

Delhi High Court

Wazirpur Bartan Nirmata Sangh vs Union Of India (Uoi) And Ors. on 29 November, 2002

Equivalent citations: 103 (2003) DLT 654

Author: S K Kaul

Bench: D Gupta, S K Kaul

JUDGMENT

Sanjay Kishan Kaul, J.

1. Benevolence in administration is a necessity but this benevolence has to be balanced against the rights of the residents of a town specially when dealing with one commodity which can never increase which is land.

2. The validity and legality of the policy of the respondents for removal and relocation of jhuggi dwellers who squat on Government land unauthorisedly and are ultimately allotted parts of land acquired for planned Development of Delhi has to be decided in the present proceedings. This became a necessity in view of the fact that the land was being acquired under the provisions of Land Acquisition Act for planned Development of Delhi at public expense for public purpose. This very land was being utilised to relocate persons who had squatted and trespassed on public land and refused to move from the original place. In order to deal those areas such persons were provided land which had been so acquired.

3. In this public interest litigation the problem arose since the squatters and encroachers on public land had to be removed who could not be so removed in view of the policy of the respondents requiring the land to be first made available to such persons for their removal and relocation as a pre-requisite to their being moved from the areas where they had squatted. In the proceedings on 13.8.2001 the Slum and JJ Department of the Municipal Corporation of Delhi stated that the removal and relocation of jhuggi was confined only to relocate the jhuggi jhonpri dwellers provided the land owning agencies bear the cost of relocation as per the approved policy. Whenever the land encroached upon is required by the land owning agency a request is made to the Slum and JJ Department to carry out a joint survey of the area in question, to determine the number of jhuggi that are existent. The most essential step for implementation in the scheme is the requirement of providing requisite land by the State Government or the Delhi Development Authority, as the case may be, which land is then developed by the Slum and JJ Department. Such relocation has not been possible in large numbers because land cannot be manufactured and increased and that itself is a limiting factor.

4. The scheme earlier provided for a cut-off date of 31.1.1990 for such rehabilitation of jhuggi dwellers who possessed ration cards prior to that date, metallic token and identity card of 1990 issued by the State Government and eligibility slips coupled with proof of continuous occupation. Such persons were being provided with plots of 18 sq. mts. with another 7 sq. mtrs. for common courtyard and had to pay a sum of Rs. 29,000/- for each eligible jhuggi dweller. This scheme was subsequently extended even for persons who were in continuous occupation up to 30.11.1998 who were provided 12 1/2 sq. metres plots on deposit of Rs. 20,000/- for each eligible jhuggi dweller.

5. This problem of relocation of jhuggi dwellers was arising in a number of cases where public interest petitions were filed to clear public land and utilise it for the purpose meant under the Master Plan. It was in these circumstances that in terms of the order dated 13.8.2001 this Court decided to examine the legality, validity and propriety of such a policy and all the necessary authorities were made parties. Union of India, through Secretary, Ministry of Urban Development and Employment, Department of Urban Employment and Poverty Alleviation were also imp led as parties other than the State Government and DDA who were already parties. Affidavits and written submissions have been filed by the parties and oral submissions were heard at length. Since another petition being CW 2112/ 2002 also raised similar issues, the same was also heard along with CW 4441/1994 in which this question of law was being examined.

6. It would be appropriate to first appreciate the stand of the Government of India and public authorities in respect of this policy.

7. The policy guideline for such relocation of JJ Clusters of the State Government has been placed on record. This scheme is stated to have been revised w.e.f. 1.4.2000. Some of the salient features of the applicability of the policy are as under:

"1. Jhuggis will be relocated only from project sites where specific requests have been received from the land owning agencies for cleaning of the project lands. No large scale removal of jhuggis should be resorted to without any specific use for the cleared site.

2. Land for relocation of jhuggies will be identified in Delhi and NCR in consultation with the DDA and NCRPB so that it is in conformity with the land use policy laid down under the Master Plan, and the NCR plan. Land pockets in NCR well connected with the transport system should also be utilised for relocation of JJ dwellers in Delhi.

3. Land will be acquired at the sites identified by the DDA/NCR in small pockets not exceeding 10 acres (4 hectares) near existing residential areas so that cost of provision of peripheral services is minimised.

4. A target of shifting 10,000 jhuggies in 2000-2001 is laid down. This target will be reviewed each year in April by Delhi Government based on requests received from land owning agencies.

5. Land will be acquired under the scheme of "Large Scale Acquisition for Planned Development of Delhi". Its development and disposal will also be governed by the conditions laid down under Government of India Orders No. F. 37/16/50-Delhi (1) dated 1961 read with GOI's Order No. J-20011 /12 /77-L. II dated 7.2.1992 making it compulsory for conversion of plots below 50sq.mts. from lease hold to freehold (copies enclosed). After acquisition, the land will be placed at the disposal of the executing agency by the Lands Department of Delhi Government. The ownership of the land acquired for relocation will vest with the Delhi Government. Requests for acquisition will be routed by the executing agency through the Urban Development Department of the Delhi Government.

6. Cut-off date and eligibility criteria--Cut-off date for beneficiaries would be 30.11.1998. To verify eligibility, Ration Cards issued prior to 30.11.1998 will be taken into account. The name of the allottee must also figure in the notified Voters' List as on 30.11.1998. jhuggies who come up after will be removed without any alternative allotment by the project Executing Agency.

