possibly be viewed as an attempt at a deliberative democratic exercise.[29] Interestingly, as the discussion on the Policy and the Draft Protocol in subsequent sections will show, they also implicitly acknowledge that the right to adequate housing is not a bare right to shelter, but a right to access several facets that preserve the capability of a person to enjoy the freedom to

[28]For a critique of deliberative democratic practices in social justice adjudication see Prof. Roberto Gargarella 'Should Deliberative Democrats Defend the Judicial Enforcement of Social Rights?', in Samantha Besson, Jose Luis Marti and Verena Seller (Eds.): **Deliberative Democracy and its Discontents**. Aldershot/Burlington: Ashgate pp. 233-252. Prof. Gargarella believes that "judges are institutionally placed in an exceptional position for contributing to foster deliberation" and "enrich the deliberative process" while helping it "correct some of its improper biases." While acknowledging the skepticism expressed by scholars that the judiciary may act in a 'minimalist way' when they deal with issues of the disadvantaged, he views some of the judicial decisions in the area of social rights as working towards "the regulative ideal of deliberative democracy (i.e. by contributing to integrate groups that were improperly marginalized by the political system or by forcing political authorities to justify their decisions in a more solid way.)"

[29]The consultative meetings in drawing up the Draft Protocol had the participation of not only the resident of the JJ *basti* but the representatives of the governmental agencies, and civil society groups.

live in the city.[30]

VI

Right to the City

80. In the context of the right to shelter and its sub-species, the right to adequate housing, it is necessary to acknowledge that there is an increasing recognition in the international sphere of what is termed as the 'right to the city' (RTTC)[31], which in the context of the case on hand, is an important element in the policy for rehabilitation of slum dwellers. According to Professor Upendra Baxi

> "The idea that the RTTC is a right to "change ourselves by changing the city" needs close consideration. It is a right not in the sense of liberty but in the sense of power; it is an individual as well as collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves. However, the 'we-ness' for transformation is not a given but has to be constructed, forged, or fabricated if only because those who wield economic, social, and political domination aspire always towards fragmentation of the emergent 'we-ness'. In this sense, then the RTTC is a 'right' to struggle for maintaining critical social solidarities.

[30]The Capabilities approach, as conceptualised by Prof. Amartya Sen, is premised on two broad claims: first, that the freedom to achieve well-being is of primary moral importance, and second, that freedom to achieve well-being is to be understood in terms of people's capabilities, that is, their real opportunities to do and be what they have reason to value. See, Johan Froneman, "Enforcing socio-economic rights under a transformative constitution" *ESR Review*, Vol.8, No.1, 21. Froneman argues that the inclusion of socio-economic rights in the South African Constitution facilitates the development of capabilities indispensable for economic freedom.

[31]'The Right to the City' is a title of a book written by Henri Lefebvre in 1968 - a social scientist who meant it to be a radical call to all inhabitants in the city to contribute to the production of urban space and to appropriate its use. This was later developed by an American scholar David Harvey, who emphasized stronger democratic control and wide participation in struggles to re-shape the city. According to Harvey, RTTC "is far more than a right of individual access to the resources that the city embodies – it is a right to change the city more according to our heart's desire" David Harvey, "The Right to the City", *New Left Review*, Vol. 53, September-October 2008, 24.

> And, accordingly, such a right presupposes the respect for freedom of speech and expression, advocacy and dissent, movement and assembly, or the popular capacity to struggle to attain these. In sum, the moral RTTC assumes legal duties of respect for the conventionally called civil and political human rights."[32]

81. The Court at this juncture seeks to trace the background to the recognition of RTTC in international law, as an integral part of the right to adequate housing. The Istanbul Declaration on Human Settlements was adopted by heads of States of Governments and the official delegations of countries assembled at the United Nation's Conference on Human Settlements (Habitat II) in Istanbul, Turkey from 3rd to 14th June 1996. It endorsed "the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier and more reliable, equitable, sustainable and productive." There were two major themes at that conference: adequate shelter for all and 'sustainable human settlement development' in an urbanising unit. The conference recognised with a sense of urgency the continuing deterioration of conditions and shelter of human settlements. It reaffirmed its commitment to better the standards of living "in larger freedom of all human right."[33] The conference also reaffirmed the commitment to "the full and progressive realization of the right to adequate housing as provided for in international instruments" and to that end sought

[32]Upendra Baxi, "A Philosophical Reading of the RTTC" in *Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship*, UNESCO, 2011, 17. Another viewpoint is that "The right to the city is not to be viewed as a legalistic right, but as an articulation to consolidate the demand, within city spaces, for the realization of multiple human rights already recognized internationally." Miloon Kothari "The Constitutional and International Framework", *Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship*, UNESCO, 2011,12.

[33]*Istanbul Declaration*, 14 June 1996, para 3

the active participation of public, private and non-governmental partners at all levels "to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families."

82.1 Two decades later, a 'New Urban Agenda' was unanimously adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador on 20 October 2016. In December 2016, during the 68th plenary session of the 71st General Assembly, all United Nations Member States endorsed the New Urban Agenda and committed to work together towards a paradigm shift in the way cities are planned, built, and managed.[34]

82.2 Preceding the adoption of the New Urban Agenda, a Habitat III Policy Unit 'Right to the City, and Cities for All', consisting of experts from Member States, was formed to provide inputs into formulation of the Agenda. The aforesaid policy paper defined the RTTC as under:

> "10. The right to the city is…defined as the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right."

82.3 The policy paper also sets out a non-exhaustive list of components that ensure the 'city as a common good': (a) a city free of discrimination; (b) a city of inclusive citizenship; (c) a city with enhanced political participation

[34]General Assembly Resolution 71/256, *New Urban Agenda,* A/71/L.23 (23 December 2016).

in all aspects of urban planning; (d) a city ensuring equitable access for all to shelter, goods and services; (e) a city with quality public spaces for enhancing social interaction; (f) a city of gender equality; (g) a city with cultural diversity; (h) a city with inclusive economies; and, (i) a city respecting urban-rural linkages, biodiversity and natural habitats.

82.4 The aforementioned components of the 'city as a common good' have been ultimately incorporated in the New Urban Agenda as a 'shared vision' for "the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all". Formulated thus, what the New Urban Agenda has acknowledged is a RTTC.

83. The RTTC acknowledges that those living in JJ clusters in *jhuggis*/slums continue to contribute to the social and economic life of a city. These could include those catering to the basic amenities of an urban population, and in the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life. Many of them travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life. Prioritising the housing needs of such population should be imperative for a state committed to

social welfare and to its obligations flowing from the ICESCR and the Indian Constitution. The RTTC is an extension and an elaboration of the core elements of the right to shelter and helps understand the broad contours of that right. As will be seen hereafter, the 2015 Policy implicitly acknowledges the RTTC and seeks to expand and deepen the right to shelter in more meaningful ways.

VII

Indian Constitutional law and Statutes

84. In the Constitution of India, there is no specific right to housing spelt out separately. The Preamble highlights the guarantee of social justice, and of the right to dignity.[35]A collective reading of the provisions relating to equality,[36] the freedom of movement,[37] of residence anywhere in the country,[38] and the freedom to carry on one's trade or profession[39] read with Article 21 impliedly invalidates the denial of the rights of the underprivileged to the basic survival rights. It also enjoins the State to not adopt measures that would deprive them of such basic rights.

[35]The Preamble to the Constitution of India, 1950 speaks of "the People of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic" securing to all its Citizens *inter alia* "Justice, social, economic and political" and promoting among them "Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

[36]Article 14 guarantees to all persons equality before the law and equal protection of the law. Article 15 underscores the 'non-discrimination' facet of the right to equality. It manifests 'horizontal' application of the right to equality.

[37]Article 19(1)(d): "All citizens shall have the right to move freely throughout the territory of India"

[38]Article 19(1)(e): "All citizens shall have the right to reside and settle in any part of the territory of India"

[39]Article 19(1)(g): "All citizens shall have the right to to practise any profession, or to carry on any occupation, trade or business."

85. Article 21, which guarantees that "no person shall be deprived of his life and liberty except according to procedure established by law", has been interpreted by the Supreme Court of India to include a range of basic survival rights. In a famous passage in ***Francis Coralie Mullin v. The Administrator (1981) 6 SCC 608***, the Supreme Court explained that:

> "...the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."

86. The Directive Principles of State Policy in Part IV of Constitution[40] refer to the right to work,[41] the right to education[42] and to just and humane

---

[40]Article 38 (2) of the Constitution states that the "The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." In a speech in the Constituent Assembly on 22nd November 1948, Dr. B.R. Ambedkar, its Chief Architect, explained that the word 'strive' was used because "our intention is that even where there are circumstances that prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives."

