



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

% **Judgment reserved on : 28 April 2025**
Judgment pronounced on : 15 May 2025

+ **W.P.(C) 9115/2023, CM APPL. 34692/2023, CM APPL. 59085/2024, CM APPL. 59471/2024 & CM APPL. 61424/2024**

SHAHZAD KHAN & ORS. Petitioners
Through: **Mr. Rakesh Tiku, Sr. Adv. with**
Mr. Pawan Prakash Pathak and
Ms. Richa Sandilya, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: **Mr. Anubhav Gupta, Adv. for**
R-1.
Ms. Prabhsahay Kaur, SC with
Mr. Aditya Verma and Ms. Sana
Praveen, Advs. for R3.
Ms. Ruchika Rathi, Adv. for R4
and R5.
Mr. Tarun Johri, Mr. Ankur
Gupta and Mr. Vishwajeet
Tyagi, Advs. for DMRC.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioners invoke the extraordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, 1950, seeking the following reliefs against the respondents herein:



- a) Issue Writ of Mandamus and/ or any other appropriate suitable writ(s), order(s) and/ or direction(s) to the respondents specifically respondent no. 03 i.e. Delhi Development Authority thereby restraining respondent No. 3 from carrying out any demolition with respect to the houses of the petitioners situated upon the land of Khasra No. 482 and 483 of Village Madanpur Khadar, presently known as Shram Vihar, Abul Fazal Enclave, New Delhi (Unauthorized Colony regd. At serial No. 391-B) comprising small part of the said colony, by pick and choose basis and without following due process of law, And further protect the petitioners from illegal eviction from their respective houses/ properties, in the interest of justice;
- b) Pass any other and further order(s) as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case.

BRIEF FACTS:

2. Shorn of unnecessary details, this bunch of 14 petitioners claim to be in lawful and settled possession of their houses situated upon agricultural land bearing Khasra Nos. 482 and 483 of Village Madan Pur Khadar, alleged to be presently known as “*Shram Vihar, Abul Fazal Enclave, New Delhi*” (hereinafter referred to as “subject land”), by virtue of documents in the nature of electricity bills, house tax receipts as well as unregistered General Powers of Attorney/Agreements to Sell/ Affidavits/ Receipts/ Wills/ Possession Letters executed in their favour by the erstwhile owners of the subject land, in the period spanning from 1996 to 2019.
3. It has been brought to the fore that proceedings under the Land Acquisition Act, 1894 [‘**LA Act**’] were initiated by the Government in respect of the subject land as far back as 1989 *vide* notification dated 23.06.1989 issued under Section 4 of the LA Act, for the purpose of the planned development of Delhi *viz.* Channelisation of river Yamuna. Consequently, an award bearing No. 20/92-93 in respect of the land



bearing *Khasra* Nos. 437 to 512 measuring 139 *bigha* 7 *biswa* situated in the revenue Estate of Village Madan Pur Khadar, New Delhi was passed by the Land Acquisition Collector [‘LAC’] on 19.06.1992.

4. It is claimed that for the next twenty years, the Government neither paid the compensation in lieu of the acquisition nor took over possession of the subject land from the erstwhile owners or for that matter, the subsequent purchasers of the subject land i.e., the petitioners herein.

5. Accordingly, it is claimed that due to inaction on the part of the respondent authorities, the petitioners and other similarly placed persons constructed *pucca* houses on their respective plots situated on the subject land which eventually turned into a “colony”, and in the year 1994, the petitioners along with such other similarly placed individuals constituted an RWA¹, namely “*Shram Vihar, Abul Fazal Enclave Welfare Society*” registered under the Societies Registration Act, 1860 on 02.02.1994 for the purpose of representing the interests of the residents of the said colony.

6. Pertinently, it is the claim of the petitioners that their colony has been listed as “*Abul Fazal Enclave (Main), Kalindikunj Road Okhla, New Delhi*” at Serial No. 385/ Registration No. 391B of the List of 1,731 Unauthorised Colonies (excluding affluent Unauthorised Colonies) published by the GNCTD², which are subject to

¹ Residents Welfare Association

² Government of National Capital Territory of Delhi



regularisation and eligible for conferment of ownership rights to the residents including the petitioners, in terms of the PM-UDAY³ Scheme.

7. Succinctly put, the PM-UDAY Scheme was conceptualized by the Government of India in 2019 to address the challenges posed by unregulated urban expansion in Delhi. The Scheme specifically sought to regularize unauthorized colonies that had proliferated due to encroachments on public land, unplanned development and the resultant lack of civic amenities, infrastructure as well as hygienic living conditions. In view of these pressing issues, the transformative PM-UDAY Scheme was implemented, and accordingly, the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulations, 2019 [**‘NCT Regulations, 2019’**] came into force, thereby extending the benefits of regularisation to residents of as many as 1,731 unauthorized colonies in Delhi.

8. Before delving back into the factual matrix, it is pertinent to clarify at the outset that the present writ petition hinges upon two significant disputed question of fact; firstly, whether the subject land falls in “Zone-O” of the MPD-2021 on which all encroachments have to be promptly removed by the respondent/DDA for the purpose of developing a biodiversity park in terms of the directions of the National Green Tribunal [**‘NGT’**], and secondly, whether the unauthorised colony [**‘UC’**] in question, i.e., “*Shram Vihar, Abul Fazal Enclave*” falls in the ambit of the List of 1,731 UCs that have been approved for

³ Pradhan Mantri Unauthorised Colonies in Delhi Awaas Adhikar Yojana



regularisation by the Government of Delhi under the PM-UDAY Scheme.