7. Size of plot--Keeping in view of the scarcity and high cost of land, the plot size now approved for JJ dwellers will be as under:

Size of plot JJ dwellers who were eligible before 31.1.90 JJ dwellers who have become eligible between 1.2.90 and 30.11.98 Size of plot for a single dwelling unit with WC. 20 Sqm. 15 Sqm. Ground 100% 100%

coverage

8. Layout Plans--The layout plans for the relocation settlement will be prepared by the Executing Agency and proper approval taken from the concerned local body/DDA as the case may be. Executing Agency will follow the ISI Code 8888 for preparing the layout. 50% of gross area will be used for residential plots. 30% for services and 20% for other social infrastructure such as schools, dispensary, community land and local shopping area and other utility sites.

9. Building Plans--The Executing Agency will also prepare standard building plans for each relocation settlement which are duly approved by the local bodies/DDA. The sanctioned shall be given to the beneficiary

along with the allotment letters/conveyance deed.

10. Construction of Dwelling Units--The construction of dwelling units on the plots will be carried out by the allottee in accordance with the sanctioned lay out plans/building plans within a period of one year from the actual date of shifting. Till completion of the project and handing over of the services to the concerned local bodies, the Executing Agency will exercise the necessary building controls and ensure that the construction activities go on as per the approved plans and building plans. In case, the allottee fails to build even a single floor with WC within a period of one year the allotment be cancelled and plot resumed by the Executing Agency.

11. Handing over of the services for maintenance to the local bodies--After two years from the date of actual shifting of the duster to the Resettlement site the settlement shall stand transferred to the concerned local body for maintaining services, and for exercising of building controls.

12. Cost of land-

Cost of land at Rs. 16.00 lakhs per acre or Rs. 400 per sqm.

Cost of internal development:

Rs. 600 per sq.m.

Total Rs. 1000/- per sqm of gross area, or Rs. 2000 per sq.m. of net area.

13. Sharing of cost-

Sharing of Cost 15 sq. m. plot: 20 sq. m. plot Total cost of plot Rs. 35,000/- Rs. 45,000/- at current prices.

Contribution by beneficiaries. Rs. 7,000/- Rs. 9,000/- Subsidy by Delhi Government. Rs. 5,000/- Rs. 10,000/- Subsidy by Land Rs. 18,000/- Rs. 21,000/-

Owning Agency (Rs. 5,000/- per jhuggi to be paid for external services directly by Delhi Government (Rs. 5,000/-per jhuggi to be paid for external services directly by Delhi Government

For internal Development the following amounts will be paid to DVB/DJB,

DVB Rs. 90/- per sqm. for electrification DJB Rs. 1557- per sqm. for providing water supply and sewerage.

14. Recovery of electricity and water--Charges for consumption of electricity and water be recovered from allottees for community toilets and common water hydrants. Fixed charges shall be recovered by the Executing Agency from such allottee to cover the cost of maintenance and consumption of water for the first two years, during which period metered supply will be provided by DVB/DJB.

15. Water Supply--Individual metered water connections will be given to each allottee within a period of two years of shifting. The reduced norm for supply of water as in the case of unauthorised colonies will be adopted. The work of laying of internal water and sewer lines at the resettlement site shall be executed by the DJB from funds to be provided by the Executing Agency. No departmental charges will however, be leviable by DJB for such works. Peripheral and trunk services will be provided by DJB as in the case of other settlements at its own cost.

Water harvesting--The DJB will adopt innovative technology for water harvesting and ground water re-charge at the relocation site.

16. Electricity--Individual metered connections will be provided to each allottee. The work of internal electrification as in the case of unauthorised colonies will be carried out by DVB. No departmental charges will be levied by DVB for executing the work. Peripheral and trunk services will be provided by DVB at its own cost as in the case of the unauthorised colonies.

17. Other developmental works--Other developmental works like laying of roads, drains, development of parks, etc. will be carried out by the Executing Agency. The services shall be transferred to the local bodies/DDA after a period of 2 years from the date of shifting, for maintenance.

18. Density and size of each dwelling units--Keeping in view the high cost of land in Delhi and the reducing availability, density shall be as follows:

Size Density

15 sqm. plot 300 dwelling units per hectare

20 sqm. plot 250 dwelling units per hectare.

19. Terms of allotment-

The grant of freehold plots to JJ dwellers at the relocation site has been agreed to, in principle by Delhi Government subject to clearance by Government of India, separate instructions with regard to nature and tenure shall be issued shortly.

20. Public Utility sites--Sites for putting up substations by DVB, tubewells and other water related infrastructure as also for primary school, community hall and dispensary will be transferred on a token charge of Rs. 1/- to the concerned Government agency, since cost of such land has already been paid for by other departments of the Government/ Delhi Government.

21. Survey of dusters--Prior to relocation and payment of subsidy by the land owning agency and Delhi Government, a joint survey of the slum cluster will be carried out by the DC of the revenue district, jointly with the land owning agency and Executing Agency. The figure of jhuggies to be relocated should be determined on the basis of mis survey keeping in view the eligibility criteria.

22. Issue of Laser Cards--Each allottee of a site and services plot shall be issued a laser card by the DC of the revenue district. This card will carry all relevant details of the allottee and his family members. This laser card will be used by the district authorities to check allotment of more than one plot to a family.

