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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4264/2019 and CM APPL. No.19056/2019 & 6310/2020**
RESIDENTS WELFARE ASSOCIATESPetitioner

Through: Mr.Nishant Raj Goel and Mr.Gagan
Talwar, Advocates

versus

DELHI DEVELOPMENT AUTHORITY & ORSRespondents
Through: Mr.Siddhant Nath, Standing Counsel
MCD with Mr.Bhavishya Makhija,
Advocate for MCD
Mr.Tarun Sharma, Advocate with
Mr.Manik Sharma and Mr.Abid Ali,
Advocates for R- 4 to 35

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER
02.09.2024

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1. The petitioner in the instant writ petition seeks to assail the order dated 10.01.2019 passed by the Municipal Corporation of Delhi (MCD), wherein, the permission to construct a boundary wall was rejected.
2. A bare perusal of the order would indicate that some of the occupiers of shop in GH-14, Paschim Vihar, New Delhi, filed the writ petition bearing W.P.(C) No. 11848/2018 titled as *Tilak Raj Kapoor & Ors. v. North Delhi Municipal Corporation & Ors.*, seeking directions to restrain the MCD from constructing boundary wall in front of their shops pursuant to the work order dated 23.10.2018.



3. The petitioners therein claimed that upon modification in the Delhi Master Plan, 2001, mixed use of house in GH-40 Paschim Vihar, New Delhi was permitted. The writ petition came to be disposed of *vide* order dated 31.10.2018 with following directions:-

“.....If such a Representation is received by second respondent within a week, then second respondent shall re-consider the work order (Annexure P-1) issued by respondent No.3 and shall give a speaking reply to petitioner's Representation within ten days, after giving an opportunity of hearing to one authorized representative of petitioners. The fate of petitioners' Representation be made known to petitioners within a week thereafter, so that they may avail of the remedies, as available in law, if need be.

Till the needful is done, work order (Annexure P-1) be not implemented. Respondent No.2 be apprised of this order forthwith to ensure its compliance.

With aforesaid directions, this petition and applications are disposed of.”

4. In pursuance of the directions passed by the Court in ***Tilak Raj Kapoor (supra)***, the MCD has considered the representations and has passed a speaking order, which is impugned before us. The MCD in the impugned order has taken note of their representation and has held as follows:-

“I have considered the entire material on record including the submissions of the petitioners, representation of RWA Pkt GH-14, report of the Building Department (EE(B)II/RZ), & report of the Maintenance Division EE(M)II/RZ. The right of commercial use of the properties of the petitioners situated on the notified MLU road has not been disputed by the Bldg Department and as well as the Maintenance Division. The right of commercial use of the properties of petitioners is derived from the relevant provisions of MPD 2021. The petitioners have also complied with formalities of payment of conversion/parking charges as required under the norms. Now, the impugned construction of boundary wall in front of the shops of the petitioner shall directly hit their trading activity which is against the import of provisions Law which permitted Mixed Use of Street If the boundary wall is allowed to be constructed in front of the shops of the petitioner, then it will defeat the very purpose of the MPD notification of the road in



question. From the photographs of the existing shops of the petitioner, it is seen that Iron Grill gates have been fixed in front of each shop and there is no open space left uncovered to raise security concerns of the Pocket. The Grill Gates have been so fixed that customers who come to shops cannot have access to enter into the residential area of the Pocket. Accordingly, the concern of security of the Pocket GH-14 as raised in the representation of the RWA has already been taken care of by the petitioners as per said pattern of erection of Iron Grill Gates in front of their respective shops. From the above discussion, I reach to an irresistible conclusion that the impugned work order dated 23.10.2018 for construction of boundary wall in front of the shops of the petitioners has been issued by EE(M)II/RZ without considering overall perspective of the case and hence the impugned Work Order dated 23.10.2018 is required to be rescinded to avoid injustice to the petitioners. Therefore, EE(M)II/RZ is hereby directed to take necessary remedial measures for immediate cancellation of aforesaid work order after seeking approval of the competent authority.”

5. Learned counsel who appears for the petitioner raises various grievances and *inter alia* submits that the MCD has not considered the controversy in the right perspective, denying the permission to construct a boundary wall.
6. I have considered the submissions made by the learned counsel appearing for the parties and perused the record.
7. Looking at the nature of the controversy and various disputed facts emerging from the perusal of pleadings like availability of adequate space for the construction of the boundary wall, construction of the iron grill gates in front of shops etc., it appears that the appropriate remedy for the petitioner is to approach the jurisdictional Civil Court for redressal of its grievances.
8. The adjudication of the petition of such nature would certainly require leading of oral and documentary evidences and adjudication of the same



thereupon, which under normal parlance, would not be amenable to the writ jurisdiction. This Court in W.P.(C) 10646/2021 titled as ***Resident Welfare Association v. Kishan Devnani***, wherein also, the issue of construction of boundary wall was involved, has considered various aspects relating to adjudication of the boundary wall disputes and also the detrimental and cascading effects of entertaining such petitions, has held as under:-

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 expositied 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...

35. This Court as well, in W.P.(C). 2873/2022 titled as **Purandeep Singh v. BSES Yamuna Power Ltd.**, has noted the detrimental effect of entertaining the writ petitions wherein disputed questions of facts exist or where the alternate remedy was not exhausted before approaching the writ Court.

36. The High Court under the writ jurisdiction cannot possibly entertain all the cases where public nuisance, encroachment over government areas etc. are being alleged. Furthermore, it is not a case where the petitioner does not have any legal remedy. There exist alternate legal remedies under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023, Special Task Force constituted vide Notification dated 25.04.2018 by the Ministry of Housing and Urban Affairs or a Civil Suit etc., which are also equally efficacious. The Court in the decisions of **DDA v. Rajbir Singh, Nemai Bagdi v. State of W.B., Rita Dalal v. Inspector-in-Charge/Officer-in-Charge, Protap Chandra Naskar v. State of W.B., Jai Prakash Yadav v. State of Bihar and Sanjeet Kumar Singh v. State of Bihar**, wherein, a similar controversy relating to the boundary wall was agitated, declined to entertain the writ petition and rather, gave the liberty to approach the competent Civil Court or avail any other remedy available as per law. ”

[Emphasis supplied]

9. In view of the aforesaid, reserving liberty in favour of the petitioner with all the rights and contentions to approach the jurisdictional Civil Court or to avail any remedy available as per law, the Court disposes of the instant writ petition.



10. All pending applications are also disposed of.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 2, 2024

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