9. In the given context, the petitioners have sought to primarily rely upon the following documents so as to solidify their claim that it is their colony viz. “*Shram Vihar, Abul Fazal Enclave, New Delhi*” that has been recognised at Serial No. 385/ Registration No. 391B of the said List of 1,731 UCs held eligible for regularisation under the PM-UDAY Scheme:

- a) Copy of an application dated 31.12.2007 (along with the requisite documents sought for verification) submitted by the petitioners’ RWA namely, “*Shram Vihar, Abul Fazal Enclave Welfare Society (Regd.)*” before the Urban Development Department, GNCTD, seeking regularisation of the UC listed at Serial No. 385/ Registration No. 391B of the List of 1,731 UCs;
- b) Copy of Letter dated 13.02.2009 issued by the Deputy Secretary (UC), GNCTD, pursuant to filing of the application by the applicant/RWA i.e., “*Shram Vihar, Abul Fazal Enclave Welfare Society*” calling upon the RWA’s office bearers, namely Dr. JM Sehgal, to personally appear before the Deputy Secretary (UC) and present his case for regularisation of the UC at Reg. No. 391 claimed to be “*Shram Vihar Abul Fazal Enclave*”;
- c) Copy of Letter dated 11.09.2007 issued by the Land & Building Department, GNCTD, informing the authorities, including the Delhi Development Authority, any land falling within the boundaries of the earmarked unauthorised colonies, whether built up or not, shall not be taken over by the Government as a matter of policy;
- d) Copy of Order dated 14.07.2011 passed by the Special Secretary (UD), GNCTD, thereby recognising the petitioners’ RWA as the representative of the UC listed at Reg No. 391B for the purpose of official communication regarding process of regularisation of the UC;
- e) Copy of Letter dated 28.12.2012 issued by the Department of Urban Development (UC Cell) to the Deputy Commissioner/Deputy Magistrate (North) informing that Shram Vihar, Abul Fazal Enclave is registered as “391C” as per order dated 14.07.2011 passed by Special Secretary (UD), GNCTD;
- f) Copy of Letter dated 25.10.2019 issued by the Deputy Secretary (UC) requesting the Geospatial Executive, GSDL to carry out an exercise to “*identify the boundaries of unauthorised colony bearing registration no. 391B Shram Vihar, Abul Fazal Enclave, New Delhi*”.



- g) Letter dated 26.12.2024 issued by the Deputy Director (PM-UDAY)/HQ, DDA to the Deputy Secretary(UC), GNCTD seeking rectification of the name of the UC found at Registration No. 391B of the List of 1,731 UCs prepared by the GNCTD, from “*Abul Fazal Enclave (Main), Kalindikunj Road Okhla, New Delhi*” to “*Abul Fazal Enclave (Main), Kalindikunj Road Okhla, (Shram Vihar) New Delhi*” in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i) published by Authority on October 29, 2019.

10. Reverting back to the facts of the matter, on 03.12.2012, the *kabza karyavahi* in respect of the subject land stood complete as the respondent authorities demolished the unauthorised buildings, except a temple (0-2 *biswa*) and two mosques {(0-3 *biswa*), (0-1 *biswa*)}, constructed upon the subject land that stood acquired *vide* Award No. 20/92-93. Congruously, the possession of the subject land measuring 139 *bighas* 01 *biswas* was acquired by the respondent No.1/ Land & Building Department, GNCTD which was thereafter handed over to the respondent No.3/ Delhi Development Authority [**DDA**].

11. Aggrieved by the demolition action of the respondent authorities, it is claimed that the petitioners’ RWA filed a writ petition bearing W.P.(C) 1234/2014 titled “*Shram Vihar Abul Fazal Enclave RWA (Regd.) v. Union of India & Anr.*” seeking quashing of the acquisition proceedings undertaken by the respondent authorities in view of Section 24(2)⁴ of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the said writ proceedings, this Court granted *status quo* to be maintained with regard

⁴ (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:



to title, possession, and construction in respect of the subject land, which continued to operate till 27.11.2017. However, the said writ petition ultimately came to be dismissed as withdrawn, by this Court on 23.10.2017, *inter alia* observing as under:

“...2. Mr. Ajay Verma, learned counsel appearing for the DDA has raised a preliminary objection with regard to the maintainability of this writ petition. **Mr. Verma states that the petitioner in this writ petition is not the owner of the land in question, nor any supporting documents have been placed on record to show that the Members of the petitioner’s Association are owners of the land. He further submits that the certificate of registration placed at page 85 of the paper book, shows a different name i.e Shram Vihar Abul Fazal Enclave Welfare Society and the Resolution, copy whereof has been filed at page 82 of the paper book also pertains to Shram Vihar Abul Fazal Enclave Welfare Society.**

3. The submissions made by the learned counsel for the respondents are refuted by learned Senior Counsel appearing for the petitioner. Mr. Khurshid submits that the members of the petitioner’s Association are in fact the owners of the land in question. He further submits that in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition is liable to be quashed. He seeks leave to withdraw this writ petition with liberty to file fresh writ petition(s), if entitled to in accordance with law and to agitate the respective claims of the rightful owners...”

[bold emphasis supplied]

12. Admittedly, the respondent No.3/DDA has since transferred 2,27,978.52 sq. metres of the subject land to the Delhi Metro Rail Corporation [‘DMRC’] for construction of the Kalindi Kunj Metro Depot which already stands completed. However, it is alleged that the DMRC is still deprived of a portion measuring 1,12,158.33 sq. metres of the said land as it remains to be illegally occupied by encroachers such as the petitioners and other residents of their colony. It appears that



during the pendency of the present petition, the DMRC has also issued a notice dated 18.09.2024 upon the respondent No.4/ Deputy Commissioner requesting Police protection for a demolition exercise to be conducted for removal of the unauthorised constructions carried out by the petitioners and other residents of the subject land.