[41]Constitution of India, Article 41: Right to work, to education and to public assistance in certain cases—"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

[42]Constitution of India, Article 45: Provision for free and compulsory education for children—"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".

Article 46: Promotion of educational and economic interests of Schedules Castes, Scheduled

conditions of work[43] and maternity relief,[44]even while they do not expressly speak of the right to shelter as such.

Olga Tellis

87.1 Among the early judgments of the Supreme Court acknowledging the right to shelter as forming part of the Right to Life under Article 21 of the Constitution, was the judgment in ***Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545***. The Petitioners included pavement and '*basti'* dwellers living on the footpaths/pavements or slums in Mumbai. The judgment was delivered in a batch of petitions, some of which were filed as Public Interest Litigation ('PIL').[45] They were challenging the decision of the Bombay Municipal Corporation ('BMC') to forcibly evict and demolish the pavement dwellings, exercising powers under Section 314 of the Bombay Municipal Corporation Act ('BMC Act'). In fact, the constitutional validity of Sections 312, 313 and 314 of the BMC Act was challenged as being violative of Articles 14, 19 and 20 of the Constitution.

87.2 The demolition drive took place during the peak monsoon season in

---

Tribes and other weaker sections— "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation"

[43]Constitution of India, Article 42: Provision for just and humane conditions of work and maternity relief—"The State shall make provision for securing just and humane conditions of work and for maternity relief"

[44]Constitution of India, Article 42

[45]The lead petition was by a journalist (Olga Tellis) and two pavement dwellers, while others were the residents of the Kamraj Nagar Basti near the Western Express Highway in Mumbai. Another petition was filed by the persons residing in structures constructed on Tulsi Pipe Road, Mahim, Bombay. The Peoples Union for Civil Liberties, Committee for the Protection of Democratic Rights and other journalists were also Co-Petitioners.

July, 1981. The trigger for the demolition was an announcement made by the then Chief Minister of Maharashtra on 13th July,1981 that all pavement dwellers in Mumbai would be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Mumbai (then Bombay). The Chief Minister directed the Commissioner of Police to provide necessary assistance to the BMC to demolish the pavement dwellings and deport the pavement dwellers. The justification provided by the Chief Minister was that the existence of the slum dwellers was 'inhuman' and that the structures were 'flimsy and were open to the elements'. According to him, "during the monsoon, there is no way these people can live comfortably".

87.3 One of the pavement dwellers, who was a Petitioner before the Supreme Court, stated that on 23rd July, 1981 his dwelling had been demolished and he and his family had been put in a bus for Salem in Tamil Nadu. While his wife and daughters stayed back in Salem, he returned to Bombay in search of a job and "he got into a pavement house" again. The Supreme Court noted,

> "It is like a game of hide and seek. The Corporation removes the ramshackle shelters on the pavements with the aid of police, the pavement dwellers flee to less conspicuous pavements in by-lanes and, when the officials are gone, they return to their old habitats. Their main attachment to those places is the nearness thereof to their place of work."

87.4 Some of the Petitioners, who lived in the Kamraj Nagar Basti, first approached the High Court of Bombay, which granted an ad interim injunction which was in force till 21st July, 1981. On that date, the

Respondents agreed that the huts would not be demolished till 15th October, 1981. Nevertheless, it was alleged that on 23rd July, 1981, the Petitioners were huddled in a state transport bus to be deported out of Bombay.

87.5 The stand of the Government of Maharashtra was that "it neither proposed to deport any payment dweller out of the city of Bombay nor did it, in fact, deport anyone." According to the Government, only those pavement dwellers who opted to return to their home towns and who sought assistance from the Government, were paid rail and bus fare for the onward journey. It was pointed out that out of 10,000 hutment-dwellers who were likely to be affected by the proposed demolition of hutments constructed on the pavements, only 1024 had opted to avail of the transport facility and the payment of incidental expenses".

87.6 The Supreme Court first rejected the contention of the BMC that since the pavement dwellers had conceded before the Bombay High Court that they did not claim any fundamental right to construct houses on the pavement, and had undertaken before the High Court that they would not obstruct the demolition of the huts after 15th October, 1981, they were estopped from resisting the demolition. The Supreme Court held that notwithstanding the undertaking given by the Petitioners before the Bombay High Court, "they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights". It was reiterated that there could be no waiver of any fundamental right guaranteed by Part III of the Constitution.

87.7 The Supreme Court next examined whether "the right to life includes the right to livelihood", and answered it in the affirmative. It was observed "that, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life". The Supreme Court acknowledged that this explained "massive migration of the rural population to big cities" namely that "they migrate because they have no means of livelihood in the villages". Therefore, there was unimpeachable evidence "of the nexus between life and the means of livelihood".

87.8 The Supreme Court then discussed Article 39-A of the Constitution, a Directive Principle of the State Policy which provided that the State shall "in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood". Reference was made to Article 41, which provided that the State shall, "within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want". It was emphasized that the Principles contained in these two provisions "must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights". It was concluded that "any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21".

87.9 Specific to the linkage between the right to shelter and the right to livelihood, the Supreme Court discussed the empirical data that around 200 to 300 people enter Bombay every day in search of employment. According to the Court, the facts justify the conclusion that

> "persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life".

87.10 The Court then drew two conclusions: one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. The Court rejected the plea of BMC that no notice need be given because, there can be no effective answer to it. According to the Supreme Court, this betrayed "a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice".[46] In discussing this aspect, the Supreme Court acknowledged

[46]Emphasizing the importance of giving a hearing to the slum dwellers before evicting them, the Supreme Court in ***Olga Tellis*** held:

> "…There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to "commit an offence or intimidate, insult or annoy any person", which is the gist of the offence of 'Criminal trespass' under section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by

"eviction of the pavement or slum dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life. Humbler the dwelling, greater the suffering and more intense the sense of loss".[47]

88. For the purposes of the present case, the importance of the decision in ***Olga Tellis*** (*supra*) is two-fold: one is the link between the right to shelter and the right to livelihood and how these cannot be separated into different compartments, as both inextricably form part of the life itself; second is that any attempt of deprivation of either right to shelter or right to livelihood, would mandate compliance with basic principles of natural justice i.e. providing a hearing to those sought to be evicted forcibly. The running theme of the decision in ***Olga Tellis*** is the acknowledgement that poverty itself could constitute a barrier to the realization of fundamental rights. The Court was acknowledging the processes of impoverishment where people are forced to migrate to cities and live in squalor just to eke out their livelihood. The Court was acknowledging the need to protect the dignity of

---

inevitable circumstances and are not guided by choice. Trespass is a tort. But, even the law of Torts requires that though a trespasser may be evicted forcibly, the force used must be no greater than what is reasonable and appropriate to the occasion and, what is even more important, the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him."

[47]It must be noted that this judgment was delivered nearly four years after the eviction derive on 10th July, 1985. The Supreme Court nevertheless held that the BMC was justified in directing the removal of encroachments and since on "admitted or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it". Although, the Court did not see any justification for asking the Commissioner to hear the petitioners, it stated that the petitioners should not be evicted from the pavements, footpaths or accessory roads "until one month after the conclusion of the current monsoon season, that is to say, until October 31st, 1985"

such persons since that was an inextricable part of the right to life itself under Article 21 of the Constitution.

Shantistar Builders

89.1 One aspect of the decision in ***Olga Tellis***, was the discussion by the Supreme Court of the schemes of the State for providing alternative housing to those sought to be evicted. The Court did not examine the reasonableness of the stipulations provided in such schemes for alternative housing. The later decisions of the Supreme Court, touching on the 'right to shelter', were precisely in the context of providing accommodation to the weaker sections of the society.

89.2 In ***M/s Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520***, the Respondents who belonged to the weaker sections of the society, challenged the permission granted by the Government of Maharashtra under Section 20 (1) of the Urban Land Ceiling Act, 1976 (ULCA), exempting excess land from the provisions thereof in favour of a builder conditional upon his using it for making 17,000 tenements for the weaker sections. The condition was that construction of such tenement should commence within one year; the final selling price should not exceed Rs.50 per square feet and the land should not be transferred except for a mortgage for raising finances for constructing the tenements.[48]

[48]The challenge was on the basis that the above condition did not actually address the needs of the weaker sections of the society; that the real estate speculators had formed a 'racket' to exclude the weaker sections, in genuine need of housing. Instead, it helped the builders to make illegal profits by transacting on the lands in question. They also challenged the sanction of price escalation i.e. allowing the builder to escalate the price.

