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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6539/2022 & CM APPLs. 19822-23/2022, 41251/2022**
BAL VIDYA MANDIR MODEL SCHOOLPetitioner

Through: Mr. Rajesh Banati, Mr. Nitin Goel,
Mr. Ankit Banant, Mr. Mayank Goel
and Mr. R.P. Singh, Advs.

versus
NORTH DELHI MUNICIPAL CORPORATION & ORS.

.....Respondents
Through: Mr. Siddhant Nath, SC for MCD with
Mr. Bhavishya Makhija, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
% **23.08.2024**

1. The petitioner in the instant writ petition seeks for a direction to the respondent-Corporation to open a gate through the boundary wall of the waste land, as has been shown in the site plan annexed as *Annexure A-3*.
2. Learned counsel appearing on behalf of the petitioner has taken the Court through the proceedings dated 16.07.2019 recorded by the National Commission for Schedule Castes, New Delhi, wherein, the responsible Officer on behalf of the respondent-Corporation appeared and made a statement that they will open a gate in the boundary wall. He, therefore, seeks for the implementation/adherence of the said undertaking to be complied with by the respondent-Corporation.
3. Learned counsel who appears on behalf of the respondent-Corporation, on the other hand, opposes the submissions made by learned



counsel appearing on behalf of the petitioner. He submits that the petitioner has suppressed a material fact of filing a Civil Suit against the respondent-Corporation and therefore, the petition can be dismissed on this ground alone. In addition, learned counsel submits that the land of the respondent-Corporation is a public land and cannot be allowed to be disposed of, in any manner, whatsoever, except in accordance with the provisions of the Delhi Municipal Corporation Act, 1957 [“Act”]. He submits that Section 200 of the Act provides for the disposal of property, which stipulates a framework for disposing of the respondent-Corporation’s land and accordingly, the petitioner is not entitled for any relief.

4. In rejoinder submissions, learned counsel for the petitioner initially submits that the Civil Suit which was filed by the petitioner was not for the relief prayed for in the instant writ petition and since the same was not a relevant factor to be brought on record and therefore, the said fact should not be treated to be material suppression. He, however, explains that on being pointed out, he enquired from the petitioner and found out that it was filed by some different Counsel and therefore, the said fact could not be mentioned inadvertently.

5. I have considered the submissions made by learned counsel for the parties and have perused the record.

6. The proceedings dated 17.07.2019 which appear to have been recorded by the National Commission for Scheduled Castes, New Delhi, where Ms. Nidhi Srivastava, IAS, Additional Commissioner, NDMC had agreed for opening of the gate in the boundary wall, cannot be the sole rationale for issuance of directions by this Court under Article 226 of the Constitution of India to the respondent-Corporation to act in a particular



way.

7. The nature of relief, as prayed in the instant case, tantamount to parting with the respondent-Corporation's rights and obligations provided in the Act. The same cannot be allowed except in accordance with law.

8. Moreover, the phraseology of Article 226 of the Constitution of India is couched in a manner that provides for the exercise of extraordinary powers by the Constitutional Courts, if the vested legal right of the petitioner is infringed and consequential breach of obligations on part of the concerned authorities takes place. The Supreme Court in the case of **Dwarkanath v. ITO**¹, discussed the phraseology of Article 226 of the Constitution of India as compared to English Law and emphasised on the prerogative nature of such writs in public law. The relevant extract of the said decision reads as under:-

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

¹(1965) 3 SCR 536.



9. The rigours of the extraordinary jurisdiction vested in the Constitutional Courts can only be triggered when sufficient exposition of vested legal right is established by the petitioner and consequent breach of those rights by instrumentalities of the State. The Constitution Bench of the Supreme Court in the case of *State of Orissa v. Madan Gopal Rungta*² has held that the language of Article 226 of the Constitution of India gives an impression that existence of a vested legal right is quintessential for exercise of writ jurisdiction. The relevant observations of the Supreme Court in the said case read as follows:-

“13. The language of the article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (fundamental rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the rights is the foundation of the exercise of jurisdiction of the Court under this article.”

10. At this stage, it is apropos to lend credence to the observations of this Court in the decision of W.P.(C) 10646/2021 titled as *Resident Welfare Association, 12 Block Subhash Nagar v. Kishan Devnani & Ors.*, wherein, the Court has enlisted certain exigencies that need to be borne in mind while exercising the writ jurisdiction. The Court also noted the cascading and detrimental effects of liberally entertaining the petitions without following the meticulous examination of vested legal right and infringement of rights thereto. The pertinent observations of this Court in the said case read as under:-

² 1951 SCC 1024.



32. An upshot of the above discussion clearly elucidates that the Constitutional Courts while exercising the extraordinary powers under Article 226 of the Constitution of India inter alia have to scrupulously ascertain i) whether the petition has been filed with any oblique motive or vested interest, ii) whether disputed and complex questions of facts are involved that require a shred of evidence, iii) whether there exists an alternate and equally efficacious remedy to address the grievance, iv) whether any individual or legal right of the petitioner has been violated along with consequential breach of obligations on part of authorities concerned thereto, v) whether the nature of action and nature of activity under question falls in the domain of public law etc. The aforesaid exigencies are only illustrative in nature and not exhaustive. Without such a meticulous exercise, if writ petitions are being readily entertained, then the Constitutional Courts would be committing a breach of trust against the genuine and bonafide litigants who have reposed faith in the constitutional machinery and have been longing since ages in the hope of justice. Undoubtedly, the scheme of Article 226 of the Constitution of India does not envisage such a practice and therefore, the Courts should be mindful while exercising the extraordinary writ jurisdiction. This self-imposed fetter on the discretionary extraordinary power of the Constitutional Courts was kept keeping in mind the spirit of Article 226 of the Constitution of India.

33. Any petition wherein the rights involved are not clearly expounded and are in fact, rooted in complexity of disputed facts, the Court is constrained to start a roving enquiry and that may not be an appropriate recourse while exercising the writ jurisdiction. Writ being discretionary and prerogative in nature, should not be exercised liberally without establishing the individual or legal rights and consequential breach of obligations on the part of the authorities concerned.

34. On this fulcrum, this Court also expresses its displeasure when petitions with vested interests are being filed under the writ jurisdiction. These cases lead to an undesirable docket explosion and often end up burdening the already saddled judiciary. Moreover, entertaining such writ petitions results in a domino effect and propels other litigants to file similar cases by frequently knocking on the doors of Constitutional Courts under Article 226 of the Constitution of India. Consequentially, these writ petitions, if being entertained, will consume not only judicial time but also resources, which can effectively be utilised in cases where parties have been awaiting the fate of their cases since ages. In a judicial system with mounting pendencies, it is necessary for the Courts to ensure that judicial time is used judiciously.



Judicial time, in principle and in fact, is public's time and the principles discussed above are only meant to ensure that it goes to the deserving causes so that the constitutional promise of guaranteed protection of rights is fulfilled in a time-bound manner.

11. In the present case, the petitioner is unable to show any vested legal right so as to seek for issuance of writ of mandamus directing the respondent-Corporation for mandating the public land to be used in a particular manner as envisaged by the petitioner. Having considered the overall facts and circumstances, no relief can be granted in the instant writ petition.

12. The petition is accordingly dismissed alongwith pending applications in the aforesaid terms. The petitioner is, however, at liberty to take any other alternate remedy, if he has, in accordance with law.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 23, 2024

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