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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 19.09.2023**

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Judgment delivered on: 09.10.2023

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W.P.(C) 6513/2018 & CM APPL. 24915/2018

VARDHMAN STAR CITY MALL SHOP-KEEPER WELFARE
ASSOCIATION (REGD.)

..... Petitioner

Through:

Mr. Pankaj Vivek, Mr. Atul
Tripathi and Mr. Naveen
Malik, Advocates.

versus

DELHI JAL BOARD AND ORS.

..... Respondent

Through:

Mr. Arjun Pant, ASSC DDA
with Ms. Latika Malhotra,
Advocate.Mr. Rohit Gandhi, Mr.
Surender Sheoran, Mr. Hargun
Singh Kalra, Mr. Kartik Jain
and Ms. Akshita Nigam,
Advocates for R-3.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****SATISH CHANDRA SHARMA, C.J.**

1. The present writ petition has been filed by Vardhman Star City Mall Shop-Keeper Welfare Association (Registered) challenging *inter alia* the *vires* of Regulation 40 and Regulation 50 of Delhi Water & Sewer (Tariff and Metering) Regulations, 2012 (hereinafter to be referred to as (the



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“Regulations”); and other ancillary proceedings initiated by the Delhi Jal Board (**“DJB”**) i.e., Respondent No.1 herein, including a Recovery of Demand Notice bearing number 205 dated 01.05.2018 addressed to the Petitioner Association wherein the DJB directed the Petitioner Association to clear the outstanding dues failing which, the DJB would be constrained to disconnect the water supply (the **“Impugned Notice”**).

2. The undisputed facts of the case reveal that the Delhi Development Authority (**“DDA”**) i.e., Respondent No.2 herein allotted a parcel of land admeasuring 3910 (three thousand nine hundred ten) Sq. Meters earmarked for a local shopping centre situated at Plot No. LSC-III, Sector 7, Dwarka, New Delhi (the **“Subject Land”**) vide a perpetual lease deed dated 22.02.2005 in favour of Vardhman Properties Limited i.e., Respondent No. 3 herein.

3. Thereafter Respondent No.3 obtained the requisite sanction from Respondent No.2 for the construction of a local shopping centre admeasuring 1147.30 (one thousand one hundred forty-seven point thirty) Sq. Meters on the Subject Land (the **“Local Shopping Centre”**). Pertinently, sanction to the construction was accorded vide a sanction letter dated 22.02.2005 (the **“Sanction Letter”**).

4. As per the terms of the Sanction Letter, Respondent No. 3 was mandated to ensure that (i) a rainwater harvesting system (**“RHS”**); and (ii) a water recycling system (**“WRS”**) (as the case may be) be installed in the Local Shopping Centre in compliance with Clause 22.4.1 and 22.4.2 of the



Building Byelaws, 1983 (the “**Byelaws**”). The relevant clause(s) of the Byelaws is reproduced as under:

“22.4.1 Water harvesting through storing water runoff including rainwater in all new buildings on plots of 100 sq. mets. and above will be mandatory. The plans submitted to the local bodies shall indicate the system of storm water drainage along with points of collection of rainwater in surface reservoirs or in recharge wells. These provisions will be applicable as per the Public Notice(s) of the Central Ground Water Authority issued from time to time.

22.4.2 All buildings having a minimum discharge of 10000 litres and above per day shall incorporate wastewater recycling system. The recycled water should be used for horticulture purposes.”

5. Respondent No.3 constructed the Local Shopping Centre as per the Sanction Letter and accordingly, Respondent No.2 issued a completion certificate on 09.11.2006 (“**Completion Certificate**” or “**Occupancy Certificate**”) and also issued approved completion drawing dated 08.11.2006 (the “**Completion Drawings**” or “**Sanctioned Plan**”). Furthermore, Respondent No. 2 also provided a water and sewage connection to the Local Shopping Centre.

6. The facts further reveal that Respondent No.3 maintained all the common areas and utilities in the Local Shopping Centre for a period of 3 years. Subsequently, Respondent No.3 vide a letter dated 31.12.2009 handed over the maintenance of the common areas and utilities to the individual unit / shop owners, and the shop owners who had proposed to form a ‘shop owners association’ in relation to the Local Shopping Centre (the “**Handover Letter**”). A copy of Handover Letter was also furnished to the



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concerned police station on 14.01.2010. Pertinently, the Petitioner Association was finally registered under the Societies Registration Act, 1860 (the “**Societies Act**”) on 08.02.2010. The facts further reveal that the water and sewage treatment availed by the Petitioner Association was initially maintained by Respondent No.2 and was subsequently handed over to Respondent No.1 with effect from 31.03.2015.

