

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

% **Date of order : 21st November 2022**

+ **W.P.(C) 15947/2022 & CM APPL. 49690/2022**

BRAHAM PRAKASH

..... Petitioner

Through: **Mr. Sumit Suri, Advocate**

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through: **Mr. Karn Bhardwaj, ASC with Mr.
Kartikay Bhaskar and Mr. Aayush
Gautam, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 49691/2022

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 15947/2022

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking following reliefs:-

“A. Writ of mandamus, order, direction or any other appropriate writ, as this Hon'ble Court deem fit in the present facts and circumstances of the case, directing the Respondent No. 1 to vacate the land in question, that is, Khasra No. 25/22/1 (1-10), because this land belongs to the Petitioner and other co-allottees.

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SHARMA

Signing Date: 25.11.2022
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B. Writ of mandamus, order, direction or any other appropriate writ, as this Hon'ble Court deem fit in the present facts and circumstances of the case, directing the Respondent No. 1 to remove all the encroachments or fixtures installed by it on the land in question, that is, Khasra No. 25/22/1 (1-10), and to restore the land to its previous state as was found when Respondent No. 1 took possession of it.

C. Writ of mandamus, order, direction or any other appropriate writ, as this Hon'ble Court deem fit in the present facts and circumstances of the case, directing the Respondent No. 2 to clearly identify, delineate or demarcate the boundaries of the land in question, that is, Khasra No. 25/22/1 (1-10), to the extent that it can be then clearly distinguished from the lands made available for forest. So that no confusion prevails.”

2. The land comprised in Khasra No. 134 min (0-10), Khasra No. 33/2, and Khasra No. 25/22/1 (1-10) situated in revenue estate of Village Devli, New Delhi were allotted to the petitioner and his brothers vide order dated 19th May 2000 passed by the Consolidation Officer, Hauz Khas, New Delhi under the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 in case no. 5/CO/98. Pursuant to the allotment, the respondent no. 1, Department of Forests and Wildlife, demarcated the land into three pieces on 16th December 2002, the *Kabza Karyavahi* took place and *Titama* Field Book was prepared.

3. The petitioner is before this Court alleging that the respondent no. 1 has forcefully entered into one of the abovesaid lands, i.e., Khasra No. 25/22/1 (1-0) on 9th November 2021, demolished a room and took possession of the same.

4. Learned counsel appearing on behalf of the petitioner submitted that

the respondent no. 1, entered the land in question forcefully, despite protest by the petitioner and demolished a room constructed on the part of the land. The petitioner made a police complaint on 9th November 2021, however, no FIR has been registered by the Police.

5. It is submitted that the allottees of the land, in apprehension that the land in question had been notified and declared as forest land, filed an application on 11th November 2021 under Section 4(1)(c) of the Indian Forest Act, 1927 seeking de-notification of the forest land, if notified. It is submitted that as per the report dated 7th September 2012 of the Special Task Force, the Khasra No. 25/22/1 (1-0) does not find mention in the table of the Khasra No.s made available for the purpose of creation of reserved forest.

6. It is further submitted that another application dated 12th November 2021 was made by the legal heirs of one of the allottees to the Tehsildar, Saket seeking delineation the boundaries of the land in question from the adjoining lands, however, no action was taken on the said application.

7. Therefore, it is prayed on behalf of the petitioner that writ in the nature of *mandamus* may be issued directing the respondent no. 1 to vacate the land entered into, remove fixtures installed, restore land to its original state and identify as well as demarcate the boundaries of the land in question.

8. *Per Contra*, learned ASC appearing on advance on behalf of the respondents vehemently opposed the submissions made and contentions raised on behalf of the petitioner and submitted that the instant case is not fit

for issuance of a writ of *mandamus* since the petitioner has not approached the concerned authority seeking the relief that is sought before this Court.

9. It is submitted that the petitioner has admittedly only been allotted the land in question which belongs to the Gaon Sabha and has not been able to establish that he is the owner of the land. There are disputed facts in the case at hand pertaining to the title of the petitioner in the land in question which may not be adjudicated by this Court in its writ jurisdiction. Therefore, it is submitted that the instant petition is premature and is therefore, liable to be dismissed.

10. Heard learned counsel for the parties and perused the record.

11. The prayers sought by the petitioner are that the respondent may be directed to vacate the land in question, remove encroachments or fixtures installed by it on the same, identify, delineate or demarcate the boundaries of the land. For the same, the petitioner is seeking issuance of writ of *mandamus* from this Court.

12. The writ powers of a High Court delineated under Article 226 of the Constitution of India enable the Court to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. In the instant matter, the writ sought by the petitioner is that of *mandamus* and it is a well settled principle that writ of *mandamus* can be issued only if the aggrieved party has an enforceable legal right under a statute or any provision of law. Therefore, before this Court as well the writ petitioner must establish that there exists a legal right in his favour

and a corresponding legal duty of the State, considering which the writ of *mandamus* may be issued in his favour as prayed.

13. The Hon'ble Supreme Court of India in the case of ***Food Corporation of India vs. Ashis Kumar Ganguly, (2009) 7 SCC 734*** while discussing the scope of *mandamus* held as under:-

“25. There cannot be any doubt whatsoever that a writ of or in the nature of mandamus can be issued only when existence of a legal right in the writ petitioner and a corresponding legal duty in the respondent are established. Where the administrative authority is conferred with a discretionary jurisdiction, the High Court, it was urged, ordinarily would not issue a writ of mandamus.”

