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

\+ LPA 630/2025, CM APPL. 63534/2025, CM APPL. 63535/2025, CM APPL. 63536/2025, CM APPL. 63537/2025 & CM APPL. 63538/2025

DELHI DEVELOPMENT AUTHORITY .....Appellant

Through: Mr. C. Mohan Rao, Senior Advocate with Ms. Mrinalini Sen, Ms. Kritika Gupta and Mr. Lokesh Sharma, Advocates.

versus

ZIAUL HAQUE & ORS. .....Respondents

Through: Mr. Prashant Bhushan, and Ms. Nisha Tiwari, Advocates.
Mr. Anuj Chaturvedi and Ms. Shivani Thakur, Advocates. for R-4.

Date of Decision: 10th October, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA,J: (ORAL)

CM APPL. 63534/2025 (*Condonation of delay)*

1. Heard the learned Counsel for the parties.

2. For the reasons stated in the application, the same is allowed. Delay in filing the appeal is hereby condoned.

3. Accordingly, the application stands disposed of.

CM APPL. 63538/2025 (*Condonation of delay in re-filing the appeal)*

4. For the reasons stated in the application, the same is allowed. Delay in re-filing the appeal is hereby condoned.

5. Accordingly, the application stands disposed of.

LPA 630/2025& CM APPL. 63535/2025 (*seeking stay*)

6. Present Letters Patent Appeal has been filed assailing the judgment dated 17.09.2024 (hereinafter referred to as *"impugned judgment"*) passed by the learned Single Judge, whereby the underlying writ petition bearing W.P.(C) 9702/2015 preferred by the respondent nos.1 to 43 herein was allowed with a direction to the appellant/Delhi Development Authority (hereinafter referred to as *"DDA"*) to rehabilitate respondent nos.1 to 43, who fulfil the eligibility criteria as per the DDA rehabilitation policy dated 03.02.2004 in accordance with law.

7. We are refraining from encapsulating the facts for the sake of brevity as learned Single Judge has succinctly captured the same in paragraphs 5 to 13 of the impugned judgment.

8. Mr. C. Mohan Rao, learned Senior Counsel appearing for the DDA submits that the respondent nos.1 to 43 are not entitled for rehabilitation under the rehabilitation policy, 2004 (hereinafter referred to as *"the 2004 policy"*) as they were carrying on the hazardous commercial activities and the said policy did not envisage extension of the provisions/benefits to those engaged in illegal or hazardous activities.

9. Learned senior counsel submits that there is overwhelming evidence that the entire Jhuggi Jhopdi cluster located at DBS Camp, Jangpura-B, near Balmiki Mandir, New Delhi (hereinafter referred to as the *"JJ Cluster"*) has been indulging in such hazardous activities, to the extent that fire accidents have occurred within the cluster. Pursuant thereto, the residents of the nearby colonies approached this Court by way of a writ petition bearing W.P.(C) 9358/2005 titled *"Jangpura Residents Welfare Association vs. Lt. Governor of Delhi & Ors."*. *Vide* order dated 31.07.2006, this Court had directed the Government of NCT of Delhi to take necessary action to ensure that no commercial activity takes place. Pursuant thereto, demolition of the subject

jhuggis was carried out by the DDA and MCD on 08.11.2006.

10. That apart, learned senior counsel draws our attention to Clauses 6 and 7 of the eligibility conditions of the 2004 Policy, extracted by the learned Single Judge at page 53 of the paper book. Clause 6 envisages that no alternative plot should be given for commercial Jhuggi Jhopdi dwellers (hereinafter referred to as *"JJ dwellers"*). Clause 7 carves out an exception for those cases where the jhuggi is being used for both residential and commercial purposes, and only in such cases, it can be considered for rehabilitation. He also contends that the respondents have used the jhuggis only for commercial purposes and are therefore not entitled to any relief. Learned senior counsel states that as far as commercial activities are concerned, they are permissible only to the extent of serving the needs of the JJ dwellers and should not involve any activity of a hazardous nature.

11. He also draws our attention to page 66 of the paper book. According to learned senior counsel, there is overwhelming evidence establishing the use of the jhuggi for a commercial purpose not envisaged in the policy, which was simply brushed aside by the learned Single Judge. He states that in view of credible evidence in the form of newspaper reports and photographs evidencing the unauthorized storage of hazardous materials/commercial activities, the respondents are not entitled to rehabilitation under the said Policy.

12. *Per contra,* Mr. Prashant Bhushan, learned Counsel appearing for the respondent nos.1 to 43, submits that this is a case where demolition took place in 2006 under the 2004 Policy, and thus the said Policy would be applicable to the respondents. As per the said policy, the DDA was required to carry out a survey prior to the demolition. He submits that contrary to the provisions of the said Policy, the DDA did not conduct the survey, however, the respondent no.44/Delhi Urban Shelter Improvement Board (hereinafter referred to as

"DUSIB") carried out the same, in which it was found that respondent nos.1 to 43 are residents of the JJ Cluster.