89.3 The High Court dismissed the writ petition as infructuous when it was informed that the policy of the government had changed in the meantime. However, it issued directions for monitoring the housing scheme. The builders then appealed to the Supreme Court aggrieved by the above directions.

89.4 In rejecting the challenge by the builders, the Supreme Court observed as under:

> "9. Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That 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 assured 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 fire-proof accommodation."

89.5 The Supreme Court further observed that "since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21.Greater social control was called for and exemptions granted under Sections 20 and 21 of the ULCA should have to be "appropriately monitored to have the fullest benefit of the beneficial legislation".

Chameli Singh

90.1 In ***Chameli Singh v. State of U.P. (1996) 2 SCC 549***, the issue was discussed again. The context was the acquisition of land for the public purpose of providing houses to scheduled castes. The land of the Appellant was notified under Section 4 (1) of the Land Acquisition Act, 1894 ('LAA'), and the enquiry under Section 5 (a) of the LAA was dispensed with by issuing notifications under Sections 17 (1) read with 17 (4) of the LAA. These notifications were challenged, *inter alia,* on the ground that the Appellants would be deprived of their lands "which is the only source of their livelihood, violating Article 21 of the Constitution".

90.2 After the High Court dismissed the writ petition, they appealed to the Supreme Court. The issue before the Supreme Court was whether the invocation of the urgency provisions under Section 17 (4) of the LAA was justified. In answering the question in the affirmative, the Supreme Court discussed the UN General Assembly Resolution No.37/221 titled "adoption of the International Year of Shelter for the Homeless"; Article 25 (1) of the Universal Declaration of Human Rights ('UDHR') and Article 11 of the ICESCR. The acquisition proceeding was held to be in accordance with the procedure established by law and that, therefore, there was no illegality attached to the notification in question.[49]

[49]The Court also discussed the decision of the Andhra Pradesh High Court in *Kasiredi Papaiah v. Government of A. P.*, which took note of the appalling housing condition of the scheduled castes and scheduled tribes, and how the provision of providing housing accommodation to them was "an urgent and pressing necessity". This has been quoted with approval in *Deepak Pahwa v. Lt.*

91. It is interesting that post ***Olga Tellis*** the jurisprudence around the right to shelter developed in the context of the invocation of the LAA to provide alternative accommodation to the weaker sections of the society and not so much regarding the right to adequate housing *in situ* where the slum dwellers reside or even in the context of right against 'forced eviction'. This was discussed only partly in ***Olga Tellis*** where the harshness of forced eviction was sought to be assuaged by requiring the authorities to comply with the principles of natural justice before resorting to eviction drive.[50]

---

*Governor of Delhi*and *State of U.P. v. Pista Devi*. Further, the Court refers with approval to the decision in *Kurra Subba Rao v. Distt. Collector,* where the Andhra Pradesh High Court had upheld the power of the State Government to invoke the urgency clause under Section 17 (4) of the LAA when State discharged its constitutional mandate in providing shelter to the poor. The Court also referred to the decision in *Sri. P.G. Gupta v. State of Gujarat*, where a Three-Judge Bench considering the mandate of the human right to shelter read the same into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. Likewise, the Court made reference to the decision of the Supreme Court in *State of Karnataka v. Narasimhamurthy*, where it had been held that "Right to shelter is a fundamental right under Article 19 (1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor".

[50]On the same day that the decision in *Olga Tellis (supra)* was delivered, the Supreme Court delivered a separate judgment in *K. Chandru v. State of Tamil Nadu(1985) 3 SCC 536* in two petitions seeking to restrain the Government of Tamil Nadu from evicting slum dwellers and pavement dwellers in Madras without providing alternative accommodation. In those cases, 450 huts situated on the Canal Bank Road adjoining the Loyola College were demolished on 17th November, 1981. The Court discussed the provisions of the Madras City Municipal (Corporation) Act, 1990; the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and the Tamil Nadu Town and Country Planning Act, 1971 and concluded that the Government of Tamil Nadu had adopted a benevolent and sympathetic policy in regard to the slum dwellers and that "Steps are being taken for the purpose of improving the slums and wherever they cannot be improved, alternate accommodation is provided to the slum dwellers, before they are evicted". Accordingly, the Court did not consider it necessary to issue any writ or direction to the Government of Tamil Nadu, but only expressed its confidence that the government would continue to evince the same dynamic interest in the welfare of the pavement dwellers. A general direction was issued that the slum dwellers would not be evicted before 31th December, 1985 "unless the land on which any slum stands is required by the State Government for an urgent public purpose.

Ahmedabad Municipal Corporation

92.1 In ***Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (1997) 11 SCC 121*** the Respondents were pavement dwellers in occupation of footpaths along a main road in Ahmedabad. In December 1982, when the Ahmedabad Municipal Corporation sought to remove them from the footpaths, the Respondents filed a writ petition in the Gujarat High Court. In its judgment, the High Court directed the Petitioner not to remove the Respondents' huts before following a procedure of hearing, consistent with the principles of natural justice. The High Court also directed the Appellant to provide suitable alternative accommodation to the Respondents before removing their huts.

92.2 The Ahmedabad Municipal Corporation filed an appeal in the Supreme Court, challenging the judgment of the High Court. Two issues arose for the consideration of the Court:

> "Whether the Respondents are liable to ejectment from the encroachments of pavements of the roads and whether the principle of natural justice, viz., *audi alteram partem* requires to be followed? If so, what is its scope and content? Whether the appellant is under an obligation to provide permanent residence to the hutment dwellers and, if so, what would be the parameters of the same?"

92.3 The Court referred to Articles 19 (1) (e) and 21 of the Constitution; Article 25 (1) of the UDHR and Article 11 (1) of the ICESCR; the Supreme Court's decisions in ***Olga Tellis***, ***M/s. Shantisar Builders***, ***Chameli Singh*** and ***P.G. Gupta v. Union of India 1995 SCC (L&S) 782*** and answered the

second question in the affirmative in the following terms[51]:

> "It would…be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement 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…It would be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the Constitutional objectives."

92.4 The Court was further of the view that apart from the aforesaid Constitutional mandate, the Appellant Municipality was also statutorily obligated under the Bombay Municipal Corporation Act as:

> "Section 284 (1) of the Act…imposes a statutory duty on the Corporation to make provision for accommodation enjoining upon the Commissioner, if it is satisfied that within any area or any part of the City it is expedient to provide housing accommodation for the poor classes and that such accommodation can be conveniently provided without making an improvement scheme, it shall cause such areas to be defined on a plan…Under the Urban Ceiling Act, the excess urban vacant land is earmarked to elongate the above."

92.5 In respect of the first issue of whether the principle of *audi alteram partem* was required to be followed, the Court while reiterating that the

[51]The Court vide order dated 11.09.1995 directed the Appellant to "frame a scheme to accommodate them [the Respondents] at alternative places so that the hutmen can shift their residence to the places of accommodation provided by the Corporation to have permanent residence." Accordingly, a scheme was framed and placed before the Supreme Court. In its judgment, the Court issued several directions pursuant to the scheme, including that if they did not opt for any of the schemes, 21 days' notice would be served on them and they may be ejected from the pavement.

Municipality was under a "statutory obligation to have the encroachments removed" noted that:

> "the Commissioner should ensure that everyone is served and if it is not possible for reasons to be recorded in the file, through fixture of the notice on the hutment, duly attested by two independent *panchas*. This procedure would avoid the dispute that they were not given opportunity, further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians."

92.6 As regards the violation of the hearing requirement in the instant case, the Court found that the Municipality was providing 21 days' notice, before taking action for ejectment of the encroachers. According to the Court, that procedure was fair and, therefore, the right to hearing before taking action for ejectment was not necessary.

Statutes

93. As regards the statutes specific to the question of removal and rehabilitation of slums, the earliest is the SAIC Act. In the Second Five Year Plan, the problems of slums and slum clearance strategy were based on the following two principles:

> "The first principle is that there should be the minimum dislocation of slum dwellers and the effort should be to re-house them as far as possible at or near the existing sites of slums, so that they may not be uprooted from their fields of employment. The second principle is that in order to keep rents within the paying capacity of the slum dwellers, greater emphasis should be on the provision of minimum standards of environmental hygiene and essential civic amenities rather than on the construction of elaborate

structures."[52]

94. However, as far as the National Capital Territory of Delhi is concerned not many slums were notified under the SAIC Act.[53] The last of the slums notified in Delhi under the SAIC Act was in 1994. One reason for the failure to notify slums was that a notified slum would have to be dealt with only in accordance with the SAIC Act in terms of in-situ rehabilitation, which clearly was not the priority of the State. In many senses, therefore, the SAIC Act failed to achieve its purposes. With there being no increase in notified slums in Delhi since 1994, there has been a marked growth of non-notified slums. In terms of the multiplicity of statutes, there are JJ clusters, slum designated areas, resettlement colonies, unauthorized colonies, regularized colonies, urban villages, rural villages and planned colonies.