23. Revolving Fund--A separate Revolving Fund of relocation to Jhuggies from project sites should be created in which the contribution of the beneficiary, the subsidy given by Delhi Government and the subsidy given by the land owning agency and other related amounts shall be deposited. This Fund shall be operated by the Urban Development Department of Delhi Government. Funds for each project shall be released to the Executing Agency based on project estimates to be approved by a Steering Committee being set up under the Chairmanship of the Chief Secretary. The Steering Committee shall also be responsible for identifying and prioritizing clusters to be shifted, shifting of identified clusters and for monitoring execution of each project.

22. Executing Agency for the scheme--Slum Wing of MCD will be the Executing Agency for relocation of JJ clusters from the lands belonging to MCD and Delhi Government and its departmental / agencies. In case of Central Government departments/Agencies like Railway, DDA, L&D), DCB, NDMC etc. they will be free to carry out the relocation themselves as per the policy of the Delhi Government or entrust the work to the Slum Wing of MCD. The subsidy of Delhi Government as per the approved funding pattern will be available to all the Executing Agencies.

23. Land protection--The Deputy Commissioners of the Revenue Districts will maintain an inventory of all Government land within their district and will closely monitor their protection through the District Task Forces. In case of lands belonging to Delhi Government and its agencies and departments, the DCs will also be responsible for protecting the lands and for ensuring that no encroachments take place. It will be incumbent on the land owning agency to approach the DC for clearing the squattered to have encroached on their lands after 30.11.1998.

The Slum and JJ Department has also placed on record the annual plan outlay for 2001-2002 of the NCT of Delhi for its department. The relevant portion of the same dealing with the enormity of the problem is as under:

SLUM & J.J.Deptt (MCD)

Relocation of JJ Squatters (Rs. 2400.00 lakh) Delhi continues to face the problem of mushrooming growth of JJ Clusters on land pockets belonging to various land owning Agencies i.e., DDA, MCD, NDMC, Delhi Cantonment Board, Railways, Government Departments, CPWD, L&DO, Departments of Delhi Government and other autonomous organisations.

Approximately three lakh fresh migrants come into Delhi every year in search of gainful employment opportunities, which are easily available in unorganized and informal segments of the metropolitan economy. Delhi started witnessing the problem of jhuggie jhoprises w.e.f. 1960 onwards. The huge influx of population from all parts of the country resulted in proliferation of JJ dusters/ squatter settlements.

JHUGGIE JHOMPRI RESETTLEMENT - BACKGROUND

In Delhi prior to inception of 7th Five Year Plan, about 2.40 lakh JJ families had been settled in 46 JJR Colonies where these families were given plots varying from 18 sq. mts. to 21 sq. mts. depending upon magnitude of the problem and physical/financial constraints with basic infrastructural facilities provided in phases.

The scheme of JJR was discontinued with the termination of the Sixth Five Year Plan, 1980-85 and emphasis shifted from resettlement of JJ dwellers to improvement of Slum/JJ clusters on "as is where is basis".

The then Hon'ble Prime Minister announced in January, 1990 the issue of food cards to jhuggie dwellers. In order to identify the magnitude of the problem of jhuggie basties for the first time a comprehensive survey was conducted by Civil Supplies Department between January and March, 1990, Consequent upon this exercise, all the jhuggie clusters were identified by Delhi Administration except for those located on road berms/foot paths etc.

RESETTLEMENT POLICY MAGNITUDE

The families residing in jhuggies were issued identity cards and metallic plates on the basis of that survey/enumeration. Food and Civil Supplies Department, Delhi Government informed that ration cards were issued in two phases to jhuggie households residing in jhuggies as on 31.1.1990. 694 jhuggie dusters with a population of 2.26 lakh families were identified in the first instance. All of them were issued food cards by the Food and Civil Supplies Department in Delhi Administration in order to bring these jhuggie families within the network of public distribution system.

However, as on January, 1990 it was estimated that about 2.60 lakh jhuggie families were staying in about 929 JJ clusters. This information is based on the data supplied by Food and Supplies Department and data collected by S&JJ Deptt. S & JJ Deptt. has drawn a preliminary list of 1080 JJ clusters as on 31.3.1994 on the basis of field assessment and in consultation with area MLAs. According to the rough estimates there were

4,80,929 jhuggie families in Delhi. The existing data also seems to be out-dated and according to the rough estimates the present numbers of jhuggies is to be around 6 lakhs.

THREE PRONGED STRATEGY

However, w.e.f. 1990-91 onwards, in Delhi a three-pronged strategy has been adopted for dealing with the problems of jhuggie jhoparies keeping in view the policy of the Government in regard to JJ dwellers. That on the one hand no fresh encroachments shall be permitted on public land and on the other hand past encroachments which had been in existence prior to 31.1.1990 not be removed without providing alternatives.

STRATEGY-I

Relocation of those jhuggie households where the land owning agencies are in a position to implement, the projects on the encroached land pockets as per requirements in the larger public interest and they submit requests to S&JJ Department for clearance of the jhuggie 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 NOC and S&JJ Deptt. for utilisation of land.

STRATEGY-III

Extension of minimum basis civic amenities for community use under the scheme of Environmental Improvement in JJ Clusters and its component scheme of construction of Pay and Use Jansuvidha Complexes containing toilets and baths and also introduction of Mobile Toilet Vans in the clusters irrespective of status of the encroached land till their coverage under one of the aforesaid two strategies. This scheme is a continuing one since/ the inception of the 7th Five Year Plan, 1985-90 i.e.. April, 1987.