13. In the aforesaid backdrop, the petitioners are apprehending that the respondent authorities, in an illegal and arbitrary manner, will demolish the houses of the petitioners comprising a small part of the colony of “*Shram Vihar, Abu Fazal Enclave*” and take over possession of the subject land without giving an opportunity to be heard to the petitioners herein, even though their colony allegedly fulfils the eligibility criteria to be regularised as provided under the NCT Regulations of 2019. Hence, the present petition.

PROCEEDINGS BEFORE THIS COURT

14. When the present writ petition was initially entertained, this Court while taking a *prima facie* view of the matter, a learned Single Judge passed an interim order dated 12.07.2023 directing the respondent authorities to maintain *status quo* with respect to the subject land and prohibiting the petitioners herein from carrying out any fresh construction on the subject land without the prior leave of this Court.

15. However, the respondent No.3/DDA has objected to the same and has moved an application bearing CM APPL. 61424/2024 seeking vacation of the stay ordered by this Court in the present writ proceedings, which is still pending disposal.

STAND OF THE RESPONDENT NO.3/DDA



16. Pursuant to the orders of this Court, a status report dated 08.07.2023 and a short affidavit dated 21.02.2024 have been filed by the Deputy Director (LM/ SEZ), DDA and the categorical as well as consistent stand of the respondent No. 3/DDA that emerges is that the subject land falls under “Zone-O” of the Master Plan for Delhi-2021, which is 1 in 25 floodplains on which all encroachments have to be promptly removed by the DDA as per the orders of the NGT as well as the Supreme Court besides this Court. It is further stated that the petitioners are illegally encroaching on the subject land that stands duly acquired by the Government *vide* Award No. 20/92-93 and as per the record provided by the PM-UDAY Cell, the colony of the petitioners, namely “*Abul Fazal Enclave Part-3 (Shram Vihar)*” does not form part of the List of 1,731 unauthorised colonies which have been approved for regularisation under the PM-UDAY Scheme.

17. What came as an interesting surprise to this Court is that subsequently, the respondent No. 3/DDA filed an additional affidavit dated 25.03.2025 through its Deputy Director (LM/ SEZ) bringing on record certain additional facts relevant to the present matter. By way of the said additional affidavit, this Court was apprised of the fact that an RWA namely “*Shram Vihar Abul Fazal Enclave Residents Welfare Association (Regd.)*” and an individual, namely Mahmood Alam Khan have filed applications in another writ petition filed before this Court bearing W.P.(C) 8035/2024 titled *Shabnam Burney v. Union of India* seeking interim relief against the same demolition exercise initiated by the DMRC in September 2024 which is the subject matter of challenge in the present proceedings as well.



18. It was further stated that the abovementioned two applications filed in W.P.(C) 8035/2024 titled *Shabnam Burney v. Union of India* were heard at length by a Division Bench of this Court and *vide* judgement dated 08.10.2024, this Court dismissed the said applications and refused to stay the impugned notice dated 18.09.2024 issued by the DMRC. What prevailed in the mind of the learned Judges in the division Bench of this Court while refusing to grant the applicants therein any relief against the demolition drive of the DMRC shall be discussed later on in this judgment.

ARGUMENTS ADVANCED AT THE BAR

19. Mr. Rakesh Tikku, learned senior counsel for the petitioners, vehemently urged that their colony “*Shram Vihar, Abul Fazal Enclave*” has been recognised by the GNCTD at Registration No. 391B of the List of 1,731 UCs approved for regularisation under the PM-UDAY Scheme, and alleged that the said position stands admitted by the respondent No.3/DDA as well. On the strength of the documents placed on the record by the petitioners [listed in para (09)], it was urged that the rights of the petitioners herein, being the residents of a recognised UC in terms of Clauses (2)(g) and (6) of the NCT Regulations of 2019, have been placed on a higher pedestal inasmuch as more-evolved rights in the nature of ownership and undisturbed possession have been conferred upon them by virtue of the PM-UDAY Scheme. It was further urged that even otherwise, it is the GNCTD and not the DDA which is the competent authority to decide whether the petitioners’ UC is eligible for regularisation under the said Scheme. Accordingly, it was prayed



that the present petition must be allowed, and the respondent authorities must be restrained from carrying out any demolition drive in the subject colony so as to give effect to the protection being provided to the petitioners and other residents of their UC under the PM-UDAY Scheme. Reliance in this regard has been placed on the decision of this Court in **Jal Kaur Educational Society v. Delhi Development Authority**⁵.

20. As regards the issue as to whether the subject colony falls in Zone-O of the MPD-2021, learned senior counsel for the petitioners placed reliance upon Clauses (6.6) and (7.5) of the Zonal Development Plan for River Yamuna/River Front, Zone ‘O’, 2010⁶ [‘ZDP’] to contend that the intent of the Government has been to re-examine and correct the boundaries of Zone ‘O’ in MPD-2021 as well as the Tentative list of unauthorised colonies falling in Zone ‘O’ in view of the eco-sensitive nature of Zone ‘O’. Placing further reliance on clause (7.2) of the ZDP, Mr. Tiku submitted that the subject land which falls under the urban village of “Badarpur Khadar” falling in Zone ‘O’ has been designated as a “special area” where “special area regulations” are stated to be applicable.

