Justice Denied, Justice Defeated
June 2003

On September 27 of 2002, a Bench(1) of the Delhi High Court, consisting of Chief Justice S. B. Sinha and Justice A. K. Sikri, gave its decision in the case of Pitam Pura Sudhar Samiti versus the Government of National Capital Territory of Delhi (CWP 4215/1995). While the petition by the Pitam Pura Sudhar Samiti was filed in 1995, it was clubbed together with a case filed earlier by K. K. Manchanda versus Union of India (CWP 531/1990) in 1990 which had brought to the notice of the Court that there was a misuse of the green belt as an "open public lavatory" in Ashok Vihar. Later 63 other cases, filed between 1992 and 2002, were also clubbed together with this case. Of these 63 cases, 26 were by resident welfare associations and manufacturer's associations, 21 had been filed by individuals, and 15 represented jhuggi dweller associations. Thus, as the Chief Justice Bench(1) observed, there were two categories of cases – those which prayed for the removal of slum clusters, and the others which wanted better facilities for slum dwellers. But the Bench(1) also decided to confine itself only to the first category, claiming that the second issue was pending before another Bench(2) and "it would not be appropriate to touch the issue in these petitions". Thus, at one stroke, all the arguments of the jhuggi dwellers were dismissed in this case and they were not given a fair hearing – which is the first fundamental principle of justice.

The Bench(1) also observed, "With over half of humanity living in cities and towns the challenge of the urban millennium is to improve the living environment of the poor." But that was, "the task of policy makers who may have the guidance of experts in the field." At the same time, the Bench(1) said, "It does not require great intelligence to know that it is because of the negligence, carelessness of the officials of these Departments that these encroachments take place." However, by ignoring the petitions of the jhuggi dweller associations, the Bench(1) also set aside the arguments of the jhuggi dwellers that the policy makers had failed in their task and the concerned Departments should be held to account for their negligence and carelessness. The Bench(1) further said, "The welfare of the residents of these (regular) colonies is also in the realm of public interest which cannot be overlooked. After all these residential colonies were developed first. The slums have been created afterwards which is the cause of nuisance and breeding ground of so many ills." Had the Bench(1) given the slums an opportunity to be heard it would have discovered that actually the slums came first, as the place of residence of the construction labourers who built the colony and then later became part of the service sector. It would have also learnt that the slums become "breeding grounds for so many ills", not because of any criminal intent of the slum dwellers, but because of the same "negligence and carelessness" of the policy makers and concerned Departments to "improve the living environment of the poor". But the Bench(1) substituted evidence with its own assumptions – thus violating the second fundamental principle of justice, which is that the judge must be free of bias.

Consequently, the Bench(1) gave orders for the demolition of slum clusters which have come up after 24.2.1997 or are contrary to the existing policy of the government. It also directed that the authorities would relocate these jhuggi dwellers and provide them with proper civic amenities at the place of relocation. Those jhuggi clusters which are protected as per the existing policy of the government could be considered for in-situ upgradation, but their relocation would depend upon the result of the petitions pending before the other Bench(2). Finally, the Bench(1) noted that those (jhuggi dwellers) who were encroaching on public land had "no legal right to maintain such petition" against removal orders. Thus, without giving the jhuggi dwellers an opportunity to

present their side of the case, the Bench(1) condemned them to be relocated by the same authorities who had failed to either frame a rational policy or provide an adequate living environment. It was conveniently assumed that the other Bench(2) would give a hearing to the jhuggi dwellers and help to frame a relocation policy accordingly. Before looking at the decisions of the other Bench(2), therefore, it would be instructive to see what might have happened had this Bench(1) decided to look at the evidence before it within the cases that were clubbed along with the Pitam Pura Sudhar Samiti case.