95. Specific to Delhi, the Delhi Development Act, 1957 was enacted "to check the haphazard and unplanned growth of Delhi." The Delhi Development Authority (DDA) was constituted thereunder. Large tracts of land were acquired by invoking the provisions of Land Acquisition Act, 1894 (LAA) and placed at the disposal of the DDA for the planned development of Delhi. However, the failure of the DDA to adequately safeguard the lands so acquired led to large scale encroachments.[54] Under

[52]"Housing", *Second Five-Year Plan,* Planning Commission, Government of India, 2nd May 1956
[53]See, supra note 21
[54]During the period of 1960-77 under the scheme of JJ Resettlement developed 44 resettlement colonies wherein 2.40 lakh jhuggi families were allotted plots measuring 25 to 80 sq. yards on license fee basis. In 1977, these resettlement colonies were transferred to MCD, which was strengthening infrastructure and on the basis of funds provided by Delhi Govt. Constructions upto 4 storeys were raised along with individual toilet facilities in those allotted plots. That scheme was, however, closed in the year 1985. Sangita Dhingra Sehgal and Kamakshi Sehgal, *An*

the DDA Act, the DDA has been empowered to frame the master plan for Delhi (MPD). The first MPD was published in 1962. A large population of construction labour helped to construct the stock of public housing, but the MPD did not earmark any space for their housing needs. This was a major contributory factor leading to the exponential growth of slums.

96. In 1990, the MCD in its annual plan "Relocation of JJ Clusters" quoted a three-pronged strategy:[55]

> *"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 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

---

Exhaustive Guide to the Slum Areas (Improvement and Clearance) Act, 1956 and Rules, 3rd Ed. , Chawla Publications (P) Ltd., 2019, 10

[55]The Slum and JJ Department of MCD was entrusted with the job to implement the scheme. Pursuant to the scheme, the Department developed 30 resettlement pockets in various places in Delhi wherein 60,000 eligible jhuggi families were allotted plots measuring 18 sq.m on license fee of Rs. 8/- per month for families having ration cards with a cut-off date of 31st January, 1990. Plots of 12.5 sq. metres were allotted to those having ration cards issued after cut-off date till December 1998. Under the scheme, about 3 Lacs jhuggi families have been allotted plots in all the 44 resettlement colonies and 30 resettlement pockets from 1960 onwards.

status of the encroached land till coverage under one of the aforesaid two strategies."

97. In 2007, the DDA notified MPD 2021, which in paras 4.2.3 and 4.2.3.1 laid out who would be included in the category of 'urban poor' and what would be the scheme for rehabilitating/relocating slum and JJ clusters. It noted that during the Plan period 1981-2001, sites and services approach based relocation was employed in which resettlement of squatter slums was done on 18 sq.m and 12.5 sq.m plots (transit accommodation) allotted to eligible persons on licence basis. This had led to "a number of aberrations" and this called for a changed approach.

98. The MPD-2021 stated that it was necessary, as an interim measure, to continue, in case of the existing squatter settlements, the three-fold strategy of (i) relocation from areas required for public purpose, (ii) in-situ up-gradation at other sites to be selected on the basis of specific parameters and (iii) environmental up-gradation to basic minimum standards. The rest of the clusters till they were covered by either of the first two components of the strategy should be continued.

99. The decision of this Court in ***Sudama Singh*** recognised MPD 2021to be a legislative document with a statutory character, and thus, enforceable. In that process it referred to the decisions in ***Bangalore Medical Trust v. B.S. Mudappa (1991) 4 SCC 598***,[56] ***Delhi Science Forum v. DDA (2012) 2004***

[56]The Supreme Court in paras 8 and 16 of this decision observed that the scheme for the development of Bangalore city formulated under the Bangalore Development Authority Act, 1976 was "undoubtedly of statutory character...[and] a administrative legislation involving a great deal of general law-making of universal application"

DLT 944 and ***Joginder Kumar Singh v. Government of NCTDelhi (2005) 117 DLT 220 (FB)***.

VIII

The DUSIB Act

100. A recent statute in the legislative framework concerning the right to housing is the Delhi Urban Shelter Improvement Board Act, 2010 (DUSIB Act). Its Statement of Objects and Reasons (SOR) states that the DUSIB Act was essentially designed for "inner city urban renewal." The SOR acknowledges that there was no suitable framework for dealing with the issues of '*katra*'[57] redevelopment. Another major objective of the DUSIB Act was the removal and resettlement of *jhuggi jhopri bastis*.[58]

101. The DUSIB Act also envisages the establishment of the Delhi Urban Shelter Improvement Board (DUSIB) under Section 3(1) of the DUSIB Act. Under Section 3(4) of the DUSIB Act the DUSIB should consist of the Chief Minister of Delhi as the Chairperson; the Minister in-charge of the concerned Department of the Govt. of NCT of Delhi dealing with the DUSIB as Vice Chairperson; a Chief Executive Officer, CEO nominated by

[57]Section 2(h) of the DUSIB Act defines '*katra*' to include "a residential building or group of buildings in which more than one household share common facilities which is traditionally and popularly known in Delhi as a katra."

[58]The term '*jhuggi*' has been defined under Section 2(f) of the DUSIB Act to mean:

> "a structure whether temporary or *pucca*, of whatever material made, with the following characteristics, namely:
> (i) it is built for residential purpose;
> (ii) its location is not in conformity with the land use of the Delhi Master Plan;
> (iii) it is not duly authorized by the local authority having jurisdiction; and
> (iv) it is included in a *jhuggi jhopri basti* declared as such by the Board, by notification."

the GNCTD; three members of the Legislative Assembly of Delhi nominated by the Chairperson in consultation with the speaker; two members of the Municipal Corporation of Delhi to be nominated by the Mayor. The ex-offico members are the vice-chairman DDA, the Commissioner of the MCD, the CEO of Delhi Jal Board, the Chairperson of the New Delhi Municipal Corporation. Further, there are four nominees of the Govt. of NCT i.e. the member (engineering), the member (finance), the member (administration) and the member (power). Another ex-officio member is the secretary in-charge of the concerned Department of the GNCTD dealing with the both. There is one representative of the Ministry of Urban Development (MoUD) of the Govt. of India and two experts on subjects dealing with urban planning and slum matters, who are non-officials to be nominated by the chairperson.

102. The functions of the DUSIB are spelt out in Chapter 3 of the DUSIB Act. These, in relation to *jhuggi jhopri bastis* includes their survey; removal and resettlement (Section 10); preparing a scheme for their improvement (Section 11) and schemes for their redevelopment (Section 12). The procedure for preparing the schemes and finally publishing them is also spelt out under the DUSIB Act.

103. Sections 10 and 11 of the DUSIB Act, which are relevant for the case at hand, read as under:

> "10. Removal and resettlement of *jhuggi jhopri bastis*
>
> (1) The Board shall have the power to prepare a scheme for the removal of any *jhuggi jhopri basti* and for resettlement

of the residents thereof, and the consent of the residents of the *jhuggi jhopri basti* shall not be required for the preparation or implementation of such a scheme.

Explanation. - Nothing in sub-section (1) shall derogate the power of the Central Government to remove jhuggis, if required.Every such scheme shall specify the amount to be paid by the land owner and by the persons to be resettled towards the cost of new houses to be allotted to them and also the criteria for eligibility for resettlement.

Explanation. - For the removal of doubts it is hereby clarified that owner of the land from where the basti is removed and the subsequent beneficiary-residents to be resettled shall contribute towards the cost of new houses to be allotted to them and the said amount of the contribution shall be specified in the scheme.

The Board may, after prior consultation with the Government, cause any *jhuggi jhopri basti* to be removed and may resettle such residents thereof as may be eligible in accordance with the scheme prepared under sub-section (1), and it shall be the duty of the local authority having jurisdiction and of the police and of any other agency or department whose assistance the Board may require to co-operate with and render all reasonable assistance to the Board:

Provided that where *jhuggi jhopri basti* is on the land belonging to the Central Government or any of its organizations, the process of removal and resettlement shall be undertaken with the prior consent of the Central Government or its organization concerned:

Provided further that such resettlement shall not be done in contravention of the provisions of the Delhi Development Act, 1957 (61 of 1957) and those of the Master Plan for Delhi or the zonal development plans prepared thereunder

Scheme of improvement of jhuggi bastis

11. (1) The Board may prepare a scheme for the improvement of any *jhuggi jhopri basti* which may include provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving, and provision of dustbins, or sites for garbage collection, street lighting, or any of them, or provision of any like facilities:

Provided that no such scheme shall be prepared if the owner of the land on which the *jhuggi jhopri basti* is situated has already consented to the preparation of a scheme for the removal of the *jhuggi jhopri basti* under section 10 and has paid his share of the cost thereof.

