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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1602/2021

NATESH MALHOTRA

.....Petitioner

Through: Mr. Mohd. Shakib, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATIONRespondent

Through: Mr. Ajjay Arora, Mr. Kapil Dutta,
Mr. Simran Dutta, Mr. Vansh Luthra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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07.08.2024

1. This petition has been filed seeking for the following reliefs:-

“(a) Issue appropriate writ, order or direction, directing the Respondent to refund the penalty amount of Rs.14,110/- (Rupees Fourteen Thousand One Hundred and Ten only) illegally charged to the petitioner for parking the said vehicle in from of his residence;

(b) Issue appropriate writ, order or direction, directing the Respondent to pay compensation of Rs.50,000/- (Rupees Fifty Thousand only) towards compensation for the inconvenience caused to the petitioner;”

2. Learned counsel appearing for the petitioner submits that on 04.01.2021, the petitioner came to know that his car, which was parked in front of the house no. B-22 was missing. Thereafter, on 06.01.2020, the petitioner visited the office of the



respondent-Corporation and came to know that his vehicle was towed away as it was illegally parked. He submits that the respondent-Corporation before towing the vehicle has not enquired about the ownership of the vehicle. He further submits that the complaint in question was with respect to the old and dilapidated vehicle and not the vehicles which are in good condition. He, therefore, submits the impugned action the respondent-Corporation has illegally seized the vehicle without following the extant rules and regulations.

3. *Per contra*, the learned counsel appearing for the respondent-Corporation submits that respondent-Corporation on 31.12.2020 conducted the encroachment removal action in the said area and found that the petitioner's car was found parked on the government land thereby, encroaching the public land resulting into obstruction in maintaining cleanliness in the area. He therefore, submits that pursuant to under Section 322 of the Delhi Municipal Corporation Act, 1957 the respondent-Corporation confiscated the said vehicle. He further submits that when the petitioner approached the respondent-Corporation for release of the said vehicle, the respondent-Corporation after the payment of the requisite penalty.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The factual matrix of the case would reveal that as to whether the petitioner's car was illegally parked or was illegally seized is highly disputed. The Court under Article 226 of the Constitution of India is unable to decipher the correctness of the aforesaid submission. Furthermore, it is the settled exposition of law that writ petitions, wherein, disputed questions of facts are involved which would require leading of evidence from the contesting parties, may not be entertained.

6. At this juncture, it is appropriate to lend credence to the observations of the Constitution Bench decision of the Supreme Court in the case of *Thansingh*



Nathmal v. Supdt. of Taxes [1964 SCC OnLine SC 13] which reads as under:-

“The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

7. In view of the aforesaid, the petition stands dismissed with liberty to the petitioner to avail necessary remedy under civil law for compensation.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 7, 2024/KG