One of the cases so clubbed was the case of Samudayik Vikas Samiti versus Union of India (CWP 6553/2000) filed on behalf of the residents of Gautampuri jhuggi cluster near ITO. A notice of eviction was given to the cluster on November 2000 and the residents were asked to pack their things and leave for the Bhalaswa resettlement colony around 14 km away. The residents then went to the High Court to ask for a stay on the eviction as most of the children were in the middle of the academic year and their education would suffer if the families were evicted. However, the Court did not issue a stay but ordered that, "it is the State's responsibility under Article 21 of the Constitution to provide services to the families in the area." Thus, the Chariman DTC was asked to provide bus services to the relocation settlement, specially for the school children; the DJB was directed to arrange for potable water; and the Secretary Health of GNCTD was ordered to provide mobile dispensaries. In other words, the Court recognised that the relocated jhuggi dwellers had valid grievances in terms of the improvement of their living environment and issued directions to the concerned authorities to do what they should have been doing as part of their legitimate duties anyway. In order to resolve the problems, the Court even set up a Coordination Committee to work out an action plan.

The Coordination Committee filed its report through the Secretary, Urban Development, Government of India, on 13 April 2001. The Committee maintained that any policy for the relocation or in-situ upgradation of slum dwellers would have to take into account the land use policy, the social tensions likely to be generated by relocation, the financial implications, and the constraints of providing trunk and feeder services in new areas. The Committee also took cognisance of the fact that earlier the Supreme Court had observed on 15 February 2000 that, "the promise of free land at the taxpayers cost, in place of a jhuggi, is a proposal which attracts more land grabbers. Rewarding an encroacher with free alternate site is like giving a reward to a pickpocket". Surprisingly, the Committee did not comment that the Supreme Court's observation was not based on any evidence, since each jhuggi dweller was paying Rs 7,000 for the land, and whatever plot-grabbing was taking place was because of the collusion between the mafia and the MCD or DDA and had nothing to do with the jhuggi dweller. So, without making any firm commitment, "because the issues involved require consideration of the Government at the highest level", the Committee advised against the "haphazard removal of squatters", suggested that the jhuggi dwellers be relocated only if the land was urgently required for a public purpose project, and recommended that all jhuggi clusters be provided with all civic amenities. All these recommendations vanished from judicial purview when the case was transferred to the Chief Justice Bench(1).

Now we come to the proceedings of the Bench(2), presided over by the Acting Chief Justice S. K. Kaul, which was presumed to be looking into the matter of better facilities for slum dwellers. The Bench(2) was actually hearing an amalgamation of two petitions: Okhla Factory Owners Association versus GNCTD filed in 1994 (CWP 4441/1994), and Wazirpur Bartan Nirmata Sangh versus Union of India filed in 2002 (CWP 2112/2002). Both the petitions prayed for the removal of slum clusters in the industrial areas. Thus, there was no provision for hearing the

jhuggi dwellers in this case at all, leave alone providing them with better facilities. Consequently, the Judge delivered his judgement on 29 November 2002, focusing entirely on "the validity and legality of the policy of the Government for the 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". Since the Bench(2) never heard the point of view of the slum dwellers, the judgement does not base itself on much evidence but is full of assumptions made by the Bench(2). For instance, the judgement observes that, "Such relocation has not been possible in large numbers because land cannot be manufactured and increased and that itself is a limiting factor." But it does not take into account that, under the Master Plan provisions, over 27000 hectares of land was to be acquired for residential purposes between 1962 to 2001, but DDA was able to account for only 11000 hectares of this.

Similarly, the Bench(2) receives a written submission from the Wazirpur Bartan Nirmata Sangh that between 1990 to 2000 DDA has acquired 7000 acres (2800 hectares) of land , out of which only 275 acres (110 hectares, or less than 4% of the total) were utilised for slum dwellers. Equally, the Bench(2) takes cognisance of the affidavit filed on behalf of GNCTD stating that slums are the products of structural inequality in socio-economic development and that the authorities have been unable to provide affordable EWS/low cost housing. But the Bench(2) does not hear evidence that DDA was supposed to build 16.2 lakh domestic units between 1992 to 2001 but actually built only 3 lakhs. The Bench(2) also hears that a uniform plot size of 18 sq.m. is to be allotted for JJ dwellers, but does not question why this is less than the minimum of 32 sq.m. stipulated for a family in the Master Plan, nor why the LG has further reduced the plot size to 12½ sq.m. The Bench(2) repeats the argument that "land is being utilised to give largesse to encroachers who have settled on the land from which farmers were ousted", without recognising that the Rs 7000 that the jhuggi dweller has paid for the land is more than the compensation paid to the "ousted" farmer, and yet the jhuggi dweller does not get a leaseholding but only a license for ten years. The Bench(2) also agrees that "no person is entitled to use or permit the land to be used other than in conformity with the Zonal development Plan", but does not give an opportunity to be told that DDA itself has changed the land use of over 5000 hectares between 1990 to 1998.