7. The Petitioner Associated has further stated that Respondent No.1 failed to raise any bills for the services rendered up until 24.11.2017. However, on 24.11.2017, Respondent No. 1 raised a bill the period between 31.03.2005 and 30.06.2017 to the tune of Rs.15,10,088 (Fifteen Lakh Ten Thousand Eighty-Eight Rupees). The Petitioner Association deposited a sum of Rs. 3,00,000 (Three Lakh Rupees) in respect of the demand and prayed for time to clear the entire dues.

8. The facts further reveal that Respondent No.1 raised two additional bills dated 18.01.2018 and 11.03.2018, and the bills raised by Respondent No.1 were not cleared by the Petitioner Association. In those circumstances, the Impugned Notice was issued. The Petitioners, in the relief clause, have prayed for the following reliefs:

“a) Issue a writ, order or direction in the nature of certiorari for quashing the demand letter dated 01.05.2018 bearing notice no. 205 (Annexure P-1) issued on behalf of the respondent no. 1 Board;

b) Issue a writ, order or direction in the nature of certiorari or any other similar writ or direction thereby quashing the Regulation 50 of Delhi Water & Sewer (Tariff and Metering) Regulations, 2012 (Annexure P-12) relating to water harvesting



as ultra vires to the Constitution and beyond the rule/regulation making power under Section 109 of the Delhi Water Board Act, 1998 or in the alternative issue a writ, order or direction in the nature of mandamus directing the respondent no.1 to recover the penalty for non-installation of Rain Water Harvesting system from the builder/respondent no.3;

c) Issue a writ, order or direction in the nature of mandamus directing respondent n6.2/DDA to ensure conditions laid down in sanction letter dated 22.5.2005 (Annexure P-3) relating to water harvesting/waste water recycling are complied with by the respondent no.3;

d) Issue a writ, order or direction in the nature of certiorari or any other similar writ or direction thereby quashing the Regulation 40 of Delhi Water & Sewer (Tariff and Metering) Regulations, 2012 (Annexure P-12) relating to disconnection of water supply as ultra vires the Constitution;

e) Issue a writ, order or direction in the nature of certiorari thereby directing the respondent no. 1 to prepare fresh bills by deleting the "Additional Sewerage Maintenance Charge for Mall/Cineplex" which is wrongly applied in the bills dated 24.11.2017 (Annexure P-8), 18.01.2018 (Annexure P-9) and 11.03.2018 (Annexure P-10) and all further bills w.r.t. the building/premises known as Vardhman Star Citi Mall, Plot no.1, LSC-3, Sector-7, Dwarka, New Delhi-110075 occupied by the petitioners;

f) Issue a mandamus directing the respondent no. 1 to amend the bills dated 27.11.2017, 18.01.2018 and 11.03.2018 and to raise further bills for volumetric usage by treating the Vardhman Star Citi Mall, Plot no.1, LSC-3, Sector-7, Dwarka, New Delhi-110075 as usage for each shop and not usage for single unit;

g) Pass such other and/ further order(s) as deemed fit and proper in the facts and circumstances of the present case, in favour of the petitioner."



9. Learned Counsel appearing on behalf of the Petitioner Association has vehemently contended that the Respondent No.1 has not only raised a consolidated bill for a period of 27 months having allowed a period of almost 2 years to pass prior to raising such bills but has also levied the maximum rate while calculating the dues accruing to it from the Petitioner Association by treating the Local Shopping Centre as a single unit instead of bifurcating the water supply charges on per individual unit / shop basis. In this context, the Learned Counsel for the Petitioner has drawn the attention of this Court towards the tariffs published by the Respondent No.1 on 25.01.2018 in order to bolster his contention that the rates charged by Respondent No.1 vis-à-vis the Local Shopping Centre are grossly inflated on account of consolidated billing. It is further contended that the levy of a higher tariff on the water supply has a cascading effect qua the 'sewer maintenance charge' which would account for 60% of the volumetric water charge (the **"Sewer Maintenance Charge"**).

10. The Learned Counsel for the Petitioner Association has further contended before this Court that the levy of 'Additional Sewerage Maintenance Charge for Mall/ Cineplex' (**"Additional Sewerage Maintenance Charge"**) on the Local Shopping Centre is illegal and unwarranted on account of the fact that the construction of the Local Shopping Complex was not sanctioned as a mall or cineplex.