DIFFICULTIES EXPERIENCED IN IMPLEMENTATION OF THIS SCHEME IN THE PAST

(i) Non-availability of Lands--At present there is a pendency of about 70,000 squatter families which are to be relocated from the project sites under encroachment, whose land pockets are urgently required by the concerned Land Owning Agencies for some important project implementation of public importance. In a number of cases even the relocation charges have been received from the Land Owning Agencies but due to Non-availability of sufficient large chunks of land, even after depositing Rs. 66.70 crores with Land Bldg. Deptt. of GNCTD, these families have not been relocated so far.

(ii) Non-availability of the contribution from the land owing agencies--488 squatter families were shifted from Diplomatic Enclave as per the instructions of the then Lt. Governor but an amount of about 4.32 crores is still to be received from L&DO.

(iii) Non-availability of shelter loan to the members of multipurpose cooperative societies of the relocated families, thus blocking another amount of about Rs. 9.00 crores, in the sense that as a part of the scheme, before shifting of the families in the relocated plots. Slum and JJ Deptt. had to provide plinth and W.C. and the cost of which was to be received from the beneficiaries after the availability of shelter loan to them from DCHFS and HUDCO, which, however, was never extended to them."

8. In the affidavit filed on behalf of NCT of Delhi it is stated that in the last few decades there has been vast increase in the slum population due to development of number of Industrial Estates, Commercial Centres, wholesale markets etc. The number of jhuggis which were about 12,000 in 1951 grew to 2.6 lacs by 1990 and

are now estimated at about 6 lacs where about 30 lacs people are residing.

9. The immigration in Delhi is estimated at about 4 to 5 lacs people every year. It is stated that the slums are products of structural inequality in the socio-economic development and that the authorities have been unable to provide affordable EWS/ low cost housing. This has resulted in haphazard and unhygienic mushrooming of slums in the urban areas causing a lot of damage to the health environment of the city as a whole. Though the administration admits its responsibility to provide shelter yet it is stated that it has been unable to do so. Under the relocation scheme it is stated that about 2.41lac JJ families have been resettled in 44 resettlement colonies between 1960 to 1985. However, with the non-availability of urbanisable land and pressure on the land from the squatters the problem has increased.

10. The affidavit further states that initially the cut-off date was 31.1.1990 but the same has been extended up to 31.12.1998, The plots are stated to be allotted on a license fee basis. However, a perusal of the Policy Guidelines for Implementation of the Scheme for Relocation of the JJ Clusters of the Government of NCT of Delhi shows that in para 19 where terms of allotment have been specified, the grant of freehold plots to JJ dwellers at the relocation site has been agreed to in principle by the Delhi Government subject to clearance by Government of India. It is further provided that separate instructions with regard to the nature and tenure would be issued shortly. It is also stated that in terms of recommendations of the Committee appointed under the directions of the Delhi High Court in CW 6553/2000 a uniform plot size of 18 sq. metres is to be allotted for JJ dwellers who have established themselves on or before 31.12.1998 and the proposed enhancement of resettlement cost to Rs. 75,000/- from Rs. 44,000/-. However, subsequently, when this report was submitted to the Lt. Governor directions were issued to have two different sizes of plots as earlier directed between the people who encroached prior to 31.1.1990 and 31.12.1998 respectively. Even the costs have been directed to be reworked out.

11. Another important aspect stated to be in the policy is that only land pockets not required by the concerned land owning agency for another 15 to 20 years for any project implementation are utilised for construction of informal shelters.

12. The Union of India in its affidavit has also referred to the claim of the Government of NCT of Delhi where it is stated that the problem of JJ dwellers have assumed large proportion with approximately 1100 slum/JJ Clusters in entire Delhi on lands under the ownership/control of Government of NCT of Delhi as also of local bodies like DDA, NDMC, MCD, The Cantonment Board, Railways and L&DO. Reference has been made to the observations of this Court in CW 6553/2000 to the effect that there is dearth of resources in the form of land and money and in the long run it may not be feasible to allocate individual plots to the jhuggi dwellers due to scarcity of land.

13. A further affidavit was filed by the Union of India dated 17.7.2002 admitting that there is no economic criteria for allotting alternative sites to eligible slum dwellers and the fact that in October, 2000 the Ministry has given consent for extension of the cut-off date to 31.12.1998 based on the proposal of the Government of NCT of Delhi. It is further stated that the provisions of Slum Areas (Improvement and Clearance) Act, 1956 are applicable only to areas notified as slum areas and not to the existing relocation policy of the JJ dwellers. Out of the total cost of relocation of Rs. 44,000/-, a sum of Rs. 29,000/- is contributed by the agencies owning land on which jhuggi dwellers exist and a subsidy of Rs. 10,000/- from the Plan Fund of Government of NCT of Delhi is provided. Rs. 5,000/- is the contribution from the beneficiaries. The Ministry has expressed absence of any specific information that more than 50% of sites allotted to slum dwellers are not held by the original allottees though it admits that some of the plots have changed hands. It is admitted that these plots are allotted on license fee basis.

14. However, the policy of the Government of NCT goes even further and the guidelines of the scheme are now seeking to provide ownership rights to the allottees though this is subject to the clearance from Government of India and separate instructions to be issued in this behalf.

15. The Railways have filed a separate written response in CW 2112/2002. It is stated affidavit that there is no provision in the budget for providing compensation to the jhuggi-dwellers and that machinery is provided for the removal of unauthorised occupants from Railway land and action is being taken under the Public Premises Act, 1971. Six thousand seven hundred jhuggis are stated to have been removed from the Railway land without paying any compensation to the jhuggi dwellers in various areas in Delhi and some of them are under the directions issued by the Division Bench of this Court.