21. Further taking this Court’s attention to clause (9.2.2) of the ZDP which provides that wherever need be, the respondent No.3/DDA is at liberty to change the proposed land use of the area falling in Zone ‘O’ by way of a separate approved Layout/ Regularisation Plan, Mr. Tiku

⁵ 2017:DHC:7080-DB

⁶ The Zonal Development Plan for Zone ‘O’ has been approved by Ministry of Urban Development, vide letter No. K-12011/23/2009-DDIB dated the 8th March, 2010 under Section 9(2) of DD Act, 1957 and notified under section 11 by DDA on 10.08.2010



apprised this Court that when the respondent No.3/DDA handed over 2,27,978.52 square metres of land falling in Zone ‘O’ (which includes the subject colony) to the DMRC, the land-use of the area in question was changed from ‘Recreational’ to ‘Transportation’ based on the observation made by the Yamuna Standing Committee [‘YSC’] in its 80th Meeting, to the effect that *“said plot is beyond the flood embankments and surrounded by the habitated area and out of present floodplains of the area”* as contained in the letter dated 29.11.2012 issued by the Chief Engineer, DMRC upon Deputy Director (AP) Zone ‘E’&‘O’, DDA.

22. Learned senior counsel placed on the record a Google Earth image of the area in question to satisfy to this Court that *Shram Vihar* (indicated by a blue pin) is situated farther from the river Yamuna (green portion on the right side of the image) than the DMRC Depot (indicated by a red pin), the scanned of copy of which is reproduced hereinbelow:

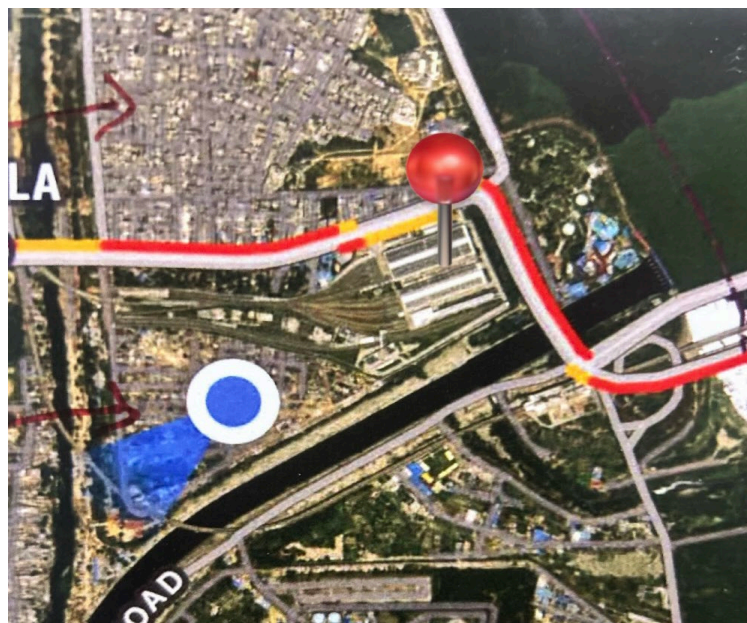




Image 1

23. It was vehemently urged by the learned senior counsel for the petitioners that if the DMRC is being allowed to construct structures on the said land despite the land's sensitive status, then even the petitioners should be allowed to reside on the same land since the laws and regulations pertaining to Zone 'O' apply fairly and equally on the DMRC as much as they do on the petitioners' colony. Accordingly, it was contended that if the DMRC is being saved from such prohibitive regulations on the basis of an approved change in land-use, then even the petitioners are entitled under Article 14 of the Constitution of India, 1950, to being extended the same protection by the respondent No.3/DDA on the ground that although the subject colony admittedly falls in Zone 'O', however it is situated outside "1 in 25 floodplains" which refers to the land along the river Yamuna that has a one-in-25 or a 4% chance of flooding every year.

24. Learned senior counsel contended that for the aforesaid reasons, even the "exclusion clause" contained in Clause (7) of the National Capital Territory of Delhi (Recognition of Property Rights of Residents of Unauthorised Colonies) Regulations, 2019 does not apply upon the petitioners' UC.

25. Lastly, upon being faced with the judgment dated 08.10.2024 passed by this Court in W.P.(C) 8035/2024 titled *Shabnam Burney v. Union of India*, learned senior counsel for the petitioners urged that the applicant-association in *Shabnam Burney (supra)* and the association of the petitioners in the present writ petition are two separate and distinct entities inasmuch as the petitioners herein are a "society" whereas the



applicants therein are an “association”. It was further contended that the admissions of the applicants in *Shabnam Burney (supra)* are wrong and not binding upon the petitioners herein, especially in light of their consistent claim that the DDA has accepted that it is “*Shram Vihar, Abul Fazal Enclave*” that is shown at Registration No. 391B on the List of 1,731 UCs eligible to be regularised under the PM-UDAY Scheme.

26. Accordingly, learned senior counsel concluded his arguments by stating that the judgment dated 08.10.2024 in *Shabnam Burney (supra)* is a misnomer and irrelevant to the present proceedings as it does not examine the issues raised by the petitioners herein as regards the area in question being outside or inside the “1 in 25 floodplains” of river Yamuna. Reliance was placed on the decision by the High Court of Bombay in **Shailymanyu Singh v. The State of Maharashtra**⁷ to support the submission that the decision dated 08.10.2024 in *Shabnam Burney (supra)* cannot be relied upon since the factual matrix of *Shabnam Burney (supra)* is distinguishable from that of the present case.

27. Controverting the aforesaid submissions, Ms. Prabhsahay Kaur, learned standing counsel for the respondent No.3/DDA urged that the petitioners have created an artificial distinction between the “society” and the “association” to escape the rigors of the judgment dated 08.10.2024, which is squarely applicable upon the facts of the present case. While drawing the attention of this Court to the contents of the application filed by “*Shram Vihar Abul Fazal Enclave Residents*”

⁷ 2023: BHC-AS:11996



Welfare Association (Regd.)” in *Shabnam Burney (supra)* seeking their impleadment in the said writ petition besides stay orders on the demolition exercise conducted by the DMRC, Ms. Kaur submitted that the abovementioned applicant/RWA and the petitioners’ RWA i.e., “*Shram Vihar, Abul Fazal Enclave Welfare Society (Regd.)*” are one and the same, and the same group of people is approaching this Court under different names and styles so as to secure favourable interim orders.