(2) The Board may take all measures which may be necessary for the implementation of any scheme for improvement of a *jhuggi jhopri basti* prepared under sub-section (1) and it shall be the duty of the local authority, power generation and distribution companies or any licensee under the Electricity Act, 2003 (36 of 2003) having operations in the area, and any department or undertaking of the Government to render all reasonable assistance for the implementation thereof.

(3) A scheme prepared under sub-section (1) may include provision for payment or for contribution of labour by the residents of the *jhuggi jhopri basti* individually or collectively, and may also include provision for recovery of charges for the use of toilets and bathing facilities:

Provided that no such payment or contribution of labour, other than charges for use of toilet and bathing facilities, shall be levied unless the scheme has been published and the residents given an opportunity to make representations and suggestions regarding it in such manner as may be prescribed by regulations, and such representations or

suggestions, if any, have been duly considered by the Board."

104. What is significant, as far as Section 10 is concerned, is that prior to the removal of any *jhuggi jhopri basti* there has to be in place a scheme prepared by the DUSIB. Under Section 10 (3), there has to be a prior consultation with the GNCTD by the DUSIB before removing a *jhuggi jhopri basti*. There is also an obligation under Section 10 (3) on DUSIB to resettle such residents as may be eligible in accordance with the scheme prepared under Section 10 (1) of the DUSIB Act.

105. Under the Explanation to Section 10 (1), nothing in that sub section "shall derogate the power of the Central Government to remove *jhuggis*, if required." Under the proviso to Section 10 (3) of the DUSIB Act, where the *jhuggi jhopri basti* is on land belonging to the Central Government or any of its organisations, "a process of removal and resettlement shall be undertaken with the prior consent of the Central Government or its organisation concerned." The second proviso to Section 10 (3) of the DUSIB Act makes it mandatory that the resettlement should not be done in contravention of the DDA Act and of the MPD for the zonal development plan (ZDP) prepared thereunder.

106. A question that has arisen in the present case concerns the applicability of the DUSIB Act to the removal and resettlement of *jhuggi jhopri basti* located on land owned by the Central Government. Although, at the hearing on 12th October 2018 this was a question that arose for consideration before

the Court, as the JJ cluster in the present case is located on land belonging to the Railways, the Central Government subsequently filed an affidavit accepting the 2015 policy prepared by the DUSIB under Section 11 of the DUSIB Act, subject to the caveat that the power of the Central Government would nevertheless be simultaneous with that of the DUSIB.

107. On account of the multiplicity of the agencies, which can be termed as 'land owning agencies', the question that arises is whether the DUSIB Act would apply in the instance of each such removal and resettlement of JJ *bastis* in the NCT of Delhi? The admitted position is that the slums managed earlier by the Slum and JJ Wing of the MCD, now stand transferred to the DUSIB. However, there are many more slums, some of them on lands belonging to the Central Government, which may not as yet be entrusted to the DUSIB. These could include JJ clusters/slums on Railway land as well.

108. It would be an anomaly if the safeguards and protocols laid down in ***Sudama Singh*** *(supra)* are made applicable only to slums managed by the DUSIB, but not to the other slums in the NCT of Delhi. It must be recalled that as far as land as a subject is concerned, it is outside the purview of the powers of the GNCTD. This stands clarified by the decision of the Constitution Bench of the Supreme Court in ***Government of NCT Delhi v. Union of India (2016) 14 SCC 353***. Specific to the said issue the following observations of the Supreme Court are relevant:

> "(xiv) The interpretative dissection of Article 239AA(3) (a) reveals that the Parliament has the power to make laws for the National Capital Territory of Delhi with respect to any matters enumerated in the State List and the Concurrent

> List. At the same time, the Legislative Assembly of Delhi also has the power to make laws over all those subjects which figure in the Concurrent List and all, but three excluded subjects, in the State List.
>
> (xv) A conjoint reading of clauses (3)(a) and (4) of Article 239AA divulges that the executive power of the Government of NCTD is coextensive with the legislative power of the Delhi Legislative Assembly and, accordingly, the executive power of the Council of Ministers of Delhi spans over all subjects in the Concurrent List and all, but three excluded subjects, in the State List. However, if the Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by the Parliament.
>
> (xvi) As a natural corollary, the Union of India has exclusive executive power with respect to the NCT of Delhi relating to the three matters in the State List in respect of which the power of the Delhi Legislative Assembly has been excluded."

109. The Lieutenant Governor of Delhi (LG) functions under the Central Government. As far as decision concerning land in Delhi is concerned, it is the Ministry of Urban Development (MoUD) in the Government of India which has the final call. Both the MCD and the DDA function under the administrative control of the MoUD. In other words, on issues of land the power vests in the Central Government and not with the GNCTD.

110. Inasmuch as the LG has notified, with the approval of the MoUD, the 2015 Policy, the Central Government should be taken to have accepted the 2015 Policy insofar as it concerns lands belonging to the Central Government. The 2015 Policy acknowledges the obligation as spelt out in

Sudama Singh to make schemes for provide regular housing to *jhuggi* dwellers. It further acknowledges ***Sudama Singh*** as laying down that it is only in an extraordinary situation, where in-situ rehabilitation is not possible, that resort must be had to rehabilitation by relocation. The 2015 Policy also acknowledges the Supreme Court's decision in ***Gainda Ram v. MCD*** (***2010) 10 SCC715*** that the poor who come to the city for work "must reside reasonably close to their place of work." These basic legal requirements in the matter of dealing with *jhuggi jhopri* dwellers cannot be given a go-by the Central Government in relation to slums on land of the Central Government.

111. This would be the position even if the Central Government were to take the position that in terms of the Explanation to Section 10 (1) of the DUSIB Act and the first proviso to Section 10 (3) of the DUSIB Act it will be up to the Central Government to proceed with the removal of the *jhuggis* if so required without DUSIB's consent. In other words, even if the Central Government were to take the stand that the JJ *Batis*/clusters on its land will not be covered under the 2015 Policy framed under Section 11 of the DUSIB Act, the basic procedural protections and acknowledgment of the rights to adequate housing and against forced evictions therein, consistent with the legal requirements as spelt out in ***Sudama Singh*** would nevertheless continue to govern the removal and resettlement of such *jhuggis*. For that matter, even as regards the Railways, which is but a Ministry of the Central Government itself, the position can be no different. The claim of the Railways that they can deal with the JJ *bastis*/clusters and *jhuggi* dwellers on land held by them in a manner contrary to the law laid

down in ***Sudama Singh*** cannot, from a legal standpoint, be accepted. This is notwithstanding the stand taken by the Railways that in view of the specific provisions of the Railways Act they can proceed to unilaterally deal with the *jhuggi* dwellers or JJ clusters on Railway land by treating them as 'encroachers' unmindful of the constitutional and statutory obligations.

IX

Sudama Singh

112.1 The Court now turns to its decision in ***Sudama Singh*** which, as will be seen hereafter, has been affirmed by the Supreme Court of India. There were four sets of writ petitions before the Court in ***Sudama Singh***. In one i.e. Writ Petition No. 8904 of 2009, the *jhuggis* of the New Sanjay Camp slum cluster were demolished on 5th February 2009 for the purpose of constructing an underpass on road No.13 (Okhla Estate Marg) which goes through Okhla Phases 1 and 2.

112.2 Writ Petition No. 7735 of 2007 was in relation to the demolition of the Nehru camp slum cluster which was carried out for the purpose of the work of widening the existing National Highway 24 (NH-24) from four lanes to eight lanes. The agencies demolished these clusters as they were found to be spread over those stretches which were required for the widening of the roads and, therefore, were on the 'right of way'.

112.3 As far as Writ Petition No. 9246 of 2009 was concerned, the Petitioners belonged to the Gadia Lohar *basti* at Prem Nagar, New Delhi and they were part of a nomadic and scheduled tribe - often referred to as

'Khanabadosh'- who had migrated from Rajasthan to Delhi in 1965. It was stated that on 12th January 2009, without prior notice, the MCD demolished the Gadia Lohar *basti* and displaced more than 200 people without giving them a chance to take their belongings to a safe place. These Petitioners sought rehabilitation.

112.4 The fourth writ petition W.P. (C) No. 7317 of 2009 was by a resident of a *jhuggi* cluster in Prem Nagar, Delhi who was seeking relocation to an alternative plot in terms of the rehabilitation scheme announced by the slum and JJ wing of the MCD.