11. The Learned Counsel for the Petitioner has further contended that the levy of 'Rainwater Harvesting Penalty' in the 2 additional bills dated 18.01.2018 and 11.03.2018 issued to the Petitioner Association is erroneous and misguided. The Learned Counsel, to bolster his submission has stated



that the Respondent No.3 constructed the Local Shopping Centre as per the building laws in vogue during the said period and, accordingly, was granted sanction by Respondent No. 2. He has further stated that RHS and WRS were mandated under the Byelaws. He has further stated that Respondent No.3 ought to have ensured compliance of the Local Shopping Complex with the Byelaws and Respondent No. 2 ought to have supervised the same. Therefore, any penalty arising out of any shortcomings qua the RHS or WRS must be fastened upon Respondent No. 3. Meaning thereby, the penalty should be imposed on the person who has constructed Local Shopping Complex and not upon the Petitioner Association.

12. The Learned Counsel for the Petitioner Association in the alternative submitted that the Delhi Water Board Act, 1998 (the “**Water Board Act**”) does not contemplate the levy of any penalty vis-à-vis any deficiency qua the RHS. Learned Counsel for the Petitioner Association in the aforesaid backdrop contended that the Impugned Notice is contrary to Section(s) 55, 68, 87, 88 and 91 read with the First & Third Schedule of the Water Board Act.

13. Learned Counsel for the Petitioner further contended that the Regulation 40 of the Regulations is violative of Article 21 of the Constitution of India; and Regulation 40 suffers from the vice of excessive delegation i.e. the Regulation has been framed in excess of the rule making power under Section 109 of the Water Board Act. Accordingly, he has argued before this Court that the parent act i.e, the Water Board Act does not contemplate regulations mandating the installation of RHS, however, the Regulations provide for the same.



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14. Learned Counsel for the Petitioner Association further contended that the Respondent No.1 has no authority to levy any penalty or impose conditions in relation to either a RHS or a WRS. He has further contended that the jurisdiction to regulate either the RHS or WRS lies solely with Respondent No.2 and / or the Government of India. Accordingly, matters incidental to the Byelaws cannot sought to be enforced by Respondent No.1 or the Government of NCT of Delhi (“GNCTD”).

15. On the other hand, the Respondent No.2 has filed a detailed counter-affidavit dated 05.09.2018 (the “**DDA Counter Affidavit**”), the Respondent No.2 in the DDA Counter Affidavit has stated that pursuant to the amendments to the Byelaws and Chapter 10 (*Provisions for Green Buildings*) of the Unified Building Byelaws, 2016 (the “**UBBL, 2016**”), a RHS is mandatory on a plot admeasuring greater than 105 Sq. Meters.

16. The Respondent No.3 filed an exhaustive counter-affidavit dated 5.10.2018 (the “**Builder Counter Affidavit**”). Respondent No. 3 has stated on oath that an occupancy certificate dated 09.11.2006 was issued by Respondent No. 2 to Respondent No.3 after inspection of Local Shopping Centre in consonance with the building laws in vogue during the said period.

17. The Respondent No.3 has drawn the attention of this Court towards completion drawings / sanctioned plan wherein a RHS i.e. a rainwater rechargeable well for water harvesting along with storm water, rainwater and surface water drainage channels were provided in the Local Shopping Centre. The Respondent No.3 has further stated on oath that the Local Shopping Centre did not feature a WRS as the Local Shopping Centre did



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not fulfill the requisite discharge norms i.e., discharge greater than or equal to 10,000 liters per day. The Respondent No.3 reiterated its stand qua the maintenance and upkeep of the Local Shopping Centre and stated that it was contractually agreed upon to vest in Respondent No. 3 for a period of 3 years from the date of issue of the Completion Drawing / Occupancy Certificate only. Subsequently, the responsibility of the maintenance and upkeep of the Local Shopping Centre would vest in the association / body representing the occupants and / or owners of the individual units / shops of the Local Shopping Centre. In this regard, Respondent No. 3 has placed reliance on (i) a 'sample possession letter' wherein the said contractually agreed position was delineated; and (ii) the Handover Letter.