28. On merits, it was contended that the petitioners’ UC, namely “Shram Vihar” is separate and distinct from “Abul Fazal Enclave” as both colonies are located at a significant distance from each other, and the petitioners herein are seeking to take unjust benefit by falsely claiming to be a part of Abul Fazal Enclave, for the reason that the petitioners’ UC does not fall under the List of 1,731 recognized UCs whereas Abul Fazal Enclave undoubtedly falls under the said List.

29. As regards the issue of eligibility of the petitioners’ colony for regularisation under the PM-UDAY Scheme, Ms. Kaur pointed out that even upon assuming that the petitioners’ UC falls under the List of 1,731 recognised UCs, since the subject land falls in Zone ‘O’ i.e., the Yamuna floodplains, the petitioners are governed by Clause (7) of the NCT Regulations, 2019 which provision specifically excludes the UCs falling under Zone ‘O’ from conferment of any rights upon the residents of such colonies or grant of any other benefit to them under the PM-UDAY Scheme. Accordingly, it was contended that Clause (7) of the NCT Regulations, 2019 demolishes the own case of the petitioners



herein and in view of the same, the petitioners are not covered by or entitled to any benefits under the PM-UDAY Scheme.

30. Mr. Tarun Johri, learned standing counsel for the proposed respondent No.4 i.e., DMRC advanced similar arguments primarily challenging the *locus standi* of the petitioners herein to file the present petition. Additionally, it was contended that the rights, title and interest of the DMRC upon the subject land flow from the DDA *vide* letter granting working permission dated 13.08.2012 and such rights were created upon payment of a hefty allotment fees to the DDA. It was urged that the DMRC is being deprived of the enjoyment and possession of the subject land due to the illegal encroachments by the petitioners and other residents of their colony which is not even recognised in the List of 1,731 UCs eligible for regularisation under the PM-UDAY Scheme. Accordingly, it was contended that the DMRC is well within its rights to conduct a demolition drive on the subject land and the present petition is liable to be dismissed for being devoid of merits.

ANALYSIS AND DECISION

31. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

32. At the outset, the present petition is devoid of any merits and deserves to be dismissed for being an abuse of the process of law. First things first, it would be expedient to address the controversy surrounding the applicability of the decision dated 08.10.2024 passed by this Court in W.P.(C) 8035/2024 titled “*Shabnam Burney v. Union of India*” to the facts of the present case. It appears that subsequent to



the issuance of the notice dated 18.09.2024 by DMRC in respect of the demolition exercise proposed to be conducted for removal of the UC of the petitioners, two applications were clandestinely filed in W.P.(C) 8035/2024. The first application bearing CM APPL. 58356/2024 was filed on 27.09.2024 by an individual, namely Mahmood Alam Khan, R/o A-15, Khasra No. 482 Shram Vihar, Madanpur Khadar, Tehsil Mehrauli, New Delhi-110026, and the second application bearing CM APPL. 58723/2024 was filed on 30.09.2024 by an RWA namely “*Shram Vihar Abul Fazal Enclave Residents Welfare Association (Regd.)*” which the petitioners herein claim is another entity altogether and is separate and distinct from the petitioners’ RWA i.e., “*Shram Vihar, Abul Fazal Enclave Welfare Society (Regd.)*”. Both the applications sought the same reliefs, in the nature of impleadment in that writ petition besides interim stay against the demolition exercise proposed by the DMRC *vide* notice dated 18.09.2024.

33. It is interesting to note that almost simultaneously, the petitioners herein also moved applications bearing CM APPL. 59085/2024 and 59471/2024 both dated 03.10.2024 in the present proceedings, seeking the same interim relief as the applicants in *Shabnam Burney (supra)* i.e., stay orders against the demolition exercise proposed by the DMRC *vide* notice dated 18.09.2024 besides seeking impleadment of the DMRC to the present petition.

34. On 08.10.2024, a division Bench of this Court heard the two applications filed in *Shabnam Burney (supra)* and made the following observations while dismissing the said applications *vide* judgment dated 08.10.2024:



“11. Having heard learned counsel for the parties, it is an admitted position that Shram Vihar colony is not one of the 1731 unauthorised colonies that have been recognised by the GNCTD. Consequently, it is an unauthorised colony that is not due for recognition as an unauthorised colony.

12. The argument that Shram Vihar does not fall in the flood plain as the risk of flooding is only one (1) in twenty five (25) years is not correct as the flood plain has been defined under the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 as, *‘such area of River Ganga or its tributaries which comes under water on either side of its due to floods corresponding to its greatest flow or with a flood of frequency once in hundred years’*.

13. Moreover, even if it is assumed, that Shram Vihar colony is situated outside the flood plains, yet it falls within Zone ‘O’, which is an ecologically fragile zone and is being primarily used for horticulture and has a wealth of flora and fauna. It needs to be borne in mind that Zone ‘O’ has been conceived for rejuvenation of river Yamuna and eco-friendly development in line with the river and its morphology.

14. The applicant’s reliance on the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies), Regulations, 2019, is misconceived as an ‘Exclusion’ clause has been incorporated by virtue of Regulation No.7, which specifically states that no rights shall be conferred or recognised under the said Regulations on the *‘land falling in Zone-O, Yamuna Flood Plain.....’*.