16. It is apparent from the affidavit that there seems to be some difference of opinion between the Ministry of Railways and the Urban Development Ministry in view of the fact that Urban Development Ministry is wanting the Ministry of Railway to adopt the policy of rehabilitation of the encroachers on the land. It is also stated that though the Railway pasted notices on prominent places informing the jhuggi dwellers, in terms of the order of the Delhi High Court dated 20.9.2000, that the area will be got vacated it was protested by the Chief Secretary, Delhi Government which has caused delay in removal of the judgment of Almitra H Patel and Anr. v. Union of India and Ors., where the Supreme Court had come down heavily

against the grant of indulgence to such encroachers and it was observed "rewarding of encroachers on public land with free alternative site is like giving reward to a pick pocket". However, in pursuance to certain subsequent discussions Railways had agreed to bear a part of the rehabilitation cost of the encroachers limited to the encroached land which Railway needed immediately.

17. A comprehensive written submission has been filed by the petitioners in CW 2112/2002 giving data of the present position and stating about the failure of the respondent authorities to protect their own land and remove the JJ clusters from encroached land despite directions passed from time to time. The details of JJ clusters are as under:

(I) Number of Jhuggi Clusters and Jhuggies in Delhi:

Year Number of Clusters Number of Families/ Jhuggies Average No. of Families/ Jhuggies Population

1951 99 12,749 64

1973 1373 1,41,700 103

1985 400 10 lakhs

1990 929 2,60,000 280

1994 1080 4,80,929 445 20 lakhs

1998 1100 6,00,000 545 30 lakhs

The aforesaid data shows that the jhuggis in Delhi have increased @ 85% from 1992 to 1994 and @ 25% from 1994 to 1998.

4. That out of 1080 clusters, 700 are on DDA land, 76 on L&DO, 65 Railways, 30 Slum Department, 23 Municipal Corporation of Delhi, 16 Gram Sabha, 11 Cantt. Board, 6 New Delhi Municipal Committee, 153 others.

The allotments made to jhuggi dwellers from 1960 to 1975 are as under:

S. No. Size of Plot Number of Plots

1. 80 sq. yds. 3,667

2. 25 sq. yds. 46,090

3. Two Room Tenements 3,560

Total 53,317

18. It is further stated that during the period 1975 to 1977 almost all jhuggis from Delhi were removed and 27 new resettlement colonies were developed allotting 1.5 lacs fully developed plots to the squatters but the scheme was discontinued from the VIth Five Year Plan.

19. It is stated that JJ resettlement scheme was started in Delhi in the year 1960 and periodic reviews have taken place in 1962, 1964, 1970 and 1975. In 1962, itself it was noted that the allotment of developed plots encouraged benami sales and trafficking in open land and plots encouraging further squatting. In 1967 a study group constituted recommended that the squatters should be removed without taking any liability of resettling them.

20. A reference has also been made to the orders passed on 8.11.1993 in CW 267/93 directing respondents that in case alternative plots are to be allotted the same should be on license basis with no right to licensee to transfer or part with possession with the plot. In such cases there should be automatic termination. On 26.5.1997 in CW 4229/96 this Court had directed the police authorities to ensure that no new jhuggi should come up during the pendency of the writ petition while in another writ petition being CW 4215/95 on 12.10.1998 this Court restrained the Government from conversion of the land which was allotted under relocation scheme to freehold. Interestingly, the original scheme provided that any person putting up jhuggi after 31.1.1990 was not to be provided with plots and ineligible squatters were to be demolished or to be acquired by the authorities. Undoubtedly, there has been an abject failure on this account.

21. It is stated that from 1990 to 2000 only 22000 plots were allotted. The scarcity of land for relocating 6 lac jhuggi dwellers is stated to be apparent from the fact that as per the statements of respondents 5 hectares of land is required for 1000 families and thus for 6 lacs families the Government would require 3000 hectares of land while no such land is available in Delhi. About 7000 acres of land is stated to have been acquired by the DDA during this period out of which 275 acres were utilised for slum dwellers. It is thus stated that by this rate it would require 272 years to resettle the slum dwellers taking into consideration the persons who are squatting up to 1998. The acquisition cost of 7500 acres of land is stated to be Rs. 1,72,500,00,000/- @ Rs. 23 lacs per acre and the development cost for the required 6 lac plots @ Rs. 70,000/- per plot would be Rs. 4,20,000,00,000/-.

22. An extremely important and relevant data given is that about 50% of the slum dwellers have sold away or transferred the land and no action has been taken against them though plots were allotted only on license basis.

23. In order to substantiate the illegality and the arbitrariness of such a policy, reliance has been placed on the judgment in Ramanand v. Union of India and Ors., DRJ 1993 (26) 594, where the respondent authorities have taken a stand that there is no vested right of allotment of persons whose land is acquired for public purposes under the Land Acquisition Act. It is thus contended that on the one hand persons who are displaced by acquisition of their land for planned development of Delhi are held to have no absolute right for allotment of plot yet on the other hand the same very land is being utilised to give largesses to encroachers who have settled on the land from which farmers were ousted in the name of planned Development of Delhi. It is thus contended that there is no purpose in acquiring the land when the authorities are unable to protect the land already acquired which has been encroached.