13. Learned counsel further submits that it is the contention of the DDA that the respondents are carrying on hazardous commercial activities, and thus, not entitled to any rehabilitation. However, the said policy clearly stipulates that even if the JJ dwellers are engaged in commercial activities at their own residences, they shall still be eligible for rehabilitation under the said policy. He states that it cannot be disputed that respondent nos.1 to 43 are residents of the JJ Cluster and holders of valid ration card. To substantiate his argument on the point that even if the residents are engaged in commercial activities, they are entitled to rehabilitation, he relies on Clause 7 of the eligibility conditions of the 2004 Policy.

14. He further submits that for the last 19 years, the DDA has frustrated the efforts of the respondents to be rehabilitated, which ought to have been considered prior to the demolition that took place in 2006. In light of the admitted facts and circumstances, he prays that this appeal be dismissed.

15. We have heard Mr. C. Mohan Rao, learned senior counsel appearing for the appellant, and Mr. Prashant Bhushan, learned counsel appearing for the respondent nos.1 to 43, perused the material on record, and the impugned judgment.

16. The view taken by the learned Single Judge after evaluating the material on record including the newspaper reports and the photographs relied upon by the appellant, to our mind seems to be justified.

17. On an appreciation of Clause 6 read with Clause 7 of the 2004 Policy of the DDA, it is clear that JJ dwellers were entitled to rehabilitation even if one floor of the jhuggi was being put to commercial use. It is also clear that the rigors of Clause 6 have been watered down by exceptions carved out in Clause

7 of the said Policy. Moreover, as to what would constitute "commercial use" has neither been specified in the 2004 Policy, nor substantiated before the learned Single Judge. To orally submit that it would take within its ambit only small shops of daily needs, though attractive, but has no legs to stand, particularly in the absence of definition clause and does not further the case of the appellant. Thus, the argument based thereon is unmerited.

18. The reliance sought to be placed on the newspaper reports and photographs filed on record by the appellant is equally unpersuasive. This is for the reason that DUSIB in its survey conducted under orders of the Court had found that the respondents have ration cards issued prior to the framing of the 2004 Policy issued for the subject jhuggis. In view of direct evidence in the form of Ration Cards issued by a statutory local authority, the need to rely on newspaper reports or photographs does not arise. Thus, this too is untenable and unmerited.

19. In our opinion, the impugned decision of the DDA has rightly been set aside by the learned Single Judge, as observed in paragraphs 14 to 22. The said observations are extracted hereunder:

> *"14. A holistic reading of the DDA Policy of 2004 reveals that it was designed to ensure that displaced individuals, particularly those genuinely residing in Jhuggies, are provided with alternative housing. The policy upholds the mandate of providing adequate safeguards to residents of Jhuggie clusters before they are evicted from the land they occupy. Notably, the DDA Policy of 2004 mandates that once a JJ cluster is identified for relocation, a survey of the clusters must be conducted in a prescribed format, along with photographs. In cases where a Jhuggie is found locked during the survey, a two-day notice should be pasted at the door to verify the occupants, followed by a re-survey of such locked Jhuggies before any demolition action is undertaken. This clearly indicates that the scope of the policy hinges on the aspect of determining the eligibility for lawful relocation and rehabilitation of the JJ clusters dwellers to another place, in order to prevent their displacement without alternative accommodation.*
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> *15. Keeping the above core objectives in view, the impugned decision, which primarily relies on purported newspaper reports, the demolition report, and photographs, is unsustainable. There is no substantial or credible evidence to refute the Petitioners' residential status. The DDA's argument revolves around the allegations that the Petitioners were mere squatters engaged in the illegal activities of storage of plastic and similar hazardous materials thereby rendering them ineligible for rehabilitation.*

However, this argument overlooks the fundamental purpose of the DDA Policy, 2004,which was specifically framed to provide relief even to those residing on public lands without authorization, provided they fulfil the prescribed eligibility criteria. The term 'squatters' in this context does not automatically imply disqualification unless it is established that the occupants were engaged solely in commercial activities, without any residential use of the premises. Notwithstanding, the policy explicitly contemplates rehabilitation even for those who used their dwellings for both residential and commercial purposes. The relevant portion of the policy states as follows:

> *"7. The jhuggie being used for both residential and commercial purposes can be considered allotment of one residential plot only. In case, the ground floor of the jhuggie is being used for commercial purposes and other floors for residential purposes that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person"*

16. While the emphasis by the DDA and DUSIB on the use of the Jhuggies for storing hazardous plastic waste and other materials, there by suggesting commercial activity, is a valid concern since rehabilitation should not extend to those engaged in illegal or hazardous activities; the DDA policy, 2004 does not automatically exclude those who might have engaged in minor commercial activities, provided these activities were incidental to their residential use. Rather, the policy makes a distinction between purely commercial use, which disqualifies a dweller, and dual use, which does not. Therefore, the strict focus on alleged commercial use by the Respondents fails to adequately consider the full scope of the rehabilitation policy in force at the relevant time.