15. Further, though the applicants claim to be in possession of a private land, yet they have not obtained any Sanctioned Plan or Completion Certificate either prior to construction or after completion of construction. It is settled law that even owners of a private land have to take permission from the statutory authority before carrying out any construction and if that is not done, the construction is liable to be demolished.

16. This Court takes judicial notice of the fact that the pollution in river Yamuna is at all-time high. As recent as yesterday i.e. 7th October, 2024, the Times of India, a daily Newspaper has published an article *“Why Yamuna is Stinking Like Never Before”*. According to the said report, which is based on a report prepared by Delhi Pollution Control Committee, the fecal coliform levels are 1,959 times the permissible limit, 9,800 times the desired limit where the river exits the city. In the said article, it is pointed out that the fecal level is at an all-time high in September, 2024 and one of the main reasons for the same is untreated sewage flowing from unauthorised colonies into river Yamuna.



17. Keeping in view the aforesaid, this Court is of the view that the applicants are not entitled to stay of the notice dated 27th September, 2024 and/or of the directions contained in the judgment dated 08th July, 2024.

18. Accordingly, the present applications are dismissed.”

[bold emphasis supplied]

35. Upon a careful perusal of the contents of the applications bearing CM APPL. Nos. 58356/2024 and 58723/2024 filed by the applicants in *Shabnam Burney (supra)* as also the judgment dated 08.10.2024 passed therein, it becomes apparent that the present petition pertains to the same UC, the same parcel of land, and raises the same set of issues, that have already been dealt with by this Court in the judgment dated 08.10.2024 passed in *Shabnam Burney (supra)*.

36. The plea taken by the learned senior counsel for the petitioners that the applicants in *Shabnam Burney (supra)* are an “association” and the petitioners herein are a “society” and therefore separate from each other, belies the obvious truth that there is a clear nexus between the two organisations and the same group of people having aligned interests have developed a habit of approaching this Court time and again under different guises for the same relief.

37. What is more surprising is that the petitioners also concealed from this Court that the second applicant in *Shabnam Burney (supra)*, namely Mahmood Alam Khan, is the father of the petitioner No.8 herein, namely Shakra Mahmood Khan, and both persons are residing together at A-15, Khasra No. 482 Shram Vihar, Madanpur Khadar, Tehsil Mehrauli, New Delhi-110026. It is needless to state that the institution of a duplicate set of proceedings by the father of one of the petitioners does not give rise to a fresh cause of action in law. Such



conduct on behalf of the petitioners only goes on to show their penchant for maliciously benefitting from multiplicity of proceedings and demonstrates a blatant disregard of the sanctity of this Court.

38. Anyhow, the fact of the matter is that the division Bench of this Court in *Shabnam Burney (supra)* has thwarted the claim of the petitioners herein that *Shram Vihar* does not fall in the Yamuna floodplains as the risk of flooding is only 1-in-25 years, and based on the admissions by the applicant/RWA, it was held that the UC of the petitioners herein is not one of the 1,731 UCs that have been recognised by the GNCTD and consequently, it is not due for recognition in terms of the PM-UDAY Scheme.

39. While the decision of this Court in *Shabnam Burney (supra)* is squarely applicable to the facts of the present case, it is imperative that this Court should make a few more observations on merits in tandem. Unhesitatingly, the present matter has now boiled down to a singular but significant issue to be determined *viz.* whether the subject colony falls in Zone ‘O’ of Delhi as per the MPD-2021. If the said issue is answered in the affirmative, there is no need for this Court to go into the second issue *viz.* whether the UC found at Registration No. 391B of the List of 1,731 UCs is actually the petitioners’ colony i.e., “*Shram Vihar, Abul Fazal Enclave*”, for the simple reason that the subject UC would still not be able to escape the rigors of Clause (7) of the NCT Regulations of 2019 which excludes the UCs falling in Zone ‘O’ from being conferred the right to recognition under the PM-UDAY Scheme.

40. At this stage, it would be apposite to reproduce Clause (7) of the NCT Regulations, 2019, which provides as follows:



“7. Exclusion- Under these regulations, no rights shall be conferred or recognised-

Over prohibited land, that is, land falling in reserved or notified forests, land identified as protected or prohibited area by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), **land falling in Zone-O, Yamuna Flood Plain**, land falling in right of way of existing roads and Master Plan Roads, land under right of high tension lines, land falling in ridge area of Delhi and land reserved or protected under any other law for the time being in force.”

41. At the cost of repetition, it is an admitted position that the subject colony falls in Zone ‘O’ of Delhi. The fervent plea raised by the learned senior counsel for the petitioners that the subject colony is situated outside “1 in 25 floodplains” which refers to the land along the river Yamuna that has a one-in-25 or a 4% chance of flooding every year, fails to inspire the confidence of this Court since the guidelines of the NGT and the Supreme Court as well as the language and purport of the exclusion Clause (7) of the NCT Regulations, 2019, are clear and unequivocal to the effect that the illegal constructions and encroachments situated anywhere in the Zone ‘O’ of Delhi have to be promptly removed by the government authorities for the swift progress of the rehabilitation efforts of the river Yamuna and green cover of Delhi.

42. Thus, the plea raised by the learned senior counsel for the petitioners is nothing but a tardy attempt to create a baseless distinction backed by neither proof nor logic, so as to circumvent the directions of the NGT passed in O.A. No. 06/12 titled “*Manoj Mishra v. Union of India*” and in OA No. 21/2023 titled “*Ashwani Yadav v. Government of NCT of Delhi*” to the effect that Zone ‘O’ has to be rid of any kind of



encroachment, be it commercial, residential or otherwise. On several occasions thereafter, the NGT has reiterated that the floodplains of Yamuna should not be permitted for construction, occupation, habitation etc. and it is the duty of the DDA to maintain the natural features and ecology of the Yamuna floodplains.