24. A plea has been taken that there is no provision for allotment of land under the DDA Act, 1957 or Nazul Land Rules, 1981 for allotment of land to persons who have encroached upon the Government land or to jhuggi dwellers. Even Rule 10 would not apply and same would be applicable in cases of areas declared as slum under the Slum Areas (Clearance and Improvement) Act. It is further contended that the Government of NCT of Delhi has no power under Entry 18 of List II read with Article 239AA(3)(a) of the Constitution of India to claim ownership of land and developed colonies. Such land can be vested in the public bodies by the Central Government though even for the same there is no policy framed under Section 21 of DDA Act.

25. A specific plea has been raised that once the land is placed at the disposal of DDA under Section 22 of the DDA Act for purpose of development, in accordance with the provisions of the Act, the land must be so developed by the DDA under the provisions of the Act and be dealt with accordingly. The encroachment on public land acquired for planned development of Delhi is stated to be the very anti-thesis of the concept of planned development of Delhi. The failure of the system is sought to be substantiated by the fact that the earlier policy had prescribed a cut-off date of 31.1.1990 and required that any person putting up any jhuggi after that date would be removed. Persons having jhuggis on footpaths, roads, berms were not included in the scheme. Plots were to be allotted on license basis. Now under the new policy of 2000 instead of implementing the cut-off date the scheme has been extended up to 30.11.1998.

26. The judgment of the Supreme Court in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, has been relied upon where it was held that no one has a right to make use of public property for private purpose and that it is the duty of the Competent Authorities to remove encroachment which are a constant source of unhygienic conditions, ecological problems, traffic hazard and a risk even to pedestrians.

27. The Supreme Court in the aforesaid judgment held that there cannot be any right for alternative accommodation to the encroacher before his/her ejection and that successors-in-interest of encroachers cannot be entitled to any benefit since directions in this behalf would only encourage the people to abuse the judicial process to avail of remedy by encroaching on public property. It is further contended that no data has been kept of the persons who have sold properties and the policy has encouraged the encroachers of public land rather than benefit the weaker sections of society based on their economic criteria and need.

28. The petitioners in CW 4441/94 have relied upon the judgment in Jilubhai Nanbhai Khachar v. State of Gujarat, and in the case of State of Maharashtra v. Kamal Sukumar Durgula, to contend that Entry 18 of State List is wide enough to cover laws relating to prevention of encroachments on public lands and on removal of unauthorised occupation of the vacant land.

29. Though the legislative assembly is not competent to enact law in connection thereto in view of what is provided in Article 239A(3)(a) a reference has been made to the scheme of the Delhi Development Act and the fact that once the Zonal Development Plan is formulated under Section 8 of the said Act no person is entitled to use or permit the land to be used other than in conformity with the Zonal Development Plan in view of Section 14 of the contravention of which is punishable under Section 29 of the Act.

30. A reference has also been made to the provisions of the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994 to contend that under Section 53-A of the Delhi Development Act no legal authority is competent to make any rule, regulation or bye-law in respect of any matter specified in the said section unless DDA certifies such Rule, regulation or bye-law. It is thus contended that under Section 429 of the DMC Act providing for any scheme to be in conformity with the Zonal Development Plan it is mandatory for the said authority to enforce and preserve land falling within its own jurisdiction. There is similar obligatory function under the NDMC Act under Section 11(z) read with Section 338. It is contended that land is acquired under the Land Acquisition Act for public purpose and thereafter is vested with public authorities for planned development of Delhi. Thus such land cannot be dealt with but in accordance with the purposes for which it is meant. Large amount of compensation is paid to acquire this land which comes from the tax-payers' money. Thus to spend money to remove encroachers on such public land would amount to

repurchasing the own land of the Government at the cost of tax-payers' money.

31. A reference is also being made to Public Premises (Eviction of Unauthorised Occupants) Act, 1971 since the definition of premises covers not only building but lands. Thus all unauthorised occupants are liable to be evicted forthwith under the provisions of 3-A and Section 5 of the said Act.

32. The provisions of Code of Criminal Procedure, 1973 have also been referred to point out the duty of the police officers where under Section 149 they have to prevent commission of any cognizable offence. Since Section 152 lays down that the police officer may make effort to prevent any injury to public property, movable or immovable, it is contended that it is the duty of the police officers to preserve public land specially when such encroachment of squatting would amount to criminal trespass. The scheme is stated to have failed to achieve its purpose of even rehabilitation of the slum dwellers since the scheme was based on the premise that there would be a full-stop to such encroachments from 31.1.1990. On the other hand such encroachments have been permitted with impunity.

33. A reference has also been made to the case of Olga Tellis v. Bombay Municipal Corporation, to contend that the right of life includes the right to livelihood in case of pavement and slum dwellers but it was held that removal of encroachments from footpaths/pavements over which the public has the right of passage and access cannot be regarded as unreasonable, unfair or unjust. The Court observed therefore that it cannot be said that the claim of the pavement dwellers to put up construction on pavements, and that of the pedestrians to make use of pavements for passing, are competing claims. It was further held that the Municipal Commissioner was justified in directing the removal of encroachments committed on pavements and footpaths etc. but time was granted for the eviction of pavement dwellers. It was made clear that the offer of alternative pitches to such pavement dwellers was not a condition precedent for the removal of encroachments committed by them.

