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

+ **W.P.(CRL) No. 1037/2012 & CrI.M.A.13021/2012**

Date of Decision: 30th August, 2013

ANKUR MUTREJA Petitioner

Through: Petitioner in person.

versus

DELHI POLICE Respondents

Through: Mr. Saleem Ahmed, ASC for the
State with Ms. Charu Dalal, Adv.
SI R.K.Jha, P.S. Jagatpuri.
Mr.K.K.Malhotra, Adv. for
respondent no.2.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for issuance of a writ of mandamus seeking a direction to Delhi Police to pass orders u/s 149 Cr.P.C addressed to the Secretary, Aviation Employees Co-operative House Building Society (hereinafter referred to as the 'Society') restraining them from locating halwais/private caterers in

any open area in and around Gagan Vihar Community Hall, whether within or outside the premises of the Gagan Vihar Community Hall or from creating any other public nuisance in whatever manner and to take immediate steps on failure of the society to obey the orders passed by Delhi Police.

2. The background facts are that the petitioner is resident of Unit I, Ground Floor, 156, Gagan Vihar Extension, Delhi which is located next to the Master Plan Road over disused canal. There is a community hall commonly known as Gagan Vihar Community Hall which is managed by the Society and is also located next to the Master Plan Road over disused canal. There are open areas on the rear southern side and western side of Gagan Vihar Community Hall Building. The open area on the rear side forms part of the Community Hall premises and on the western side is an internal road of Gagan Vihar Extension Colony whose status is under dispute in the Court of ADM(E) Delhi in a complaint filed by the petitioner u/s 133 Cr.P.C. The said open area is often used by various people who organize functions in the community hall. The open areas are used for locating halwais/private caterers either by the society or the organizers themselves. The halwais/private caterers carry out various cooking and ancillary activities including washing of utensils in the open area. The

location of halwais/private caterers in the open area is a public nuisance and cognizable offence under various sections of Chapter XIV IPC. Several complaints were filed with the SHO of local police station, ACP, DCP, Addl. CP, Joint CP and CP of Delhi from the year 2008 to 2012 complaining about nuisance but no action has been taken by Delhi Police till date. However, ADM(E) Delhi has passed a conditional order u/s 133(1)(a) Cr.P.C followed by an interim order restraining the society from locating halwais/private caterers in the western side open area and the location of halwais/private caterers stopped on the western open area thereafter, but it continued in the said rear open area which falls within the community hall premises itself. A complaint u/s 473 DMC Act was also filed which was transferred to the learned Municipal Magistrate, Karkardooma Courts, Delhi for removal of nuisance from the community hall premises. In a revision petition, an interim order was passed by learned Additional Sessions Judge restraining the society from washing utensils in the open area outside, which order was not obeyed by the Society, as such contempt petition was filed. A complaint was also filed before the ACP Preet Vihar but no action was taken. A criminal complaint u/s 200 Cr.P.C read with Section 156(3) Cr.P.C was filed before the learned ACMM(E) Delhi which was transferred to Sh. A.K.Aggarwal,

learned M.M. Karkardooma Courts, Delhi and the Court has taken cognizance of the criminal complaint filed before it. The disobedience and public nuisance continued, hence this petition.

3. Respondent no.1, Delhi Police filed the status report submitting therein that during the course of inquiry, on the complaints filed by the petitioner, it was revealed that the society has managed the community hall, commonly known as Gagan Vihar Community Hall. There is open area on the rear southern and western side of the community hall building and forms part of the community hall premises. Enquiry was made from Sh. S.N.Singhal, Secretary of the society who stated that he is looking after the work of the community hall and functions and marriages take place in the community hall, when halwais sit in the area belonging to the community hall only and they clean up the place completely after cooking etc and the halwais do not create or leave dirty water and garbage in the adjacent foot path. The various written complaints, e-mails and PCR calls made by the petitioner do not reveal any cognizable offence, as such, same were filed. However the petitioner has approached the various authorities/ADM/learned M.M. The petitioner is in the habit of making such types of complaints.