18. The Respondent No.3 in the Builder Counter Affidavit has stated that the Respondent No.3 has for the last 9 years neither been engaged directly nor has been involved indirectly through the Petitioner Association in any maintenance services in relation to the Local Shopping Centre. The Respondent No. 3 has further submitted that the Petitioner Association is collecting the maintenance charges as per the rates determined by all stakeholders of the Local Shopping Centre i.e. owners, occupants and shopkeepers. Accordingly, the Respondent No.3 contends that it is the Petitioner Association who is responsible for maintaining the various utilities provided in the Local Shopping Centre including *inter alia* the RHS.

19. The Respondent No.3 has further stated that the maintenance of RHS falls squarely on the Petitioner Association. Furthermore, the Respondent No.3 has stated that the Respondent No.1 issued letters / bills dated 18.01.2018 and 28.03.2018, wherein, rainwater harvesting penalties were



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levied with effect from 17.11.2017 on Respondent No.3 on account of legal fiction qua the Local Shopping Centre. However, the Petitioners Association never brought to the knowledge or attention of the Respondent No.3 the factum of the penalty or details of the discrepancies and / or deficiencies. Additionally, it has been stated that the Respondent No.3 has never been served with any independent show cause notice in this regard.

20. The Respondent No.3 further contended that it cannot be made responsible for the lapses on part of the Petitioner Association vis-à-vis the failure to maintain the RHS or upgrade the RHS in accordance with any subsequent revisions in standards beyond 01.01.2010 i.e. 3 years from the issue of the Completion Drawing / Occupancy Certificate. The Respondent No.3 has further contended that the cost of any upgradation or improvement in the RHS shall solely be attributable to the occupants of the Local Shopping Complex as per the terms of the standard Flat Buyer Agreement executed *inter alios* the Respondent No.3 and the buyers of individual units/shops of the Local Shopping Centre on *pro-rata* basis.

21. The record of the case reveal that various orders were passed from time to time during the pendency of this writ petition. This Court *vide* an order dated 01.06.2018 directed the Petitioner Association to set up the RHS within the Local Shopping Centre and observed that the said direction would not reflect a finding vis-à-vis the fastening of liability on the Petitioner Association as against Respondent No.3 for the said expenditure of the building of RHS. Thereafter, *vide* an order dated 07.09.2018, this Court directed (i) Respondent No. 1 to file an affidavit certifying the installation of the RHS; (ii) Respondent No. 3 to ensure that a copy of the sanctioned plan



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of the Local Shopping Centre is provided to the Petitioner; and (iii) Respondent No. 2 to furnish to the Petitioner, a copy of the Sanctioned Building Plan/ Completion Drawings as well as the Completion Certificate issued to Respondent No.3.

22. The Respondent No.2 filed a compliance affidavit in light of the direction issued by this Court (“**DDA Compliance Affidavit**”). *Vide* the DDA Compliance Affidavit, Respondent No. 2 placed certified copies of (i) the Sanctioned Building Plan / Completion Drawings; and (ii) Completion / Occupancy Certificate on record.

23. The Respondent No.1 also filed an affidavit dated 09.11.2022 pursuant to the directions of this Court (the “**DJB Counter Affidavit**”). In the DJB Counter Affidavit, it is submitted that the present Writ Petition is an afterthought and an abuse of process of law. The Respondent No.1 has contended in the aforesaid affidavit that the Petitioner Association are *lessees* of Respondent No. 3, accordingly, any dispute vis-à-vis the Local Shopping Centre qua Respondent No.1, out to be raised by the Respondent No.3 who has undisputedly never raised any dispute.

24. It is stated that Respondent No.1’s competency to enact regulation stems from Section 9 read with Section 109(1), (2) and (3) of the Water Board Act and the other provisions of the Delhi Jal Board Act. Moreover, reliance was placed on Section 55 of the Delhi Jal Board Act, 1998 (the “**Jal Board Act**”) to contemplate and ensure recovery of such dues. In this context, Respondent No.1 has submitted that Section 9 read with Section 109 of the Water Board Act specifically permits the Board i.e. the



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Respondent No.1 to make any regulation in relation to the charges for supply of water and the requirements to be complied with by the persons desirous of seeking such supply.

25. The Respondent No.1 in the DJB Counter Affidavit has further contended on oath that the Local Shopping Centre does not have a water harvesting pit or a functional RHS as on 05.11.2022. The Respondent No.1 has further submitted that at the time of approval of the Local Shopping Centre, Respondent No.2 has specifically sanctioned a 'One Bulk Water Connection', accordingly, there is no policy or provision to now provide individual water connections. Moreover, the Local Shopping Complex has been designed with a common bulk sewerage system, therefore, there can be no question of individual/ separate water connections being granted to the members of the Petitioner Association.

