

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

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Date of decision: 31st July, 2015

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W.P.(C) 7234/2015 & CM No.13286/2015 (for directions)

BIJENDER SINGH

..... Petitioner

Through: Mr. R.M. Bagai, Adv.

Versus

**NORTH DELHI MUNICIPAL
CORPORATION & ORS**

..... Respondents

Through: Ms. Piya Kalra, Adv. for R-1/NrDMC

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.13287/2015 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) No.7234/2015

3. This petition is filed seeking mandamus to the respondent No.1 North Delhi Municipal Corporation (NrDMC) to take action with respect to the construction, allegedly unauthorized, being carried on by the respondents No.2 and 3 Jaswant Singh and Devinder Kumar on plot No.10, Gali No.7, Main Road, Som Bazar (Part-II), village Mukandpur, Delhi.
4. It is the case of the petitioner that the respondent No.2 Jaswant Singh has sold the said property to the petitioner through a Power of Attorney; however the respondent No.3 Devinder Kumar, being the brother of the

respondent No.2 Jaswant Singh, has forcibly taken possession of the said property from the petitioner and now the respondents No.2 and 3 have commenced construction thereon. It is disclosed that though the petitioner instituted a suit for recovery of possession under Section 6 of the Specific Relief Act, 1963 but the same was dismissed and a revision petition preferred thereagainst is pending in this Court.

5. I have at the outset enquired from the counsel for the petitioner, why the petitioner in the revision petition aforesaid has not made an application for interim relief to restrain the respondents no.2&3 from raising construction on the property.

6. The counsel for the petitioner states that since the respondent no.1 NrDMC is not a party to the revision petition and direction in the revision petition against the respondent no.1 NrDMC could not be obtained, the petitioner has filed this petition.

7. What is evident from the aforesaid is that the seeking of mandamus by the petitioner against the respondent no.1 NrDMC to take action with respect to the construction on the property aforesaid, in this petition, is not guided by any desire of the petitioner for the welfare of the city by enforcement of the Building Bye-laws but owing to the dispute of the petitioner with the respondents no.2&3 with respect to the rights in the property. The petitioner admittedly is engaged in a civil litigation with the respondents no.2&3 as to the title to the property and in first round of which litigation the respondents no.2&3 have emerged victorious. It is evident that the real motive of the petitioner in filing this petition is to settle private scores with the

respondents no.2&3, and may be, to compel respondents no.2&3 to settle the civil dispute aforesaid with the petitioner.

8. Upon the same being put to the counsel for the petitioner, he however states that the petitioner, notwithstanding the civil dispute, is entitled to demand performance of the statutory duties from the respondent no.1 NrDMC.

9. Though undoubtedly the respondent no.1 NrDMC is statutorily obliged to ensure that no construction, save in accordance with law, takes place within its jurisdiction and to take action with respect to the unauthorized construction if any but the question for consideration here is the entitlement of the petitioner to a relief under Article 226 of the Constitution of India from this Court. Jurisdiction of the High Court under Article 226 is a discretionary and an equitable jurisdiction.

10. Article 226 of the Constitution of India confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of fundamental rights or for any other purpose. The prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which the ordinary legal remedies are not adequate. The Supreme Court in ***K.D. Sharma Vs. Steel Authority of India Ltd.*** (2008) 12 SCC 481 held that a prerogative remedy is not a matter of course and while exercising extraordinary power, a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. Prerogative writs are issued for doing substantial justice. It is therefore of utmost necessity that the petitioner approaching the Writ Court must come with clean hands.

Similarly in *T.K. Rangarajan Vs. Government of Tamil Nadu* (2003) 6 SCC 581 it was observed that under Article 226, High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel and that such extraordinary powers are required to be sparingly used. Where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extraordinary jurisdiction under Article 226. The extraordinary jurisdiction of the High Court is not a cure for all the maladies which a litigant may suffer from. Though existence of alternative remedy does not affect the jurisdiction of the High Court to issue a writ but existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ. Article 226 is not meant to supplant the existing remedies at law but only to supplement them in well recognized situations. The Court will not always issue a writ simply because it is lawful to do so. Therefore, even if a petitioner establishes infringement of some legal right, the Court may still refuse to issue a writ.

11. Jurisdiction under Article 226 is not meant for declaring the private rights of the parties. Serious questions about title and possession of land cannot be dealt with by the Writ Court and a regular suit is the appropriate remedy for deciding property disputes. Reference if any required in this respect can be made to *Shalini Shyam Shetty Vs. Rajendra Shankar Patil* (2010) 8 SCC 329 where the Supreme Court also noticed the growing trend amongst several High Courts to entertain writ petitions in cases of pure property disputes and deprecated the practice.

