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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10405/2024 & CM APPL 42766/2024**
WELFARE ASSOCIATION E BLOCK & ANR.Petitioners

Through: Mr. Arvind Kumar, Mr. K.S. Captain
and Mr. Subit Kumar Singh, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

.....Respondents

Through: Mr. Manu Chaturvedi, SC for R-1
Mr. Shashi Pratap Singh and
Ms.Urvashi, Advs. for R-3 to R-4
with SI Roshan Lal, P.S. Kalkaji

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER
30.07.2024

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1. The instant writ petition has been filed seeking the following reliefs:-

“A. Allow the present writ petition and issue a writ of mandamus or any other appropriate writ directing the Respondent No 1 to cancel the permission letter numbered AC/RPC/MCD/2024/D-/180 dated 24.04.2024 authorizing the Respondent 2 to install a Communication Ground-Based Monopole (GBM) near Sudhar Camp, Block-E, Kalkaji, Outsider DUSIB Basti, Central Zone, and

B. Pass any such further order as this Hon'ble Court may deem fit in the interest of justice.”

2. The petitioners in the instant petition are essentially aggrieved by the permission granted to the private respondents to establish telecom infrastructure for telecom service providers.



3. Learned counsel for the petitioners, while referring to the impugned permission dated 24.04.2024, contends that it was issued in violation of several existing norms and extant regulations. More specifically, learned counsel highlights *Clause 20* of the permission, which stipulates that the Ground-Based Monopole (GBM) and its operation should not disrupt free movement of traffic and public, and should preferably be situated away from schools, hospitals and areas with heavy traffic and public movement. Learned counsel argues that, in this case, the location in question is in proximity to a school and a hospital and is surrounded by areas with substantial public and vehicular traffic. Additionally, the learned counsel points out that a Delhi Urban Shelter Improvement Board ('DUSIB') *basti* is located near the site in question.

4. *Per contra*, learned counsel appearing for the respondents at the outset raised questions on the maintainability of the writ petition and argued that these issues could be agitated before the competent Civil Court. He further submits that permission from the concerned department was taken after following the due procedure as per extant rules and regulations.

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

6. The Court has considered the submissions advanced at the Bar and is of the opinion that legislative intent behind Article 226 of the Constitution of India has not envisaged entertaining the writ petition wherein alternate and efficacious remedy is readily available at the behest of the petitioner. At this stage, it is apropos to lend credence to the ratio of the decision of the Supreme



Court in the case of ***Radha Krishan Industries v. State of H.P.***¹, which summarized the exigencies while considering the writ petition. The relevant extracts of the said decision read as under:-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. 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.”

7. Furthermore, if the petitioner has any grievance regarding the location or non-compliance of the specific conditions of the relevant permission, such issues may be addressed before the appropriate Civil Court. This Court, while

¹ (2021) 6 SCC 771



exercising jurisdiction under Article 226 of the Constitution of India, cannot be expected to evaluate the precise location of the site, the extent of traffic, or whether the conditions of the permission have been violated or not. The writ Court while exercising the extraordinary powers vested under Article 226 of the Constitution of India cannot be expected to conduct a roving enquiry to determine whether the installation of the mobile tower would lead to a halt in the traffic movement or not. Moreover, if the petitioners believe that the respondents have violated the conditions of the permission or any extant rules or regulations, they can approach the Civil Court or avail any remedy available as per law.

8. The Court also takes note of the directions passed by this Court in W.P. (C) No. 9663/2024, where even police authorities have been directed to provide necessary protection and assistance so that the installation of tower takes place as per law. Any direction in this writ petition would tantamount to interdiction with the existing order. The petitioner is also granted liberty to take up appropriate remedy in that respect as well.

9. Accordingly, with the aforesaid liberty, the instant petition stands dismissed alongwith pending application(s).

10. All rights and contentions are open.

PURUSHAINDR KUMAR KAURAV, J

JULY 30, 2024

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