4. Respondent no.2 society, in reply has taken preliminary objection, inter alia on the ground that petitioner has absolutely no locus standi to file and institute the petition. He is neither the owner nor the lawful occupant of the property bearing No.156, Gagan Vihar Extension, Delhi. The petitioner and his parents, namely Sh. B.P.Mutreja and Smt. Pushpa Mutreja are unauthorized occupants of the property and have encroached upon a portion of 40 sq.yds of the property belonging to DDA/PWD/Government of India which has been meant for foot-path. After encroaching upon a portion of about 40 sq.yds of government land, the petitioner has raised unauthorized construction, by raising the room. After grabbing land belonging to the Government of India and to protect his illegal and unauthorised construction over the said portion, he has affixed his board on the outer wall and is filing and has filed one after the other petition. Sh.B.P.Mutreja and Smt. Pushpa Mutreja were earlier litigating with the respondent and they gave an undertaking before the Court of Ms. Kamini Lau, Civil judge, Delhi that they will close the doors and windows towards the side of community hall but till date they have failed to close the same. Since they have given a solemn undertaking before the competent court of law, now they have put forward their son to litigate with the respondent. Earlier the parents of the petitioner were

claiming themselves to be the owners of the property, now the petitioner is claiming his ownership. However he has nowhere disclosed the measurement of the plot which allegedly he has purchased. Petitioner himself is a wrong doer and has not come to the Court with clean hands. He is an unauthorised occupant and is not entitled to any relief. Moreover, petitioner is claiming similar type of reliefs in other litigations also, details of which are given in the reply.

5. It was further alleged that respondent is a co-operative housing building society and the plot in dispute has been allotted to the respondent by DDA for community purpose and vide the sanction plan, a community hall has been constructed over there which is being used by the members of the society as well as other neighbouring localities and is being given to the public at nominal rate for conducting the marriages, kriya, religious functions etc. The same is not a commercial activity in any manner and the respondent is serving the public at large. The petitioner, who himself is a wrong doer, has intentions that the community hall may be closed for one reason or the other. The writ petition is not maintainable and there is absolutely no special reason for exercising the writ jurisdiction by this Court.

6. On merits it was submitted that there is absolutely no property as Unit No.1, ground floor, 156 Gagan Vihar Extension, Delhi. The Master Plan Road over disused canal is the back side of the property and the front side of the property is from Main Gagan Vihar Extension, Delhi. The petitioner in order to open the property from disused canal has alleged the same and created a new number of the property on his own. In fact the PWD wanted to raise a wall over the disused canal starting from Karkari Mor red light to SDM office, East Delhi but the petitioner has encroached upon a portion of about 40 sq.yds of government land that opens door towards disused canal road and got an injunction against the PWD from raising the wall by filing a suit in the Civil Court. It was further alleged that the halwais are not washing utensils in the open area. The open area is part and parcel of the community hall and meant for the purposes of the community and can be allowed to be used by the caterers/halwais or for any other activity. There is no public nuisance. Even otherwise, the petitioner has filed number of litigations seeking same relief, as such the petition is liable to be dismissed with cost.

7. I have heard the petitioner in person, Mr. Saleem Ahmed, learned Additional Standing Counsel for the State and Sh. K.K.Malhotra, Advocate for respondent no.2 and have perused the record.

8. The petitioner has relied upon *Bhajan Kaur v. Delhi Administration*, 3(1996) CLT 337; *NHRC v. State of AP*, 1996 AIR 1234; *Subhash Kumar v. State of Bihar*, 1991 AIR 420; *Himmatlal Mehta v. State of MP*, 1954 AIR 403; *Peico Electronics v. Deputy Commissioner*, (2005) 199 CTR 407; *Nagpur Cable Operations v. Commissioner of Police*, AIR 1996 Bom 180 and *Dhanabhai v. State*, CR RA/691/2007.

9. On the other hand, learned counsel for the respondent has relied upon *V.M.Singh v. State* dated 01.10.1997; *Rajender Kumar Sharma & Anr v. Registrar Co-operative Societies & Ors*, 65(1997) DLT 324 and *Girraj v. State N.C.T of Delhi & Ors.* in W.P(Crl.) 733/2009.

10. At the outset, it may be mentioned that powers under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure is to be exercised in exceptional cases and very sparingly. Furthermore, if alternative remedy is available to the petitioner, then the Court will not allow the said party to approach this Court in writ jurisdiction.