26. The Respondent No.1 has submitted that the Local Shopping Centre is a commercial building and the Petitioner Association has attempted to project itself as a 'Local Shopping Centre' under the provisions of the buildings laws as an afterthought.

27. The Respondent No.1 has reiterated that in all plots admeasuring greater than 100 (one hundred) Sq. Meters, the installation of a RHS is mandatory. Further, it is contended that the Respondent No.1 issued a notice dated 07.01.2019 to the Petitioner Association underscoring the lack of an RHS, however, till date no such facility has been installed. Additionally, it has been clarified that the delay in generating bills was on account of delays in the transfer of data between Respondent No. 2 and Respondent No. 1.



Nonetheless, it was submitted that the said bills were raised well within the limitation period as per actual readings of water consumption on bulk connection.

28. Lastly, the Respondent No. 1 has brought to the attention of this Court a resolution dated 01.03.2016 wherein Respondent No.1 has resolved in its 126th meeting to *inter alia* amend the provisions of the Regulations (i) mandating a RHS to all plots admeasuring 500 Sq. Meters; (ii) outlining penalties for any non-compliance arising out of any discrepancies with the RHS (the Amendment’”). Therefore, even as per the Amendment the Local Shopping Centre admeasuring 1147.30 (one thousand one hundred forty-seven point thirty) Sq. Meters ought to be penalized for non-installation of the RHS.

29. In response to the DJB Counter Affidavit, the Respondent No.3 has filed an additional short affidavit dated 03.01.2023 (the “**Builder Short Affidavit**”). In the Builder Short Affidavit, the Respondent No. 3 has stated on oath that it provided a rainwater rechargeable well for rainwater harvesting along with a provision for stormwater, rainwater, and surface water drainage through a network of pipes which would drain into the rainwater harvesting well. Additionally, the Respondent No.3 has placed on record 96 affidavit(s) from owners/ buyers/ occupants of the Local Shopping Centre who have stated that the RHS was present and functioning when the Respondent No.3 handed over the maintenance to the Petitioner Association.

30. In response to the DJB Counter Affidavit, the Petitioner Association has filed a rejoinder affidavit dated 16.01.2023 (the “**Rejoinder Affidavit**”).



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The Petitioner Association has contended that during an inspection dated 05.11.2022, it attempted to show the presence of a RHS as per the Completion Drawings / Sanctioned Plans. Furthermore, the Petitioner Association contended that the execution of the RHS by Respondent No. 3 is made out from the documents placed on record by Respondent No. 2. Accordingly, it is submitted that once the presence of an RHS is established, Respondent No. 1 has erred in issued the Impugned Notice. Moreover, it has been submitted that as per the master plan and zonal plan prepared by Respondent No. 2, the Subject Land is earmarked for the purpose of a local shopping centre and accordingly, Respondent No. 1 cannot treat the same as a shopping complex to justify the inflated tariff for water supply and sewerage.

31. Lastly, by way of the Rejoinder Affidavit, the Petitioner Association has contended before this Court that Regulation 40 of the Regulations grants unbridled power to Respondent No. 1 to disconnect water supply, which according to the Petitioner Association would amount to denying an essential commodity to persons. Furthermore, it has been contended that (i) the Regulations and subsequent modifications thereof have been enacted without jurisdiction and are not covered Section 109 of the Delhi Water Board Act; and (ii) Regulation 50 of the Regulations had been implemented without following due process i.e., Regulation 50 of the Regulations had not been tabled before the Delhi Assembly as per Rules of Procedure and Conduct Of Business in the Legislative Assembly of the National Capital Territory of Delhi, 1997 (the “Rules”) and in fact had been issued *suo moto* on the basis of an approval by the Member (Water Supply) of the DJB.



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32. This Court has heard Ld. Counsels for the Parties at length and perused the record.

33. This present Writ Petition was set into motion in 2018, during the pendency of this Writ Petition this Court has made certain observations and issued certain directions that have truncated the live issues before this Court. The factual matrix as it stands today reveals that the following issues must be dealt with:

- (a) Whether a RHS has been installed at the Local Shopping Centre in compliance with applicable building laws?; and
- (b) Whether Respondent No. 1 / DJB is justified in levying Additional Sewerage Charge by treating the Local Shopping Centre as a mall / cineplex?