43. It is pertinent to mention that in the case of **Court on its own motion v. Union of India**⁸, this Court has also issued several directions to the DDA, aimed at the restoration and ecological rejuvenation of the Yamuna Floodplains, which read as under:

“20. DDA in coordination with all concerned agencies is hereby directed to ensure removal of encroachments from Yamuna River Flood Plains. Delhi Police shall provide necessary force to the DDA as and when requested, to maintain law and order during such encroachment removal drives to remove encroachment from Yamuna Flood Plains.

21. Further, DDA shall submit an action taken report on development of ten bio-diversity parks / wetland areas in Yamuna River Flood Plain including an action plan with timelines for completion of pending projects. Cities and Towns around India, which have been developed along rivers, are doing horticulture and green development of river fronts for their citizens as symbols of urban pride.

22. DDA shall explore green horticultural development of river fronts and recreational zones with public amenities to increase public participation and awareness about rejuvenation of River Yamuna in accordance with extant guidelines.

23. It is necessary to do green development of the banks of the Yamuna as wetlands and public spaces, parks for open green spaces, access to civic amenities, zones of entertainment or playgrounds for the children. This will lead to buy-in by the common citizen, a sense of ownership and consequent pressures on the authorities to ensure maintenance. All this will go hand in hand with ecological restoration, maintenance, and protection of the flood plains.

24. A large number of religious devotees pray at different locations, discharging solid waste in the river water, adding to an already

⁸ 2024 SCC OnLine Del 2675



serious problem. Recognising this need of the residents of the State, DDA should construct select number of ghats or platforms on stilts along the riverbank, for such purposes to ensure that the devotees get space and the authorities are able to deal with the challenge of waste scientifically.”

44. Reference may also be invited to the decision of the NGT dated 30.08.2024 in OA No. 190/2024 titled **“News Item Titled “161 Illegal Colonies on O Zone Making River Water Toxic” Appearing in the Time of India dated 25.01.2024”** that specifically dealt with the issue of illegal colonies in Zone ‘O’ of the Yamuna floodplains, whereby it has been categorically held that no right shall accrue or be conferred or recognised in respect of the land falling in Zone ‘O’ Yamuna floodplains in terms of Clause (7) of the NCT Regulations of 2019.

45. Similar and consistent findings have been reached at by this Court in **Mehruddin Ansari v. Delhi Development Authority**⁹, which was a case pertaining to the removal of yet another unauthorised colony, namely Joga Bai Extension, situated in Zone ‘O’ of Delhi. In the given context, this Court held as under:

“15. It is pertinent to mention that while explaining the aforesaid map, learned senior counsel for the petitioners has referred to the coloured map filed along with the additional affidavit of the petitioners dated 27.01.2025 and it has been canvassed that the petitioners are located in the area falling in the purple patch which is claimed to be outside Zone ‘O’.

16. I am afraid that the aforesaid position explained by the learned senior counsel for the petitioners is not fathomable since, at the cost of repetition, they are unable to show the exact location of the subject residences/construction sites. It is also pertinent to mention that the learned standing counsel for the respondent no. 1/DDA has rightly referred to Regulation (7) of the aforesaid notification dated 29.10.2019⁷, thereby canvassing that although the unauthorised colonies which have been recognised by the Government fall outside

⁹ 2025 SCC OnLine Del 569



the purview of any action of demolition, however, the land which is *inter alia* falling in Zone 'O' Yamuna floodplains is clearly excluded.

17. On a careful perusal of the Regulation (7)(a), there are certainly no two opinions that no right to recognition and/or grant of any benefit under the PM-UDAY Scheme arises if the land falls under Zone 'O' i.e., Yamuna floodplains. Faced with the above position, learned senior counsel for the petitioners, however, urged that their respective lands are not falling under Zone 'O'. I am afraid the said position canvassed by the learned Standing Counsel for the respondent DDA stands fortified by the decision of National Green Tribunal, Principal Bench, New Delhi, dated 30.08.2024⁸ in OA No. 190/2024 that considered the issue of illegal colonies in Zone 'O' of the Yamuna floodplains, whereby it has been categorically held that no right shall accrue or be conferred or recognised in respect of the land falling in Zone 'O' Yamuna floodplains in terms of the aforesaid Regulation (7). Accordingly, the National Green Tribunal came to pass certain directions in respect of 90 such unauthorised colonies which are falling in Zone 'O' and it has been pointed out that the matter is still under consideration.

xxx xxx xxx

22. There is no gainsaying that the process of identification of unauthorised colonies is a rigorous one which involves firstly identifying the area and thereafter, setting out the boundary under the aegis of the Boundary Delimitation Committee which comprises members from Survey of India, officials of the DDA as well as the Revenue branch of the GNCTD. The petitioners place on record no iota of material to upset the demarcation of the boundary laid down for applicability of the PM-UDAY Scheme.

23. In view of the foregoing discussion, this Court has no hesitation in finding that the petitioners have woefully failed to substantiate their *locus standi* in filing the present writ petition. Accordingly, the present petition is hereby dismissed for being misconceived, ill-conceived and bereft of any merit, with token costs of Rs. 5,000/- imposed on each of the petitioners for indulging in gross abuse of the process of law."

46. Coming to another aspect of the arguments advanced by the learned senior counsel for the petitioners, indeed while there may be some merit in the argument that the ZDP for Zone 'O', 2010 contains a mechanism for changing the land-use of any area falling under Zone 'O' which is exercisable by the DDA, and which was evidently



exercised in the case of the DMRC as well, but then the said proposition put forth by the learned senior counsel is now not only misconceived but also hollow, as rightly pointed out by the learned standing counsel of the respondent No.3/DDA.