112.5 The GNCTD had, with the approval of the Central Government, finalized in 2000 a rehabilitation improvement scheme for *jhuggi* clusters. This came into effect from 1st April 2000 and had a cut-off date of 13th February 1998. However, in ***Wazirpur Bartan Nirmata Sangh v. Union of India (2003) 103 DLT 654 (DB)***, a Division Bench of this Court set aside the above scheme. In a special leave petition [SLP (C) 3166-67 of 2003] filed by the Union of India, the Supreme Court passed orders dated 19th February and 3rd March 2003 staying this Court's abovementioned judgment. As a result, the Scheme of rehabilitation continued to operate.

112.6 This Court in ***Sudama Singh*** noted the stand of the Respondents that as far as the first two writ petitions were concerned no compensation was payable for encroachers existing on the Right of Way. In other words, it was contended that those Petitioners were outside the notified scheme of rehabilitation.

112.7 The issues that fell for determination before the Court in ***Sudama Singh*** were as under:

> "1. Whether the State Government'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?
>
> 2. If there is any policy regarding the persons living on Right of Way then what could be the true import of such policy?
>
> 3. 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?"

112.8 After discussing the provisions of the ICESCR, General Comment No. 7 and the Special Rapporteur's guidelines on relocation of displaced persons, this Court in ***Sudama Singh*** concluded as under:

> "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 State's policy which governs relocation and rehabilitation of slum dwellers. State'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 respondents 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 *jhuggis* 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."

112.9 It was further observed:

> "When the petitioners set up their *jhuggis* 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 *jhuggis* 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 Delh****i* (*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.""

112.10 The other significant aspect of the decision in ***Sudama Singh*** is the discussion of the decisions of the South African Constitutional Court in ***Grootboom*** and ***Joe Slovo*** in the context of the technique of 'meaningful

engagement'. This Court held as under:

> "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."

112.11 The decision in ***Sudama Singh*** also acknowledged the ground realities of the life of *jhuggi* dwellers. Emphasizing that *jhuggi* dwellers should not be treated as 'secondary citizens', the Court held that:

a. It is the State's constitutional and statutory obligation to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller is not worse off.
b. The relocation has to be a meaningful exercise, consistent with the

rights to life, livelihood and dignity of *jhuggi* dwellers.

c. Therefore, the exercise of conducting a survey has to be undertaken with a great deal of responsibility. If it is to be meaningful, it has to be conducted either at the time when all the members of the family are likely to be found or by undertaking repeated visits over a period of time with proper prior announcement.

d. Documents of proof of residence are crucial to establishing the *jhuggi* dwellers' entitlement to resettlement, since most relocation schemes require proof of residence before a "cut-off date". If these documents are either forcefully snatched away or destroyed (which they often are) then the *jhuggi* dweller is unable to establish entitlement to resettlement. A separate folder containing all relevant documents of the *jhuggi* dweller must be preserved by the agency or the agencies involved in the survey.

112.12 This Court in its conclusion in ***Sudama Singh*** declared that:

> "64. (i) The decision of the respondents holding that the petitioners are on the "Right of Way" 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.
>
> (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 "meaningful" 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 *Jhuggis*, are available at the site of relocation."

113.1 At this juncture, it should be noticed that the decision in ***Sudama Singh*** was carried in appeal to the Supreme Court by the Government of NCT of Delhi by way of an SLP (Civil) No. 445-446/2012. While notice was issued on 5th January 2012, the Supreme Court stayed the contempt proceedings which were by then initiated in this Court.

113.2 At the hearing on 1st October 2012, the SLP was adjourned "to enable the Petitioners to explore the possibility of re-settling/ rehabilitating the *jhuggi* dwellers to some other place". On 14th January 2013, the Supreme Court was informed that the matter was "under active consideration of Council of Ministers, who were supposed to make a decision within a week. At the hearing on 29th April, 2013, the Supreme Court passed the following order:

> "Mr. Prashant Bhushan, learned counsel appearing for the respondents, has brought to our notice that in spite of the specific directions issued by this Court, still the report of the Group of Ministers has not been placed on the record showing how the displaced jhuggi dwellers are to be rehabilitated. Learned counsel appearing for the Government of N.C.T. Of Delhi has submitted that all necessary formalities have been completed. However, certain clarification is required as to why the Government is saying that the Scheme now proposed shall be applicable

> only in future. Let that clarification be sought within a period of one week. List the matters on 10th May, 2013."

113.3 Thereafter, on 31st July 2013, the Government sought leave to withdraw this Special Leave Petition and the following order was passed:

> "Learned counsel for the petitioners seeks permission to withdraw the special leave petitions. Permission is granted. Consequently, the special leave petitions are dismissed as withdrawn."

113.4 The net result, as far as the decision in ***Sudama Singh*** is concerned, is that it was accepted by the Government of NCT of Delhi, and that decision has now attained finality with the dismissal of the SLP filed by the GNCTD against the said decision.

114. This explains how the ***Sudama Singh*** judgment has in fact been referred to in the preamble of the 2015 Policy, which has been mentioned hereinbefore.

115.1 At this juncture, it is also to be noted that in the contempt proceedings filed in this Court with respect to the non-implementation of the decision in ***Sudama Singh,*** an order was passed on 16th December 2014 in Contempt Case No. 884 of 2013 by a learned Single Judge taking the view that the directions issued in ***Sudama Singh*** were confined only to the "four Petitioners" and not to any other person, even though the Petitioners intended to refer to them.

115.2 This decision was taken in appeal to the Supreme Court by the

original Petitioners. In its judgment dated 12th December 2017 in Civil Appeal Nos. 21806-807 of 2017 the Supreme Court set aside the order of the learned Single Judge and observed as under:

> "In our view, the High Court went wrong in referring only to paragraph 62 of the judgment and not to the other relevant considerations leading to the decision which are contained in the judgment itself, which we have extracted above. The whole purpose of paragraph 62 of the judgment is to lend the benefit of the judgment to the affected persons whose names have been furnished in the writ petitions in the form of annexures to the petitions. Paragraphs 63 and 64 in fact makes it very clear. It is not required that in a public interest litigation all the affected parties should be petitioners. It is a well-accepted principle of class litigation. In the facts of the present case, the petitioners have actually furnished the names of persons who have been identified as the persons affected. Hence the High Court ought to have extended the benefit to those persons whose names have also been furnished by way of annexures to the writ petitions and for whose benefits the High Court has rendered the judgment dated 11.02.2010. As rightly pointed out by learned Additional Solicitor General, the eligibility of the persons referred to in the Annexures will have to be verified and that is what is precisely indicated by the Court in direction No.3 to the effect that the benefit should be available to those eligible persons in terms of the relocation policy."

116. The Supreme Court thereby reaffirmed the dictum in ***Sudama Singh*** and directed the Government of NCT of Delhi to implement it in full measure.

117. The decision in ***Sudama Singh*** governs the law in relation to slums and slum dwellers in the NCT of Delhi. This is true whether the slums are those

under the management of the DUSIB or are located on land owned by other agencies including the central Government. The decision in ***Sudama Singh*** requires a Court approached by persons complaining against forced eviction not to view them as 'encroachers' and illegal occupants of land, whether public or private land, but to ask the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy.

118. While the 2015 Policy lays down a framework in terms of the decisions in ***Sudama Singh*** for the authorities to follow if they propose to undertake eviction of slum dwellers for any reason, even for those JJ clusters and *jhuggis* which are situated on the land of the Central Government, including those entrusted to the Railways, where the Central Government or the Railways seeks to take action independent of the DUSIB, the basic elements of that framework would certainly apply. The decision in ***Sudama Singh*** is binding on all agencies including the Central Government and the Railways. In sum, it is not as if only the JJ clusters and *jhuggi* dwellers in the 675 JJ clusters entrusted to the DUSIB that are required to be dealt with in terms of the decision in ***Sudama Singh*** but every *jhuggi* dweller, anywhere in the NCT of Delhi, has to be dealt with in terms of the said decision. In effect, therefore, no slum dweller in the NCT of Delhi in one area can be treated differently from that in another.

X

The 2015 Policy

119. It is necessary at this stage to discuss the provisions of the 2015 Policy. As already noticed, the Policy itself delineates principles on which it is based. In this context paras 1 (i, ii and iii) are relevant and they read as

under:

> "(i) The people living in *jhuggis* perform critical economic activities in Delhi like drivers, vegetable vendors, maid servants, auto and taxi drivers, etc.
>
> (ii) In the past, adequate housing was not planned for these people in middle or upper class areas, to which they provide services. As a result, a number of *jhuggi bastis* mushroomed all over Delhi close to the areas where they provide services.
>
> (iii) They have encroached upon the lands on which they live."

