

**Press Release on Supreme Court order dated 31.08.2020
regarding demolition of Jhuggis along the railway tracks**

One is deeply disappointed and distraught beyond measure by the hasty order of the Supreme Court dated 31.08.2020 in MC Mehta v. Union of India, WP(C) 13029/1985, ordering the demolition of Jhuggis along the railway tracks. This order was made without giving the affected parties notice. This is surprising because the Jhuggis along the railway tracks are covered by the recent decision of a Division Bench of the Delhi High Court in Ajay Maken v. Union of India, WPC(C) 11616/2015, dated 18.03.2019 (attached herewith) where the High Court categorically directed that all the Jhuggi dwellers near the railway tracks must be rehabilitated according to the policy framed by the DUSIB long back.

Since, the Jhuggi dwellers represented by various petitioners were deliberately not made parties before the Supreme Court, this vital policy and court order was not brought to the notice of the Supreme Court. If this order is implemented without rehabilitation, great distress will be caused to tens of thousands of families who are already in grave danger due to the spread of COVID-19.

This statement should be read in the backdrop of the UN Special Repertoire reporting that the "Housing has become the front line defence against the coronavirus. Home has rarely been more of a life or death situation". Another UN report tabled before the General Assembly in 2019 states that "When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations." In the present case, the court has not approved but DIRECTED the evictions!

One, therefore, hopes and prays for the Supreme Court to suo motto recall this order solely on the ground that the affected parties were not before the Court.

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Addendum:

1. Relevant extracts of Ajay Maken v. Union of India, Ajay Maken v. Union of India, WPC(C) 11616/2015, dated 18.03.2019
2. Relevant extracts of Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015

Attached:

3. Supreme Court order dated 31.08.2020 in MC Mehta v. Union of India, WP(C) 13029/1985
4. Delhi High Court Division Bench order dated 18.03.2019 in Ajay Maken v. Union of India, Ajay Maken v. Union of India
5. Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015
6. UN Officer of the High Commissioner on Human Rights, press release dated 18.03.2020
7. Access to Justice for Right to Housing, UN General Assembly document dated 15.01.2019

Ajay Maken v. Union of India
WPC(C) 11616/2015, dated 18.03.2019
relevant extracts

“XII Stand of the Railways

137. (viii)... 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...

139. The DUSIB Act and the 2015 Policy are by and large in conformity with the Constitution and India's obligations under the ICESCR (regarding Right to Housing). 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...

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 discourages 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 coordination with the other agencies, and without compliance with the above steps, would be contrary to the law explained in the above decisions.

144. ...it is essential to first complete a survey and consult the JJ dwellers... 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 ...adequate time will be given to such dwellers to make arrangements to move to the relocation site.”

Delhi Slum and Jhuggi Jhopri Rehabilitation and Relocation Policy, 2015
relevant extracts

"(PART-A) 1. (iv) The decisions of the Hon'ble Supreme Court of India in Chameli Singh Vs. State of UP [1996 (2) SCC 549] and in Shantistar Builders Vs. N.K. Toitame, [1990 (1) SCC 520] and numerous other judgments have laid down that the right to life is not a right to mere animal existence and that the right to housing is a Fundamental Right. Going further, in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan, [1997 (11) SCC 123], the Supreme Court held that even poverty stricken persons on public lands have a Fundamental Right to housing. The Court laid down that when slum dwellers have been at a place for some time, it is the duty of the Government to make schemes for housing the jhuggi dwellers. In the most recent decision of the Chief Justice's Bench in the Delhi High Court in Sudama Singh Vs. Government of Delhi [168 (2010) DLT 218], the Court referred to the provisions of the Delhi Master Plan and emphasised in-situ rehabilitation. It is only in the extraordinary situation, when in-situ rehabilitation is not possible, then only, rehabilitation by relocation is to be done. The normal rule is in-situ up-gradation and re-development...

(v) The recent Supreme Court decision in Gaiinda Ram Vs. Municipal Corporation of Delhi, [2010(10) SCC 715] reiterated that hawkers have a fundamental right to hawk. It is, therefore, clear that the poor, who come to the city for work, must reside reasonably close to their place of work. Even apart from the legal aspect, studies have shown that resettlement at far way places invariably force the poor to return to their informal housing arrangements close to their place of work...

2. Keeping the above principles in mind, Government of National Capital Territory of Delhi announces the following policy for rehabilitation and relocation of Jhuggi Jhopri basti

(a) Nodal Agency: The Delhi Urban Shelter Improvement Board (DUSIB) will 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 Jhuggi Jhopri colonies existing in lands belonging to Central Government/Agencies like Railways, Delhi Development Authority, Land & Development Office, Delhi Cantonment Board, New Delhi Municipal Council, etc. 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...

(i) Who is eligible for rehabilitation or relocation: Jhuggi Jhopri Bastis which have come up before 01.01.2006 shall not be removed (as per National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011) without providing them alternate housing. Jhuggis which have come up in such Jhuggi Jhopri Bastis before 01.01.2015 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)"