47. Besides the fact that the subject land was transferred to the DMRC for a public purpose which outweighs any private interest, there is no denying that at the time of framing of the ZDP 2010, the government and the stakeholders were unfortunately not paying enough attention to the menace of increasing pollution in the river Yamuna. It was only in 2015 that the NGT intervened and addressed the said issue *vide* order dated 13.01.2015 passed in O.A. No. 06/12 titled “*Manoj Mishra v. Union of India*”, thereby issuing stringent and robust directions to several governmental agencies like the DDA, to firstly repossess those areas being part of the floodplains that are under unauthorised and illegal occupation of any person/body, and then to take steps to restore the ecological health of the river Yamuna.

48. This Court takes notice of the fact that even the transfer of the subject land to the DMRC *vide* letter dated 08.01.2013 was approved by the DDA in a pre-2015 scenario which was marred by obliviousness and inattention among the government agencies towards the degrading environmental health of Delhi. However, the prevailing state of affairs is that the National Green Tribunal as well as the Supreme Court besides this Court are heavily cracking down upon government agencies like the DDA to prohibit all occupation and remove all unauthorised encroachments from the environmentally fragile Zone ‘O’ as expeditiously as possible so that the efforts to rehabilitate and



rejuvenate the river Yamuna and the floodplains can be carried out without any hindrance.

49. Before finally drawing the curtains down on this petition, though the second issue *viz.* whether the petitioners' UC falls in the List of 1,731 UCs, has now been rendered moot in view of the fact that this Court has established that the subject land falls in Zone 'O', and thus, excluded from the PM-UDAY Scheme in terms of Clause (7) of the NCT Regulations, 2019, however, even upon examining the said issue in isolation, this Court finds that the case of the petitioners herein stands on very shaky ground.

50. Much mileage was sought to be drawn by the learned senior counsel from the letter dated 25.10.2019¹⁰ issued by the Deputy Secretary (UC), GNCTD as well as order dated 14.07.2011¹¹ issued by the Special Secretary (UD), GNCTD besides letter dated 26.12.2024¹² issued by the Deputy Secretary (PM-UDAY)/HQ, DDA. However, having gone through the contents of the said documents, the letter dated 25.10.2019 is merely an internal communication seeking a demarcation exercise to be carried out in respect of what was assumed to be "*unauthorised colony bearing registration no. 391B Shram Vihar, Abul Fazal Enclave, New Delhi*" on the basis of the representation made by the petitioners herein before the Chief Minister of Delhi. On the other hand, the order dated 14.07.2011 only recognises the RWA of the petitioners as the official representative of the colony for the purpose of

¹⁰ Refer to Para 9(f) of this Judgment

¹¹ Refer to Para 9(d) of this Judgment

¹² Refer to Para 9(g) of this Judgment



the application for regularisation, but it does not recognise the colony itself. Even the letter dated 26.12.2024 is an internal communication, whereby the DDA is requesting the GNCTD to consider rectifying the name of the colony listed at Registration No. 391B “*Abul Fazal Enclave (Main), Kalindikunj Road Okhla, (Shram Vihar) New Delhi*”. However, there is nothing placed on the record to show that the GNCTD actually considered the said request or that the said rectification was notified in the Gazette of India. Thus, none of the documents relied upon by the petitioners contain a conclusive finding to the effect that the colony listed at Registration No. 391B is actually “*Shram Vihar, Abul Fazal Enclave*”, nor is there any demarcation report on the record to show the exact location of the petitioners’ colony so as to determine its actual boundaries.

51. Furthermore, as per the revenue records maintained by the GNCTD, the petitioners herein are not the recorded owners of the subject land. Rather, the petitioners seem to be claiming rights, title and interest over the subject land on the basis of unregistered documents like GPA, Agreements to Sell, Wills, Affidavits etc. besides electricity bills and house tax receipts which are not a valid and legitimate proof of ownership. Therefore, there is a heavy cloud of doubt surrounding the *locus standi* of the petitioners to file the present petition.

52. Even the cited case of *Jal Kaur (supra)* does not come to the rescue of the petitioners herein, as it is entirely distinguishable from the facts of the present case inasmuch as the land in question in *Jal Kaur (supra)* does not fall in Zone ‘O’ and the issue raised therein pertains to misdescription of the land in question, not the name of the unauthorised



colony like in the present case. The appellants therein had argued that the earlier civil proceedings had mischaracterised the location of the appellant's colony, and such misdescription should not bar the appellants from claiming a different relief in the writ proceedings. In this said context, the appellants sought protection from dispossession of their plots, which was granted by this Court in terms of Section 3(1) of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011. Hence, *Jal Kaur (supra)* is on an entirely different footing from the present case and consequently, is of no help to the petitioners herein.

53. In view of the foregoing discussion, this Court has no hesitation in holding that the petitioners have been conferred no legal right by virtue of the NCT Regulations, 2019, to continue to reside on the subject land. It bears repetition that the said land falls within the ambit of the Zonal Development Plan for Zone 'O' as sanctioned by the Ministry of Urban Development and is required to be ridden of the encroachments on an urgent basis in view of the larger public interest.

54. Resultantly, the *status quo* order passed by this Court stands vacated and the present writ petition is hereby dismissed with costs of Rs. 5,000/- to be paid to the Delhi High Court Legal Service Committee by each of the petitioners within thirty days from today, failing which the same be recovered by the Worthy Registrar General of this Court in accordance with law.

55. The pending applications stand disposed of accordingly.

DHARMESH SHARMA, J.

MAY 15, 2025/Sadiq/ES