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

+ **W.P.(C) 8833/2024**

**SH. AJAY BANSAL**

..... Petitioner

Through: Mr.Achin Mittal and Mr.Sandeep  
Katariya, Advs.

versus

**MUNICIPAL CORPORATION OF DELHI & ORS.**

..... Respondents

Through: Mr.Ashutosh Gupta, SC.  
Mr.Mohit Bhardwaj, Adv for R-6.

**CORAM:**

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

**ORDER**

% **01.07.2024**

**CM APPL. 35895/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

**W.P.(C) 8833/2024**

1. The petitioner in the instant writ petition *inter alia* seeks for directions to respondent no.1 and 2 to take appropriate action against illegal and unauthorised constructions allegedly raised by respondent nos.3 to 5 over the agricultural land bearing Khasra no. 68/18/1 admeasuring 622 sq.yards and Khasra no.68/13/2 admeasuring 1300 sq. yards situated in the revenue estate of Village Karala, Delhi.
2. The case of the petitioner, as has been unfolded in the instant writ petition, indicates that the petitioner and respondent no.3 jointly purchased



the aforesaid agricultural land on 19.01.2013. The petitioner appears to have sold his share of the agricultural land bearing Khasra no.68/18/1 and respondent no.3 transferred his respective share to respondent no.4, who happens to be the real brother of respondent no.3. The respondent no.4 further sold his share bearing Khasra no.68/18/1 to respondent no.5.

3. According to the petitioner, respondent no.5 in connivance with respondent nos.1, 3 and 4 started raising unauthorised construction of godown/factory over the agricultural land. The petitioner further alleges illegal encroachment upon the land of the petitioner bearing Khasra no.68/13/2.

4. Having gone through the facts of the case, it is seen that the land in question is admittedly a private land and the petitioner is claiming rights against the private respondents. The petitioner, however, submits that in the instant writ petition his grievance is not against the action by the private respondents but only against the respondent-Municipal Corporation of Delhi, who under the law is duty bound to deal with the representation made to such an authority. The petitioner, therefore, submits that he is confining his relief only against the official respondents to deal with the representation submitted by the petitioner in accordance with law. He, thus, submits that if the construction in question is found to be illegal or unauthorised, the respondents have to take necessary action.

5. Having considered the aforesaid submissions, this Court is not inclined to even entertain the aforesaid limited prayer in view of the fact that the inaction on the representation would not itself be a sufficient ground to entertain a writ petition.



6. To invoke writ jurisdiction under Article 226 of the Constitution of India, a party must demonstrate the existence of a vested legal right. Additionally, the party must substantiate a corresponding infringement. This could be an action that is *ultra vires* the powers and responsibilities vested in the respondent or indicative of high-handedness. Any party approaching a writ court seeking invocation of the extraordinary jurisdiction should also establish that there is no alternate mode to remedy the grievance or the remedy available is not efficacious.

7. The petitioner, at best, can seek appropriate remedy in accordance with law to get his grievance redressed. Without analysing the repercussions which may flow from directions being issued in contentious issues, for deciding the representation, normally courts should stay its hand in passing such direction. Afterall, a striking aspect pertaining to Article 226 of the Constitution which has evolved through judicial interpretation over the passage of time suggests that the writ jurisdiction carries with itself certain self-imposed restrictions, which are inherent in nature of the power and are well-defined. These restrictions, which predominantly include exhaustion of alternate remedy, are meant to ensure that the extraordinary and discretionary jurisdiction conferred upon the High Courts under Article 226 is exercised sparingly in exceptional circumstances. The said exercise of power must reflect a commitment towards maintaining the integrity of the rule of law and should not be aimed at broadening the horizon of writ jurisdiction to adjudicate private disputes which are not in larger public interest and lack an element of public law.

8. At this juncture, it is also apposite to refer to the decision of this Court



in the case of ***Rajendra Motwani &Anr. v. MCD &Ors.***<sup>1</sup>, whereby, it was held as under:-

**“8. --- An illegal construction always no doubt gives locus standi to the local municipal authorities to seek removal of the illegal construction, but, a right of a neighbor only arises if the legal rights of light and air or any other legal right is affected by virtue of the illegal construction of the neighbor. Legal right to light and air is only in terms of Section 15 of the Easements Act, 1882 which requires a cause of action to be laid out and proved that right to light and air has been enjoyed for 20 years and only on completion of 20 years there is a right to acquisition by prescription in the easementary rights. It is relevant to note that even after acquisition of easementary rights of prescription, yet, right to injunction for a neighbor is not absolute and is covered by Section 33 of the Easements Act which requires that disturbance to the easementary rights must actually cause substantial damage to a neighbor and the infraction materially diminishes the value of the dominant heritage with the fact that there is material interference in the physical comfort of the neighbor of living in his own house or prevents the neighbor from carrying on his accustomed business in the dominant heritage/his own house.”**

9. The decision in the case of ***Rajendra Motwani (supra)*** has been followed in a subsequent decision dated 23.05.2022 titled as ***Kamal Kapoor and Anr. v. Commissioner (North MCD) and Ors.***<sup>2</sup>, wherein, the Court rejected the prayer to direct the respondents therein to take action against the alleged illegal construction/encroachment on the ground that the petition was not filed to secure any fundamental or legal right. Under the facts of the case at hand and in light of the aforesaid decisions, the petitioner’s request for directions to the respondent-MCD to decide the representation does not seem to be amenable to writ jurisdiction.

10. Needless to emphasize that if the petitioner takes appropriate recourse in accordance with law, this order shall not come in the way of the petitioner

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<sup>1</sup> 2017:DHC:6171

<sup>2</sup>2022 SCC OnLine Del 1842



asserting his rights. This Court has not expressed any view on the merits of the case.

**PURUSHAINDR KUMAR KAURAV, J**

**JULY 1, 2024/MJ**