120. After setting out the decisions of the Supreme Court and of this Court in ***Sudama Singh*** and the decision of the Supreme Court in ***Gainda Ram v. Municipal Corporation of Delhi*** (*supra*) which reiterated that "hawkers have a fundamental right to hawk", the Policy notes in paras 1(vi) and (vii)as under:

> "(vi) Government of National Capital Territory of Delhi recognizes that the habitat and environment in which *Jhuggi Jhopri Bastis* exist is often dirty, unfit for human habitation and unhygienic both for the inhabitants living in that area as well as for the people living in surrounding areas.
>
> (vii) Government of National Capital Territory of Delhi, therefore, wishes to put in place and implement this policy to house the poor in a permanent and humane manner; at the same time, clear lands for specific public projects and roads etc."

121. The 2015 Policy states that DUSIB is to be the Nodal Agency for relocation/rehabilitation of *jhuggi jhopri bastis* "in respect of the lands

belonging to MCD and Delhi Government and its department/agencies. In case of JJ Colonies existing on lands belonging to the Central Government/Agencies, Railways, DDA, Land and Development (L&D) Office, the Delhi Cantonment Board, the New Delhi Municipal Council (NDMC) etc. it stipulated that "the respective agency may either carry out the relocation/rehabilitation themselves as per the policy of the Delhi Government or may entrust the job to the DUSIB."

122. The proviso to para 2 (a) of the Policy states:

> "Provided that, the Agencies while doing relocation rehabilitation/in-situ redevelopment of the dwellers of *Jhuggi Jhopri Bastis* must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of Pradhan Mantri Awas Yojna and provisions which have been notified by the Central Government from time to time"[59]

123. As already noticed, as regards who is eligible for rehabilitation or relocation, the 2015 Policy states that JJ *bastis* that had come up before 1st January 2006 shall not be removed in terms of the National Capital Territory of Delhi Laws (Special Provisions) Act 2011.

[59] The 'Pradhan Mantri Awas Yojana' (PMAY) was launched in 2015 with the aim of providing houses to "eligible families/beneficiaries" by 2022. The PMAY defines "beneficiary family" to comprise of "husband, wide, unmarried sons and/or unmarried daughters". In order to be eligible the beneficiary family "should not own a *pucca* house either in his/her name or in the name of any member of his/her family in any part of India to be eligible to receive central assistance under the mission." The PMAY allows States and Union Territories to decide a cut-off date on which beneficiaries need to be a resident of that urban area in order to be eligible. Under the PMAY, beneficiaries can avail *one* of the 'four vertical components': (i) in-situ redevelopment (ii) affordable housing through credit-linked subsidy (iii) affordable housing in partnership *and* (iv) subsidy for beneficiary-led individual house construction. See, "Pradhan Mantri Awas Yojana: Housing for All (Urban)", *Scheme Guidelines*, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2015

124. In the brief note submitted by Mr. Kirtiman Singh, counsel for the MoUD, a reference has been made to the affidavit filed by the Central Government (MoUD) on 6th December 2018 and the Office Memorandum dated 20th March 2017 whereby the MoUD conveyed to the DoUD its response to the 2015 Policy *inter alia* in respect of paras 2(a) and 2(b) as under:

> "(i) Para 2 (a) (Part-A) Nodal Agency:
> This Ministry broadly concurs with provision but the agencies while doing relocation/rehabilitation/in-situ redevelopment of the dwellers of JJ Clusters must ensure that the methodology, benefits and provisions adopted in such tasks are in conformity with the guidelines of the Pradhan Mantri Awas Yojna.
>
> (i) Para 2 (a) (v) (Part-A) Relocation in rare cases:
> This Ministry has no objection to the revised proposal. This provision will come into effect only when the Central Government Land Owning Agency approaches DUSIS for rehabilitation, removal and relocation of *Jhuggi Jhopri Basti*. However in this case also the provisions which have been notified by Central Government will prevail. This issues with the approval of Hon'ble Union Urban Development Minister."

XI

The Draft Protocol

125. The Draft Protocol framed by the DUSIB in consultation with all stake-holders,[60] and pursuant to the orders of this Court in the present writ

[60] DUSIB states that the Draft Protocol drafted by it and the 2015 Policy were discussed in a meeting held by it on 20th January 2016, which was attended by the representatives of Civil Society Organizations, Land Owning Agencies and Delhi Police. The written comments of the following agencies were also taken into account while drafting the Protocol: in writing. The written responses of the (i) Jhuggi Jhopri Ekta Manch (ii) Social Society - CiRiC (iii) Actionaid

petition, sets out the steps to be taken for removal of *jhuggis* and JJ *bastis*. It states that "the process of removal/re-settlement /rehabilitation/in-situ improvement /re-development of *jhuggis* and JJ *Bastis* in Delhi will be governed by the 2015 Policy. The Land Owning Agency (LOA) is to send a proposal for removal of the *jhuggis* and JJ *bastis* to DUSIB sufficiently in advance "with proper justification satisfying the conditions mentioned in the Policy, along with commitment to make payment of the cost of rehabilitation". DUSIB then examines the proposal with reference to the cut-off date and after an in-principle approval undertakes a joint survey along with the representative(s) of LOA to determine the eligibility of JJ dwellers for rehabilitation as per the 2015 Policy.

126. A detailed procedure has been set out for conducting the joint survey receiving claims and objections which would be disposed of by a Claim and Objection Redressal Committee. The procedure for determination of the eligibility of the JJ dweller to rehabilitation has also been set out. There is to be an Eligibility Determination Committee (EDC) constituted by the CEO of DUSIB which will comprise the officers of DUSIB and representatives of the concerned ERO and AERO (Electoral Registration Officer and Assistant Electoral Registration Officer) as nominated by the District Election Officer (DEO).

127. A detailed programme is to be drawn up by the DUSIB including

---

and its partner JJEM (iv) Jagori (v) East Delhi Municipal Corporation (vi) Delhi Police (vii) Northern Railway (viii) Revenue Department of GNCTD (ix) Ministry of Urban Development, GOI (x) Delhi Development Authority.

holding of a pre-camp at the side to facilitate filling up the requisite application form. A schedule is to be permanently displayed in the JJ *basti* mentioning the place and time to appear before the EDC along with the requisite documents. A finalised list of eligible and ineligible JJ dwellers is then to be submitted by the EDC to the CEO DUSIB for approval. If a genuine case is left out, an Appellate Authority is to be provided for to whom such left out person may appeal.

128. Post survey, and after receiving the cost of rehabilitation from the Land Owning Agency (LOA), DUSIB, in the presence of representatives of eligible JJ dwellers, is to conduct a draw of flats to be allotted to the eligible JJ dwellers. After receipt of the beneficiary contribution and verification of possession, letters are to be issued and the JJ dwellers are to be given two months' time for shifting. Thereafter, steps are to be taken for removal with the assistance of the police. Para 7 of the Protocol sets out the steps for actual removal of the *jhuggis* after the above steps are complete. *Inter alia,* it talks of DUSIB facilitating "transportation of household articles/belongings of eligible JJ dwellers to the place of alternative accommodation, if necessary."

129. Suitable facilities are to be provided at the site where rehabilitation is to take place, for (i) for admission of the wards of the *jhuggi* dwellers in the nearby schools (ii) for setting up a dispensary/ Mohalla Clinic in the vicinity of the flats (iii) opening a fair price shop/Co-operative store to cater to the basic daily needs of the *jhuggi* dwellers, if not available in the vicinity. For this purpose, DUSIB is expected to make requests to the Directorates of

Education and Health Services of the GNCTD and the MCDs to make arrangements. DUSIB is also to request the Delhi Transport Corporation (DTC) to make arrangements for DTC buses. DUSIB is to facilitate the "availability of drinking water and sewerage facilities in the flats to be allotted." It further states that "the demolition/shifting shall not be carried out during night, Annual Board Examinations or during extreme weather conditions." Further, "as far as practicable, DUSIB will provide potable water, sanitation and basic health facilities at the site of demolition of the *jhuggis*." The steps to be followed post removal of *jhuggis* are set out in para 8 of the Protocol.

130. The Protocol thus seeks to put into effect the core elements of the 2015 Policy which acknowledge that the right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the other rights to life viz., the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage facilities and transport facilities. The constituent features of the RTTC thus find place in the 2015 Policy.

