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

+ **W.P.(C) 5604/2024**

**VINEET KUMAR SHARMA**

.....Petitioner

Through: Mr.Aayushi Jain and Mr.Rashi  
Aggarwal, Advs.

versus

**NORTHERN RAILWAY AND ORS.**

.....Respondents

Through: Mr.Vivek Sharma, SPC for UOI/R-  
1&2.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

% **19.09.2024**

**CM APPL. 31271/2024 (Delay in filing the counter-affidavit)**

1. The present application has been filed under Section 151 of the CPC, 1908 seeking condonation of delay of 10 days in filing the counter-affidavit.
2. For the reasons stated in the application, the same is allowed and the delay of 10 days in filing the counter-affidavit stands condoned.
3. The application stands disposed of.

**W.P.(C) 5604/2024**

1. The instant writ petition is seeking to set aside the order dated 11.08.2023 with further direction to respondent no.1 and 2 to allot an alternate space to the petitioner, restoring the petitioner's Amul Milk Stall situated at Shakur Basti Railway Station or any other railway station in Delhi.



2. The petitioner also prays for monetary compensation to the tune of Rs.29 lakhs.
3. It appears that the petitioner's representation came to be rejected in terms of order dated 11.08.2023 by the respondents on account of no precedence and no policy guidelines for restoration of the stall.
4. Learned counsel appearing on behalf of the petitioner asserts that there exists a policy guideline and an inquiry was also conducted which conclusively held the private respondents are responsible for illegally removing the stall of the petitioner and allocating the same to the son of respondent no.3.
5. The official respondents have placed on record their counter-affidavit and have controverted the submissions made by the petitioner.
6. Besides the objection with respect to the maintainability of the instant writ petition, in view of the arbitration clause in the agreement, the respondents have also stated in paragraph no.3 to 8 of their counter affidavit that the case set up by the petitioner is *dehors* the material available on record, and therefore, the petitioner is not entitled for any relief.
7. The respondents have also stated that the present petitioner is the sub-licensee and all the correspondences were made by the licensee i.e. M/s GCMMF Limited and not by the petitioner. The respondents, therefore, have raised serious doubt about the bona fides of the petitioner.
8. The Court in the instant writ petition at this stage, is not required to go into the veracity of the submissions made by the respondents, however, observes that the nature of the grievance raised in the instant writ petition requires the parties to adduce oral and documentary evidence and their adjudication thereto. The scope of Article 226 of the Constitution of India



clearly delineates the extraordinary powers to be used sparingly and not in petitions where disputed questions of facts exists. This Court in ***Resident Welfare Assn. v. Kishan Devnani***<sup>1</sup>, after perusing the catena of decisions, has considered the ambit of Article 226 of the Constitution of India in dealing with the writ petitions where disputed questions of facts exist and held as under:-

**“Writ Jurisdiction in Cases involving disputed questions of facts**

27. Yet another facet of the writ remedy under Article 226 of the Constitution of India is that the Constitutional Courts cannot be expected to conduct a roving or fishing enquiry in cases where contentious issues of facts exist. The Supreme Court in the case of *Radha Krishan Industries v. State of H.P.* has held that in cases where the disputed questions of facts are involved, the Court may decline to entertain the writ petition on that perspicuous count. The relevant extract of the said decision reads as follows:—

“(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.”

28. The Supreme Court in the case of *Shubhas Jain v. Rajeshwari Shivam*, has held that the Constitutional Courts, while exercising the writ jurisdiction, should restrain themselves from adjudicating the hotly disputed question of facts. The Court held as under:—

“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.”

29. Furthermore, in the case of *Union of India v. Puna Hinda*, the Supreme Court has observed that in cases where disputed questions of facts are involved, the writ jurisdiction is not amenable. The relevant observations of the Supreme Court as observed in the said case read 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

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<sup>1</sup> 2024 SCC OnLine Del 5697.



*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.”*

**30.** *At this juncture, it is apropos 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 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.”*

*31. This Court as well, in the case of Harpati v. State (NCT of Delhi) has held that where there are disputed questions of facts involved, the High Court should not be entertaining the writ petition. The relevant extract of the said decision reads as under:—*

*“22. A reading of the aforesaid judgments makes it clear, that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. Particularly in cases where tortious liability and negligence is involved, it has been held that the remedy under Article 226 may not be proper. In the instant case, the relief of compensation sought by the petitioners is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated only on the basis of affidavits. 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 is necessary, as an indispensable prelude to the grant of the relief sought.”*

*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.”*

9. In view of aforesaid, instead of keeping this petition pending on its



Board, the Court grants liberty in favour of petitioner to institute proper proceedings, in accordance with law, for restoration of the stall in question or for necessary damages.

10. Accordingly, the Court disposes of the instant writ petition.

11. All rights and contentions are left open.

**PURUSHAINDR KUMAR KAURAV, J**

**SEPTEMBER 19, 2024/MJ**