11. In *Rajender Kumar Sharma* (supra), it was held that where statutory remedy is available to a party, the Court would not allow the said party to approach this Court under Article 226 of the Constitution of India. The relevant observations are reproduced as under:-

"19. It is a well recognised principle which has ripened now almost into a rule of law that where a statutory remedy is available to a particular party the Court would not allow the said party to approach this Court under Art. 226 of the Constitution of India. The underlying idea of the said principle is that where there is alternative remedy available to a party the said party must first exhaust that remedy before approaching this Court. Had this not been so every body would like to approach this Court under Art. 226 simply because the alternative remedy, according to him, is more arduous and strenuous with the result that the statutory provisions under an Act would become almost meaningless and non-existent. This Court is fortified in the above view by the observations of the Hon'ble Supreme Court as reported in : AIR (37) 1950 SCC 163, ***Rashid Ahmad v. The Municipal Board, Kairana***,.... "There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under Art. 32 are much wide and are not confined to issuing prerogative writs only."

20. To the same effect are again the observations of their Lordships of the Supreme Court as reported in AIR 1957 SCC 882, ***Union of India v. T. R. Varma***, "It is well settled that when an alternative and an equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ, but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. . . . And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226, unless there are good grounds therefore."

21. It was then observed by the Hon'ble Supreme Court in AIR 1985 SCC 330, ***Assistant Collector, Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. & Ors***,..." Article 226 is not meant to short circuit or circumvent statutory proceedings. It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very virus of the statute is in question or where private or public wrongs

are so inexplicably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by the statute."

12. A perusal of the petition itself reflects that the petitioner is availing the various statutory remedies available to him under law. He approached ADM(E) and on 01.12.2009, a conditional order u/s 133(1)(a) Cr.P.C was passed directing the society to remove the public nuisance within 10 days. Thereafter a civil suit was also filed by the petitioner. The matter was taken to the Session Court by filing criminal revision No.85/2010. On 23.12.2010, Ms. Savita Rao, learned Additional Sessions Judge directed the respondent society to ensure that if the utensils are washed in the open area of community hall premises, the said activity shall not cause any nuisance as well as collection of garbage and dirty water on the adjacent footpath and if the petitioner cannot ensure such ramification then they shall get the utensils washed inside the building of the community hall. It was alleged that the directions are not being complied with, as such contempt petition is pending.

13. The petitioner also filed a complaint u/s 156(3) Cr.P.C in the Court of Sh. A.K.Aggarwal, M.M vide complaint case No.396/2011 and 402/2011. After calling for the status report, the learned M.M has directed

the complainant to produce witnesses. All these goes to show that the petitioner has an alternative efficacious remedy available to him and in fact he is resorting to the same by filing civil or criminal cases. Under the circumstances, there is no ground to exercise the extra-ordinary jurisdiction of the Court by issuing writ as prayed for.

14. None of the authorities relied upon by the petitioner helps him. ***Bhajan Kaur*** (*supra*) was a case where a riot victim sought enhancement of amount of compensation awarded to her on account of death of her husband. ***National Human Rights Commission***(*supra*) was a public interest litigation filed by NHRC to enforce its rights under Article 21 of the Constitution of about 65,000 Chakma/Hajong tribals . ***Subhash Kumar*** (*supra*) was again a public interest litigation which was filed on the allegations that West Bokaro and Tata Iron and Steel Company are polluting the river Bokaro by discharging slurry from their washeries into the river and in fact this petition was dismissed by observing that personal interest cannot be enforced in the garb of public interest litigation and entertainment of petitions satisfying personal grudge is abuse of process of Court. In ***Himmatlal Harilal Mehta***(*supra*), vires of Explanation II to s.2(g) of the Central Provinces and Berar Sales Tax Act, 1947 as further amended by Act XVI of 1949 itself was challenged which could not have

been done by resorting to either civil or criminal remedy. In *Peico Electronics* (supra), an order passed by the Deputy Commissioner of Income Tax was challenged. Similarly in *Dhanabhai*(supra), the order passed by JMFC dismissing the complaint by the Magistrate was challenged. As such, none of the authorities relied upon by the petitioner has any application to the facts of the case in hand.

15. Moreover Hon'ble Supreme Court in *Sakiri Vasu v. State of U.P & Ors.*, AIR 2008 SC 907 also held that the writ petition should not be entertained when the petitioner has an alternative remedy available under the Code of Criminal Procedure to get an FIR registered. Since the petitioner has the alternative remedies available to him under various statutory provisions of law and in fact he is availing the same, as such there is no ground for exercising the extra-ordinary jurisdiction of this Court.

The petition is accordingly dismissed.

**SUNITA GUPTA
(JUDGE)**

AUGUST 30, 2013
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