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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10841/2024, CM APPL. 44645/2024 & CM APPL. 44646/2024**
MEHRAZ BANOPetitioner

Through: Mohd. Azam Ansari, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondent

Through: Mr. Ranjeet Pandey, SC for MCD
with Ms. Mansha, Adv.

Ms. Shobhan Takiar, SC for DDA
with Mr. Kuljeet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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06.08.2024

CM APPL. 44647/2024 (Ex.)

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

W.P.(C) 10841/2024, CM APPL. 44645/2024 & CM APPL. 44646/2024

3. The petitioner has prayed for the following reliefs:-

(A) *Issue a writ of mandamus directing the respondents to clarify about the genuineness/authenticity of the list circulating in petitioner's area/locality since yesterday 31.07.2024 annexed in this writ petition as Annexure P-2 with further directions to respondents to clarify as to why petitioner's Residential Flat (Address in MOP) purchased more than 7 years ago on 14 June 2017 from the Builder, is also included in the said list at SI.No.628 & 702(4th floor & 5th floor) and petitioner's building is also included at SI.No.578(Grd floor to 3rd floor) showing to be allegedly booked on 10.10.2016 & 29.03.2017 in the name of Kamran whereas petitioner purchased her single residential Flat at 4th Floor/Top Floor subsequently on 14 June 2017 from the owner MOHAMMAD ARSHEE as*



evident from her property papers marked Annexure P-1

- (B) *Pass further direction to respondents, in the event the alleged list is found to be genuine, to disclose to the petitioner the reasons of booking and be pleased to give an opportunity of at least 6 months to petitioner to clear violations if any, of her 4th /top floor flat by taking appropriate actions as per applicable law/rules including to apply for regularization as per clause 2.8 of the Unified Building Bye laws 2016 which, allows regularization even after unauthorized construction, if carried out by Builder in the instant case, which was sold to the petitioner without disclosing the fact of booking to her by keeping her in complete dark regarding alleged booking of building on 10.10.2016 and 29.03,2017 whereas petitioner purchased her residential flat on 14 June 2017 being only flat in Delhi for residence of herself & her family members.*
- (C) *Pass any other appropriate order (s) / direction(s) as this Hon'ble Court may deem fit and proper in the seriousness of the matter and in the most peculiar facts and circumstances of this case and in the utmost interests of justice as matter pertains to petitioner's residential house being the only house for residence of the petitioner and her family members having purchased more than 7 years ago on 14 June 2017 by spending her entire money and of her husband as well.*

4. A bare perusal of the nature of reliefs which are sought to be agitated by way of a writ petition would indicate that a roving enquiry would have to be undertaken to ascertain the claims of the petitioner.

5. This Court while exercising the extraordinary powers under Article 226 of the Constitution of India cannot be expected to conduct a roving enquiry wherein disputed questions of facts exist that would require meticulous examination of evidence. 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***¹ 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

¹ 1964 SCC OnLine SC 13.



*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.”*

6. This Court as well in the case of ***Harpati v. State (NCT of Delhi)***², 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.”

7. In view of the aforesaid, this Court is not inclined to entertain the present writ petition. The petitioner, however, shall be at liberty to take appropriate recourse in case; the respondents contemplate any action with respect to the petitioner’s property.

²2023 SCC OnLine Del 4607.



8. Needless to state that the respondents shall be bound by the applicable provisions and no action can be taken unless a proper opportunity of hearing is extended to the petitioner.
9. With the aforesaid observations, the petition stands disposed of.
10. All rights and contentions of the parties are left open.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 6, 2024/p