12. I am of the opinion that though a writ petition is undoubtedly maintainable to enforce Building Bye-Laws and to seek mandamus against Municipal and other Statutory Bodies, if found to be not performing their functions in this regard, but only where the petitioner before the Court does not have any dispute with the person indulging in violation of Building Bye-Laws, unauthorized construction, encroachment etc. In such cases, though the remedy of filing a suit restraining the person indulging in illegality from proceedings with the same affecting the rights of the petitioner of a clean and orderly neighbourhood would also be available but it would not be proper to require such person to pay Court fees and to indulge in civil litigation. However where the purpose in enforcing the Building-Bye Laws is not to secure a clean, aesthetic and orderly neighbourhood but out of vengeance for the person indulging in illegality, in my view, the Writ Court would not be justified in allowing its extraordinary jurisdiction to be invoked for such private purposes and more so where the petitioner has already indulged in a civil proceeding with the person committing an illegality and in which civil proceeding he can very well seek enforcement of Building Bye-Laws also.

13. The Supreme Court in *Mohan Pandey Vs. Smt. Usha Rani Rajgaria* (1992) 4 SCC 61, finding that a dispute was between two private persons with respect to an immovable property and in which respect a suit was already pending, held that the filing of the writ petition could not be justified on the ground of certain complaints to the authorities having been made and the authorities having not acted thereon. It was held that even if the grievance was of unjustified initiation of criminal proceedings at the

behest of another, the same was also not a ground for invoking the writ jurisdiction and the remedy under the general law including the Criminal Procedure Code is to be invoked. It was held that the High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies under the general law, civil or criminal, are available. It was further held that the writ remedy, is not intended to replace the ordinary remedies by way of a suit or application available to a litigant, being a special and extraordinary remedy not to be exercised casually or lightly.

14. This Court in *Hari Chand Vs. Government of NCT of Delhi* MANU/DE/8077/2006 held that a writ remedy cannot be permitted to be invoked to settle private scores.

15. The writ petition in the present case, as aforesaid has been filed by the petitioner to settle private scores with the respondents no.2&3. It is not as if the petitioner could not have sought the relief of restraining construction on the property in the pending civil proceedings. However, the petitioner, perhaps apprehensive that the first Court having held the petitioner to have not been able to establish his rights in the property, would not find a *prima facie* case in favour of the petitioner and consequently decline the relief, has chosen to file this petition. It is for this reason that an independent litigation under Article 226 of the Constitution is sought to be initiated. I am of the view that if in such circumstances the Court entertains the petition, the Court may be playing into the hands of the petitioner by allowing the writ jurisdiction under Article 226 to be used for the purposes of achieving private gains and not as a public law remedy.

16. I have in *Surender Malhotra Vs. Agricultural Products Market Committee* MANU/DE/2926/2011 similarly held that the public law remedy of Article 226 cannot be allowed to be used to arm twist and for the *bona fide* dispute if any, the remedy is by way of civil proceedings. The High Court of Punjab and Haryana also, in *Shyam Lal Thukral Vs. State of Punjab* MANU/PH/4195/2013, has held that invoking writ remedy to settle personal score is misuse of the process of law.

17. The matter is put beyond any pale of doubt from the dicta of this Court in *Mrs. Amrit Surjit Singh Vs. Union of India* AIR 2001 Delhi 110 where, finding that the motive of the petitioners was not to get the unauthorised construction demolished or rectified but to demand a pond of flesh on account of construction made by the respondents, it was held that where the petition is filed with the sole motive of harassing or for extortion of money but not to get unauthorised construction rectified, the petition has to be dismissed.

18. The allegations in the petition, of the respondent no.1 NrDMC, notwithstanding the petitioner having called upon them to take action with respect to the alleged unauthorized construction, having not taken any action with respect thereto, do constitute an allegation of infraction of the Delhi Municipal Corporation Act, 1957 by the respondent no.1 NrDMC. It is also true that this Court in a number of writ petitions, not only filed as Public Interest Litigation (PIL) but otherwise also, has on such allegations been issuing mandamus / directions to the Municipalities. However those are the cases where either the petitioner being a resident of the locality is affected by the unauthorized construction or being the owner / resident of an

adjoining property is suffering because of the unauthorized construction and where the petitioner otherwise has no score to settle or dispute with the person carrying out such unauthorized construction. In such cases, where there is no civil *lis* pending between the parties, it is felt that the petitioner should not be directed to institute a civil proceeding for restraining such unauthorized construction and is entitled to invoke the jurisdiction under Article 226. However, where the petitioner is found to have already indulged in civil litigation with the person who is alleged to be carrying out unauthorized construction and / or has a personal axe to grind, in my view Article 226 cannot be permitted to be invoked.

19. There is thus no merit in the petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 31, 2015

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(corrected and released on 16.9.2015)