131. The MoUD has also pointed out that the PMAY which has been referred to in the 2015 Policy also talks of some of the aspects of "*in-situ* slum redevelopment using land as a resource." In view of the integration of the PMAY aspects into the 2015 Policy and the Draft Protocol, the Central Government has categorically informed the Court that it has no objection to the rehabilitation Policy notified by the LG by order dated 11th December 2017, "as well as the draft protocol for removal."With the above stand of the

Central Government being made categorical, the questions that arose earlier for determination in the order dated 12th October 2018 of this Court have been rendered academic.

132. At this juncture, it requires to be noted that there has been a distinct shift in the approach of the State to the issue of rehabilitation of slum dwellers. The MPD 2021 makes a shift from resettlement to rehabilitation in-situ i.e. at the place where the dwelling is found. The shift is from allotting plots of unreasonably small sizes (12.5 sq.m) to building multi-storey building blocks to house the dwellers in the JJ clusters, based on their eligibility in terms of the policy from time to time.

133. In the present case, since that stage is yet to be reached, the Court is not called upon to comment on the adequacy of such policy in the matter of dealing with the needs of the dwellers in the JJ clusters. As and when such an issue arises it would have to be addressed by the Court. For that reason, the Court is also not commenting on the individual elements of the 2015 Policy or the Draft Protocol which have been responded to by the Petitioners as well as the Respondents.

134. It must be noted that the Petitioners have some reservations to the specific aspects of the Draft Protocol. However, as of now there is no threat of forced eviction of the dwellers of Shakur Basti as all the Respondents, including the Railways, have taken a stand recognising that in terms of the DUSIB Act, the 2015 Policy and the decision in ***Sudama Singh*** it is essential to first complete the survey and consult the JJ dwellers. Further,

under Section 10 (1) of the DUSIB Act, read with the 2015 Policy, and even otherwise, unless it is possible for the JJ dwellers to be rehabilitated upon eviction, the eviction itself cannot commence.

135. If no *in situ* rehabilitation is feasible, then as and when the Respondents are in a position to rehabilitate the eligible dwellers of the JJ *basti* and *jhuggis* in Shakur Basti elsewhere, adequate time will be given to such dwellers to make arrangements to move to the relocation site. The Court would not like to second guess the time estimate for such an exercise and, therefore, keeps open the right of the JJ dwellers to seek legal redress at the appropriate stage if the occasion so arises. At that stage, the Court would possibly examine the objections that the JJ dwellers may have to the Protocol. Subject to this, the Court permits DUSIB to operationalise the Protocol.

136. The key elements of the 2015 Policy, which are in conformity with the decisions of the Supreme Court of India discussed in Part VII of this judgment as well as in ***Sudama Singh***, would apply across the board to all *bastis* and *jhuggis* across the NCT of Delhi. In other words, conducting a detailed survey prior to the eviction; drawing up a rehabilitation plan in consultation with the dwellers in the JJ *bastis* and *jhuggis*; ensuring that upon eviction the dwellers are immediately rehabilitated - will all have to be adhered to prior to an eviction drive. Forced eviction of *jhuggi* dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in all of the above decisions.

XII

Stand of the Railways

137. That leaves for consideration the stand taken by the Railways, which are a part of the Union of India. To summarise the Railways' contentions:

(i) Lands "belonging to the Railways" fall exclusively within the purview of the Railways Act, 1989. Reference is made to the definition of 'Railway' contained in Section 2(31) of the Railways Act, 1989. It is stated that Railways, as a part of their statutory duty, are obliged to remove encroachments upon their land. Reference is made to Section 147 of the Railways Act which deals with "trespass and refusal to desist from trespass." It states that any person entering on Railway land without authority shall be punished with imprisonment for a term which may extend up to 6 months or a fine which may extend to Rs.1,000/- or both.

(ii) The proximity of *jhuggi* dwellers near railway lines, resulting in a number of accidents causing loss of life and limb.

(iii) The DUSIB Act has no applicability "in so far as the activities of the Railways are concerned." A State legislation will not have an overriding effect over a Central legislation. The Explanation to Section 10(1) and the proviso to Section 10(3) of the DUSIB Act "makes it abundantly clear that the DUSIB Act would not *ipso facto* apply to the lands belonging to the Railways." It is also contended that those provisions of the DUSIB Act therefore "do not apply to any land belonging to the Central Government, including that of the Railways."

(iv) Section 20 (o) of the Railway Act specifically provides for rehabilitation and resettlement only in the context of acquisition of land and that if the legislature had deemed it appropriate it would have a similar provision in Section 147 for 'trespasses/encroachments' but it did not.

(v) DUSIB "will have no jurisdiction to notify any illegal encroachment as JJ Cluster under provisions for the DUSIB Act on the land belonging to the Railways."

(vi) Due to the special needs of the Railways, "the slums on Railway land are 'untenable settlement'" hence, "in-situ settlement of slum dweller on Railway land would not be feasible."

(vii) As regards MPD-2021, a reference is made to table 12.7 which permits all facilities related to Railway passenger operations, goods handling, passenger change over facilities, including watch and ward, Hotel, Night Shelter, all facilities related to Railway Tracks, operational areas including watch and ward." Therefore, in-situ rehabilitation is not permitted.

(viii) Reference is then made to the Public Premises (Eviction of Unauthorized Occupations) Act (PP Act) and the procedure prescribed thereunder for removal of unauthorised occupants. A reference is made to the order of 1st October 2018 of the National Green Tribunal (NGT) which has directed the constitution of Special Task Force to remove JJ Clusters from Railway land.

138. The above submissions proceed on the basis that Railways is an entity separate from that of the Central Government, whereas it is not. The Railways is another Ministry of the Central Government. Two Ministries of the Central Government cannot talk in two different voices. The MoUD has categorically informed this Court that it has no objection to the 2015 Policy notified by the LG (who incidentally also functions under the administrative control of the Central Government) or the Draft Protocol.

139. The DUSIB Act and the 2015 Policy are by and large in conformity with the Constitution and India's obligations under the ICESCR. Therefore, the Railways Act when it comes to the question of removal of 'encroachments of slum dwellers' will have to be understood as having to also be interpreted in a manner consistent with the above legal regime. The Explanation to Section 10 (1) and the proviso to Section 10 (3) of the DUSIB Act make it clear that JJ *bastis* and *jhuggis* on Central Government land, which includes Railway land, can be made the subject matter of the DUSIB Act with the consent of the central Government. In fact, as already noted, land in the NCT of Delhi is under the control of the Central Government. The decision of the NGT will also have to be read consistent with the above legal regime.

140. The Railways by themselves are not a 'land owning agency'. The word 'owning' is used only in the sense of Railways holding the land of Union of India for activities concerning the Railways. In that sense, when it is said that land belongs to the Railways it is not in the sense of land being 'owned

by the Railways', but land of the Union of India being held by the Railways. If on account of close proximity to Railway tracks, in-situ rehabilitation is not possible, then alternative land, not close to the tracks, will have to be found in consultation with the DUSIB. It is clarified that this direction is specific to the facts of the present case.

XIII

Concluding observations

141. The right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport facilities.

142. The law explained by the Supreme Court in several of its decisions discussed hereinbefore and the decision in ***Sudama Singh*** discourage a narrow view of the dweller in a JJ *basti* or *jhuggi* as an illegal occupant without rights. They acknowledge that the right to adequate housing is a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city. They recognise such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement. That is the running theme of the DUSIB Act and the 2015 Policy.

143. Once a JJ *basti*/cluster is eligible for rehabilitation, the agencies should cease viewing the JJ dwellers therein as 'illegal encroachers'. The decisions of the Supreme Court of India on the right to shelter and the decision of this

Court in ***Sudama Singh*** require a Court approached by persons complaining against forced eviction not to view them as 'encroachers' and illegal occupants of land, whether public or private, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy. Forced eviction of *jhuggi* dwellers, unannounced, in co-ordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in the above decisions.

144. In view of the positive stand of the Respondents, including the Railways, that in terms of the DUSIB Act, the 2015 Policy and the decision in ***Sudama Singh*** it is essential to first complete a survey and consult the JJ dwellers, there is, as of now, no imminent possibility of eviction of the JJ dwellers of the Shakur Basti. If no *in situ* rehabilitation is feasible, then as and when the Respondents are in a position to rehabilitate the eligible dwellers of the JJ *basti* and *jhuggis* in Shakur Basti elsewhere, adequate time will be given to such dwellers to make arrangements to move to the relocation site. The right of the JJ dwellers to raise objections to the 2015 Policy and the Protocol and to seek legal redress at the appropriate stage, if the occasion so arises, is reserved.

145. The petition and pending applications are disposed of in the above terms.

S. MURALIDHAR, J.

VIBHU BAKHRU, J.

MARCH 18, 2019
mw/tr