34. It is in view of these elaborate submissions that the policy as existing today has to be tested. The object of acquisition of land under the Land Acquisition Act is to make available land for public purposes. It is for that public purpose that the land has been acquired. The displacement of farmers and land owners from the land in question is a natural corollary of such acquisition. It undoubtedly causes certain hardships. But such hardship has to give way to a larger public cause for acquisition of land. Once such land is acquired and persons are displaced for the public purpose, can such land be utilised for the purposes of providing accommodation to persons who have encroached on public land? In our considered view the answer to this question is in the negative. The authorities cannot acquire land and thereby make the farmers, who have held the land for generations, landless and displace them with the object to use the same very land for "unplanned development" rather than planned development. To permit such land to be utilised for rehabilitation of persons who have encroached upon public land would be travesty of justice and fair play and would amount to a premium on such dishonesty and public encroachment on the land. It would only encourage persons to encroach on public land as has happened.

35. The whole concept of urbanised development of land in Delhi has almost collapsed as a consequence of such haphazard development and irrational policies. Any person can sit wherever he wants. Squatting on the land gives a right to get another allotment which allotment also he sells and after selling comes back on the same land. The policy itself gets defeated.

36. There is an important aspect to the matter since there are workers coming into Delhi from even adjacent areas. There are honest citizens who stay far away and travel long distances to come to their work place. The question remains why such persons should be placed in a disadvantageous position as to the persons who have encroached on the public land.

37. It is relevant to note that there is total absence of any economic or social philosophy behind such policy since it is not the economic criteria which is the basis for such allotment. It is undoubtedly the duty of the

Government authorities to provide shelter to the under-privileged. It is possible to have housing scheme developed for these under-privileged people. However, the respondents in their affidavits have admitted their failure to devise housing schemes for persons in the economically weaker sections of the society. This lack of planning and initiative on the part of respondents cannot be replaced by an arbitrary system of providing alternative sites and land to encroachers on public land. If the scheme were to be devised for the economically weaker sections of society based on a rational criteria, it would achieve a social objective. The basis cannot be encroachment on public land. Such a basis, in our considered view, would be arbitrary and illegal on the face of it. It encourages dishonesty and violation of law.

38. It is also relevant to note that the purpose of providing alternative sites was to provide accommodation on license basis. Almost 50% of these sites have been sold and transferred defeating the very object. It has only created a mafia of property developers and builders who have utilised this policy to encourage squatting on public land, get alternative sites and purchase them to make further illegal constructions. The policy is defeatist in its approach. No effort has been made to collect data or make surveys of such sites allotted to verify whether they continue to be occupied by the original occupants. What more can be said of the arbitrariness of the action of the respondents.

39. The policy of 1990 was devised to rehabilitate the encroachers on public land but the principal object of putting stop to further encroachment has been given, a go-by. Thus the very substratum of the policy has collapsed. Admittedly land is one thing which cannot be multiplied. Land in and around Delhi is specially scarce. Once land is a limiting factor there cannot be a policy to keep on rehabilitating encroachers on public land since it is a perennial problem. No care was taken to ensure that encroachments on public land at least stopped after 31.1.1990 and that rehabilitation should be limited to persons occupying public land as on that date.

In fact the policy has been encouraged further encroachments and there has been an alarming growth in this behalf specially between the period 1990 to 1994 when the rate of increase has been as much as 85%. This rate of increase came down but has still continued on an alarming rate of 25% for the period from 1994 to 1998. It has thus not really been possible even to provide rehabilitation to persons prior to 1990 what to talk about further encroachments on public land where it is now stated that there are 6 lac jhuggi dwellers as in 1998.

40. The tax-payers' money is being utilised for acquisition of the land. The cost of acquisition is enormous as the aforesaid data would show. A society can ill-afford to spend this amount on acquisition of land which is utilised not for any public purpose and not even for any rehabilitation of the economically weaker sections of society on any permissible criteria but purely on the arbitrary criteria of squatting on public land.

41. There is force in the submissions of Counsel for the petitioners that on the one hand the Government pleads that even the policy for allotting alternative plots on cost to persons whose land has been acquired does not give an absolute right to such person yet on the other hand it has a policy to encourage squatting on public land by giving such persons allotment of alternative plots, rather assured allotment with additional benefits. What can be the social object of displacing poor farmers from their lands by acquiring it for public purposes and then giving it to those who have scant respect for law and unauthorisedly squat on public lands. If the Government is unable to protect its own land and keep it free from encroachments then it is failing to perform its obligations under various Statutes and Acts as aforesaid. Not only this, one cannot appreciate that if land acquired and it not used for a number of years the same should be utilised to rehabilitate encroachers on public land. The object certainly cannot be to encourage encroachments on this land and if it is so it must be nipped in the bud.

42. Though initially the allotment was to be made on license basis the NCT Scheme, as stated above, even goes further and is now seeking to give ownership rights to the allottees, though subject to approval by the Central Government. This is, in our considered view, totally unsustainable in law that encroachers on public

land to be removed are given ownership rights on other land which has been taken away from the land owners through acquisition proceedings. Thus, on the one hand, people who have settled ownership of land for years together are deprived of the ownership of the land for public purpose and subsequently the same land is sought to be given on license basis or even further on ownership basis as an incentive to persons to shift to the said land from where they are squatting on public land.