In fact, these are examples of the "haphazard development and irrational policies" that the Bench(2) is so concerned about. It is not as if the various authorities do not know of it. The Sajha Manch, for instance, has presented this data repeatedly between 1999 and 2003 before the Union Ministry of Urban Development, the DDA, the GNCTD, the MCD, and even the High Court through petitions and affidavits in Common Cause versus Union of India (CWP-4733/93) and Mansa Jan Kalyan Samiti versus Union of India (CWP-5916/2001). But neither the authorities nor the courts have ever acknowledged or responded to the evidence. So, even the Bench(2) admits, "It is undoubtedly the duty of the Government authorities to provide shelter for the under privileged. The respondents have admitted their failure to devise housing schemes for persons in EWS schemes." Yet the Bench(2) does not hold them to account for this manifest "lack of planning and initiative on the part of the respondents", but rather holds the "considered view that the continuing existence of such a (resettlement) policy serves no social purpose. Such a policy without any social criteria, is illegal and arbitrary and we hereby proceed to squash the same which requires alternative sites to be provided to slum dwellers." In other words, the Bench(2) will neither penalise the authorities for their failure to provide cheap housing, nor will it let them settle people on alternative sites for which the urban poor are being made to pay more than the cost price.

Thus, based on this lack of hard evidence and the logic that flows from it, the Bench(2) gave some arbitrary directions that only those persons who have been allotted alternative sites before the cut-off date of 31 January 1990 would be allowed to continue to occupy those sites, strictly on license basis, while all the others should be evicted and no further plots created to accommodate such persons, nor further allotments made for persons residing after 31 January 1990. The Commissioner of Police was directed to render all assistance to clear the encroachment on public lands, while the authorities were instructed to collect data and verify the position of occupation on the land. This was the judgement given by a Bench(2) that had been expected by another Bench(1) to consider the issue of provision of better facilities for slum dwellers! Perhaps no better example can be found of
"haphazard development and irrational policies" or "a policy without any social criteria". But to acknowledge that the Bench(2) would have to listen to the jhuggi dweller associations who would have argued that the cut-off date itself is arbitrary. They would have informed the Bench(2) that while the policy was proclaimed for 31 January 1990, the official surveys began later and people obtained their tokens and identity cards well after January 31. They would have said that they are forced to live in jhuggies because of the abject failure of the authorities to provide legally mandated affordable housing with services. And they would have further explained that they are sometimes forced to abandon their new homes in the resettlement colonies because the distance inhibits them from exercising their fundamental Right to Livelihood.

As a result of this irrational judgement there was a huge uproar in Delhi and on 19 December 2002 there was a massive rally at Jantar Mantar, organised by the Jan Chetna Manch, in which the Sajha Manch also participated. Given the explicit bias of the courts against the urban poor, it was decided that the jhuggi dwellers would not file a petition but political pressure would be brought to bear on the Government to protect its own policies. The public pressure eventually forced the Government of India to file a Special Leave Petition in the Supreme Court in February 2003, Union of India versus Okhla Factory Owners Association (SLP 3166-3167/2003). In its petition the Government argued that the High Court had erroneously struck down the resettlement policy, which was based in the Constitution, and had exceeded its jurisdiction in giving direction on policy, which is essentially an executive function. The Government also finally acknowledged that it could allot government land for the purpose of relocation; that the lack of affordable, reasonable housing leads people to encroach and squat upon available open land; that giving the homeless a stake in their own development is sound economics as well as contributes to social stability; that the slum dweller gives a contribution of Rs 5000 to the total cost of relocation; and that economic and social justice requires to be done to the weaker section of the society. Hence, the Government asked for an interim stay on the order of the High Court through notice of motion to the respondents. This stay was granted by the Supreme Court order of 19 February 2003, "In the meanwhile, it will be open to the Union of India to proceed with the impugned policy. However, no allotment of land shall be made in pursuance thereof, till further orders." On 3 March 2003, the Supreme Court modified its order, "Interim stay shall continue except that the Authority may allot land (subject to the result of the petitions)."