17. Furthermore, there is no direct or documented evidence, such as a contemporaneous inspection or survey, showing that hazardous waste was stored in these Jhuggies as a ***primary*** *activity. Without such evidence, the Court cannot conclude that the Petitioners' use was exclusively commercial or that they should be automatically disqualified for rehabilitation under the policy. The only evidence relied upon by the Respondents—newspaper reports, photographs, and the demolition records—fails to categorically prove that the primary purpose of the Petitioners' occupation was either commercial, residential or was there dual usage.*

18. The paragraph 4 of the DDA policy, 2004 lays down the criteria for eligibility. The JJ dweller must produce documentary evidence showing their existence before the Cut-off Date 31st December, 1998 till the date of removal. In this regard, the Petitioners have produced valid ration cards and voter IDs, which have been duly verified by the FSO and the AERO. DUSIB, in its own status reports dated 28th January, 2013 and affidavit 10th May, 2013, has also conclusively held the Petitioners to be eligible for rehabilitation on the basis of this fact. Thus, the Petitioners have proved their residential status at the time the demolition action as per the DDA policy, 2004, thereby establishing the entitlement to seek rehabilitation under the said policy. In absence of a prior survey by DDA, the benefit of the doubt ought to be given to the Petitioners who have proven their eligibility for rehabilitation. The lack of clear and convincing evidence to establish that the Petitioners were solely engaged in illegal hazardous waste activities, the Petitioners should be granted their right of rehabilitation as per the prevalent DDA policy, 2004.

19. We must also address DUSIB's reliance upon the case of ***Howrah Municipal Corporation and Ors. v. Ganges Rope Co. Ltd. & Ors.*** *DUSIB contends that since no 'vested right' was created in the present case, Petitioners' eligibility must be assessed as of the date of the final sanction order. Their objection focuses on the conditions of*

allotment, which require the applicants to confirm that they do not own any residential property in Delhi, either individually or jointly with family members, and have not previously been allotted any residential accommodation by the DDA, MCD, or any other government agency. DUSIB argues that these conditions must be verified at the time of the final sanction, rather than at an earlier date.

*20. In **Howrah Municipal Corporation**, the Supreme Court held that the claim of a 'vested right' based on the Building Rules as they existed at the time of the application was misconceived. The Court reasoned that the term 'vested right' refers to an immediate, fixed right in relation to the ownership or enjoyment of property, or an absolute and indefeasible right. In the context of that case, the 'vested right' asserted by the respondent company was merely a 'settled expectation' based on the rules in force at the time of their application for sanction of plans, which was negated due to a subsequent change in law. The Court emphasized that such a 'settled expectation' does not equate to a vested right, particularly when new statutory provisions or amendments come into force that alter the original conditions under which the expectation was formed. The claim to a 'vested right' or 'settled expectation' was dismissed because it could not be upheld against the amended statutory provisions that were introduced in the public interest. In contrast, in the present case, there has been no change in law or policy. The DDA Policy, 2004, remains the applicable policy, and there has been no amendment that would affect the Petitioners' rights under it. The Petitioners' claim for rehabilitation arises from their eligibility under the prevailing policy, as they have provided the required documentation and met all other criteria specified in the DDA Policy, 2004. Therefore, their eligibility must be determined based on the date they applied for rehabilitation, under the terms of the unchanged policy. Therefore, the **Howrah Municipal Corporation** case is distinguishable on these facts, as there has been no legal change here that could defeat the Petitioners' entitlement to be considered for rehabilitation, although they shall nonetheless comply with other requirement and furnish the requisite documents.*

21. In the present case, the Respondents' approach in evaluating the eligibility of the Petitioners has been unduly narrow, focusing primarily on alleged commercial activities while neglecting substantial evidence supporting the Petitioners' residential status. The verified ration cards, voter ID cards, and the 2004 survey conducted by the Slum and JJ Department—all of which confirm the Petitioners' longstanding residence at the disputed site—were either dismissed or inadequately considered. The Court finds that a comprehensive evaluation of all available evidence is essential in such cases, ensuring that no single factor, such as the presence of commercial activity, unduly prejudices the overall assessment of eligibility. The rehabilitation policy in place clearly provides for a pre-demolition survey and also acknowledges the possibility of dual usage. The Respondents' failure to account for these provisions, alongside the verified documentation of residence, represents a significant oversight that warrants correction.

22. In view of the above, the present writ petition deserves to be allowed and disposed of with following directions:

> *(i) The impugned decision of Respondents taken in their joint meeting on31st January, 2015 is set-aside.*
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> *(ii) The Respondents are directed to rehabilitate the 43 Petitioners who fulfil the eligibility criteria as per the DDA rehabilitation policy dated 03rd February, 2004, as clarified above and in accordance with law.*

23. Accordingly, the writ petition is disposed of in the above terms."

20. In that view of the matter, we do not find any reason to interfere in the appeal. The same is dismissed. Pending applications, if any, also stand disposed of.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

OCTOBER 10, 2025/*rl*