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

+ **W.P.(C) 647/2022 & CM APPL. 1859/2022**

MOTTALYA & ORS.

..... Petitioners

Through: Ms. Vrinda Bhandari, Advocate.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. Respondents

Through: Mr. Sameer Vashisht, ASC Civil
GNCTD with Ms. Sanjana Nangia,
Advocate for R-1 and R-5.

Ms. Shobhana Takiar, SC for
DDA/R-2.

Mr. Parvinder Chauhan, Standing
Counsel for DUSIB/R-4.

Ms. Monika Arora for Respondent
Union of India/R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **11.01.2022**

The hearing was conducted through video conferencing.

CM APPL. 1860/2022 (Exemption from filing attested affidavit)

1. Exemption allowed, subject to the condition that the petitioner will file the duly sworn/attested affidavit within 72 hours from the date of resumption of the regular functioning of this Court.
2. The application stands disposed-off.

CM APPL. 1861/2022 (Exemption)

3. Allowed, subject to all just exceptions.
4. The application stands disposed-off.

W.P.(C) 647/2022

5. The petitioners claim to be living in the Gadia Lohar settlement in Manglapuri village in Palam, South West Delhi, 110045, for the past



about four decades. They have documents to prove their residence in the said area by way of Ration Card, Election Card and other identity cards issued to them, starting from the 1997 etc. The petitioners further state that their children also study in schools in the vicinity which is sufficient proof of their residence at the claimed respective addresses. Earlier this month, some people, purporting to be officers from the Delhi Development Authority threatened them with imminent eviction.

6. The petitioners seek protection from arbitrary dispossession of their residence without prior survey in terms of the dicta of this court in *Ajay Maken vs. Union Of India*, (2019 SCC) Online Delhi 7618. The relevant paragraphs of the aforesaid judgment *inter-alia* reads as under:

*“...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..”

7. Issue notice. The learned counsel named above accept notice on behalf of their respective respondents.
8. Reply and rejoinder, if any, be filed in four weeks each, successively.
9. Respondent No. 3 is a not a necessary party at this stage. At the petitioners’ request, respondent no. 3 is deleted from the array of parties. Let Amended Memo of Parties be filed in four weeks.
10. List on 23.08.2022.
11. In the interim, let status quo be maintained.
12. The order be uploaded on the website forthwith.

JANUARY 11, 2022
SS

NAJMI WAZIRI, J