34. On a perusal of the issues framed before this Court, it is amply clear that the present dispute is hinged on the presence of an RHS at the Local Shopping Centre; and the treatment of the Local Shopping Centre as a mall / cineplex inviting the levy of Additional Sewerage Maintenance Charge. The other issues are ancillary and contingent on two primary issues identified above.

35. In this regard, the Ld. Counsel for the Petitioner has submitted that as per the documents on record i.e., (i) the Competition Certificate / Occupancy Certificate; and (ii) the Competition Drawings / Sanctioned Plan which have been duly certified by Respondent No. 2, the presence of an RHS at the Local Shopping Centre cannot be disputed by Respondent No. 1 who is taking a divergent position vis-à-vis the presence of the RHS. Furthermore,



it has been contended that the levy of Additional Sewerage Maintenance Charge is only attracted in the event that a consumer is extracting 'groundwater' in addition to 'board-water'. Accordingly, it is contended that the levy of the 'rainwater harvesting penalty' is erroneous as an RHS has been installed on site; and the levy of Additional Sewerage Maintenance Charge cannot be permitted as the Local Shopping Centre does not extract any 'groundwater'.

36. On the other hand, the Ld. Counsel for Respondent No. 1 has submitted before this Court that Respondent No. 1 has conducted an inspection of the Local Shopping Centre on 3 (three) occasions and has found that no RHS is present. Furthermore, it has been submitted that as per his instructions, the Local Shopping Centre is extracting 'groundwater' in addition to 'board-water' and accordingly, Respondent No. 1 was justified in levying an Additional Sewerage Maintenance Charge.

37. Undisputedly, the issues before this Court pertain to disputed questions of fact of a complex nature in relation to inter alia (i) the presence of a RHS, which is compliant with applicable building laws in vogue and consequently, the levy of the 'rainwater harvesting penalty'; (ii) whether the levy of Additional Sewerage Maintenance Charge is correct on account of the Petitioner Association extracting 'groundwater' in addition to 'board-water'.

38. The Hon'ble Supreme Court of India (the "**Supreme Court**") has in *Punjab National Bank v. Atmanand Singh*, (2020) 6 SCC 256 analysed the scope of High Courts' exercising its writ jurisdiction under Article 226 of the



Constitution of India wherein the writ petition raises disputed questions of fact of a complex nature. The relevant extracts of the decision in ***Punjab National Bank (Supra)*** is as under:

“22. We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the party concerned and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law. (Emphasis Supplied)”

39. Furthermore, the Supreme Court in ***Shubhas Jain v. Rajeshwari Shivam***, 2021 SCC OnLine SC 562 observed that:

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

40. Pertinently, the Supreme Court in ***Union of India v. Puna Hinda***, (2021) 10 SCC 690 while dealing with a matter pertaining to disputed questions of fact in relation to *inter alia* the quantum of payment due, observed as under:

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure



contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.”

41. Accordingly, upon a perusal of the aforementioned decisions of the Supreme Court, this Court is of the considered opinion that it is a well settled proposition of law that where there are disputed questions of fact which are central to the adjudication of the dispute, High Courts should not normally exercise its jurisdiction under Article 226 of the Constitution of India.

42. In the present case, there are disputed questions of fact which are essential to the adjudication of the dispute including *inter alia* (i) the presence of a RHS in the Local Shopping Complex; (ii) the quantum of dues accruing to Respondent No.1 on account of the various penalties levied against the Petitioner Association; and (iii) the nature of the Subject Land and Local Shopping Complex.



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43. Undisputedly, the relief sought by the Petitioner Association herein is contingent upon resolution of the disputed questions of fact as enumerated above. In view of the aforesaid, it would not be appropriate for this Court to entertain the instant writ petition as there are disputed questions of fact involved, the resolution of which are necessary, as an indispensable prelude to the grant of the relief sought herein.

44. However, in the interest of all parties involved and the considerable time taken to adjudicate the present issue, Respondent No. 1 is directed to conduct an inspection of the Local Shopping Complex along with a representative of the Petitioner Association, to determine the existence of a compliant RHS in an expeditious manner. It is clarified that, in the event any defects are found vis-à-vis the RHS installed by Respondent No. 3, the Petitioner Association is granted liberty to recover payments from Respondent No. 3 in accordance with its rights and remedies under law.

45. With these observations, the writ petition is dismissed with the aforesaid liberty, along with pending application(s), if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

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