14. The Hon'ble Supreme Court in the case of ***Rajasthan State Industrial Development & Investment Corporation & Anr. vs. Diamond & Gem Development Corporation. Ltd. & Anr., (2013) 5 SCC 470***, made a similar observation and held as under:-

“21. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. *Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand."*

15. Therefore, the two conditions which need to be considered while issuing a writ of *mandamus* are, first, that there exists a legal right in favour of the person who is seeking the directions to the authorities and second, that the authority against whom the directions are sought is empowered by the law to execute the directions given to it by the concerned High Court.

16. In the instant matter, the petitioner has relied upon an allotment letter dated 19th May 2000 to claim the relief of issuance of *mandamus* against the respondent Department. A perusal of the allotment letter reveals that the land in question is the part of the Gaon Sabha land that has been allotment

in favour of the petitioner and his brothers. The said land, in the absence of any title deed or documents, continues to vest with the Gaon Sabha. As discussed above, the existence of a legal right is the principal prerequisite to a writ of *mandamus* and since there is no document on record to show that the petitioner has a legal and rightful title in the land in question, this Court cannot conduct a roving enquiry into the disputed facts and decide the question of title and ownership of the petitioner. There is no provision of law which allows the petitioner to seek a relief which does not accrue to him.

17. In the case of the petitioner, there are mere allegations that the respondent had illegally entered the property of the petitioner without any supporting documents to substantiate the allegations that there did not exist an entitlement in the favour of the respondent to enter the part and portion of the land, which also evidently vests with the Gaon Sabha. Moreover, the second prerequisite to the issuance of a writ of *mandamus* is that the authority against which the writ is sought shall have a corresponding duty and shall also be empowered to enforce the directions given to it. The respondent no. 1, being the Department of Forests and Wildlife, is not the appropriate and competent authority to either adjudicate the grievances of the petitioner or to implement and execute the directions if any given by this Court.

18. Another requirement necessary for the writ of *mandamus* is that the person seeking its issuance must approach the concerned authority responsible to address and adjudicate upon his grievances before approaching the High Court by invoking its writ jurisdiction.

19. During the course of the arguments in the case at hand, a query was put to the learned counsel for the petitioner whether the concerned authority empowered to redress the grievances of the petitioner was approached before filing of the instant petition, however, the learned counsel for the petitioner could not satisfactorily reply to the query of the Court. Neither by way of the pleadings on record nor by his oral submissions the learned counsel for the petitioner was able to show that the petitioner had approached the concerned authority seeking the reliefs that it has sought before this Court. As discussed in the foregoing paragraphs, the issuance of writ of *mandamus* is to be considered at the stage only when the person seeking its issuance had satisfied the prerequisite conditions. However, in the case at hand, the petitioner did not approach the concerned authority before invoking the writ jurisdiction of this Court.

20. In the landmark case of ***Whirlpool Corporation vs. Registrar of Trade Marks, (1998) 8 SCC 1***, the Hon'ble Supreme Court made an observation *qua* the availability of an alternative remedy as a limitation for exercise of writ powers under Article 226 of the Constitution of India held as follows: -

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation

of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

21. In the case of ***Radha Krishan Industries vs. State of Himachal Pradesh, 2021 SCC OnLine SC 334***, the Hon’ble Supreme Court has reiterated and summarized the principle and has observed as under:-

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

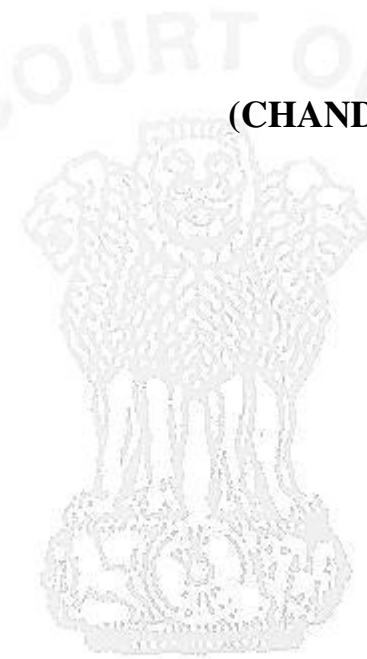
22. Therefore, it is inferred from the findings of the Hon'ble Supreme Court that non-entertainment of the writ petitions in existence of an alternate remedy is a manifestation of self-restraint by the High Court to avoid the exercise of extraordinary powers in each and every case at the throw of a hat, and to reserve the same for cases where the interests of justice and the Court's conscience requires them to be exercised. Hence, it is found that there is an efficacious remedy available to the petitioner which he has failed to avail and in view of the foregoing discussion, this Court does not find any merit to allow the prayers which the concerned and competent authority has the power to adjudicate upon. This Court does not find any cogent reason to direct an authority, to carry out any action, which is yet to be approached by the petitioner and be communicated his grievances.

23. Keeping in view the contents of the petition, the submissions made on behalf of the parties as well as the principles laid down by the Hon'ble Supreme Court of India, this Court does not find any reason to pass any directions to any authority in favour of the petitioner. The petitioner has not been able to establish that there exists a legal right in his favour and a corresponding duty of the respondent. Neither has he exhausted his remedies before invoking the writ jurisdiction of this Court. Moreover, the disputed facts pertaining to the title and ownership of the petitioner in land in question cannot be adjudicated by this Court in its writ jurisdiction.

24. Accordingly, the instant petition is dismissed for being devoid of merit.
25. Pending applications, if any, also stand disposed of.
26. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 21, 2022
gs/ms



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