43. A populist measure need not necessarily be a legal one. The date has been extended from 31.1.1990 to 31.12.1998. It is stated that there may be further extension. This cannot be an indefinite process since land is not available in unlimited quantity for these encroachers on public land. The consequence is that the encroachments are not removed and citizens who have paid for the land and occupy the adjacent areas are inconvenienced. An unhygienic condition is created causing pollution and ecological problems. It has resulted in almost collapse of municipal services.

44. The Supreme Court in Ahmedabad Municipal Corporation's case (supra), has already hold that there cannot be mandatory requirement for providing alternative accommodation at the expense of the State for ejection of encroachers on public land. In fact normally such encroachers should not be provided with alternative accommodation as it would only encourage the illegal act of encroachment. The Supreme Court in Almitra H. Patel's case (supra), thus observed that creation of slums has become a good and well organized business. This has obviously happened in active connivance with the Municipal bodies and the promise of free land at the tax-payers' costs in place of a jhuggi is a proposal which attracts more land grabbers. One cannot but use the expression as stated in the said judgment which best describes this position as 'giving reward to a pick-pocket'. Any town or city has its limitations in respect of population which can be inhabited and cannot be an unlimited number. The respondents have admitted in their affidavits that there is a flow of population to Delhi but Delhi cannot accommodate such continuing number of persons pouring in from various parts of the country. Schemes and methods have to be devised to provide employment to such persons at their original places of habitation.

45. A Division Bench of this Court has recently pronounced judgment in (CW 4215/95 and CW 4229/96) Pitampura Sudhar Samiti v. National Alliance of Peoples' Movement, Delhi Chapter, decided on 27.9.2002 dealing with the issue of relocation and removal of JJ Clusters in Delhi. Certain directions have been given in the judgment and the Division Bench observed that humanitarianism must be distinguished from miscarriage of mercy. It was further observed that the result of the inaction of the authorities has been that countless slum lords cropped up on public land creating their own illegal estates. It was held that there was no reason for continuing the JJ Clusters on public land in the vicinity of the resident associations' thereby blocking footpaths, open lots, green lands or parks and that the welfare of the residents of these colonies cannot be overlooked. Directions have been issued to remove the slum clusters contrary to the Government policy and which are in violation of the orders passed in CW 4215/95 dated 24.2.1997 for prevention of such clusters from coming up. However, in so far as the policy in question in the present writ petition was concerned, the Division Bench did not deal with the same issue in view of the pendency of the judgment in the present petitions where this issue was to be considered.

46. We are thus of the considered view that the continuing existence of such a policy serves no social purpose. Such a policy without any social criteria, is illegal and arbitrary and we hereby proceed to quash the same which requires alternative sites to be provided to slum dwellers occupying land before they can be removed from such public land. Needless to say it will be open to the respondents to devise a policy for rehabilitation of the economically weaker sections based on a legitimate criteria but the criteria cannot be encroachment on public land.

47. The question, however, remains as to what directions are now to be issued taking into consideration that much water has flowed since the policy was originally devised in 1990.

48. We have considered the suggestions given at the Bar and have applied ourselves to the problem at hand. While quashing the policy aforementioned we consider it appropriate to give the following consequential directions:

(1) The cut-off date should be maintained as 31.1.1990 and a verification should be carried out of all the persons who have been allotted alternative sites. The needful be done within a period of 6 months from today and in any case by 30.6.2003.

(2) The persons found in occupation of the original sites would be allowed to continue to occupy the same but strictly on license basis and appropriate license deeds should be issued to them clearly stating that the rights are not transferable in any manner whatsoever.

(3) In so far as the persons who are occupying the alternative sites and who have transferred it to third parties, the plots should be got cleared from occupation of such third parties and should be allotted only to those who still remain to be allotted plots in terms of the 1990 scheme with the cut-off date remaining as 31.1.1990. Steps in this direction should also be taken up and the task should be completed within a period of one year from today and not later than 31.12.2003. Such occupants would have no right to continue to occupy since admittedly these sites were given on a license fee basis and should not have been transferred.

(4) If some persons still remain without allotment and were in occupation of any site prior to 31.1.1990, the money, if received from them should be refunded and no further plots be created to accommodate such persons.

(5) Insofar as the persons who have been allotted sites and who had encroached upon land after 31.1.1990 are concerned, the same criteria would be applied as in paras 1, 2, 3 above. However, no further allotment should be made for any such persons and the sites got vacated should be utilised for the benefit of those persons who have been occupying sites prior to cut-off date of 31.1.1990.

(6) No allotment will be converted into ownership basis as is proposed by the Government of NCT of Delhi in its policy guidelines for implementation of the scheme for relocation.

(7) No alternative sites are to be provided in future for removal of persons who are squatting on public land.

(8) Encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before such encroachment is removed or cleared.

(9) The land owning agencies should collect data and verify the position about the land vested in them for planned Development of Delhi and keep a periodic check to ensure that no further encroachment takes place on the public land and that the encroachments already existing are removed expeditiously.

(10) The Commissioner of Police would render all assistance as and when required by the public authorities to clear the encroachment on public land.

(11) The public authorities should make their officers responsible for such protection of public land accountable for any encroachment which takes place on public land since undoubtedly the same takes place in connivance with such public authorities. The local police authorities should also be made responsible to ensure that encroachment does not take place on public land.

49. We part with this judgment with the hope and desire that it would help to make Delhi a more livable place and ease the problems of the residents of this town who undoubtedly suffer and are harassed as a consequence of this encroachment on public land.

Both the writ petitions be listed before the appropriate Bench for further directions in respect of individual grievances made in the writ petition.