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

+ W.P.(C) 3813/2014 & CM APPL. 12070/2015 CM APPL. 25110/2015 CM APPL. 22731/2016 CM APPL. 5021/2017 CM APPL. 5023/2017 CM APPL. 24694/2018

ELIAMMA SEBASTIAN

..... Petitioner

Through: None

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondent

Through: Mr. Rishikesh Kumar, ASC, GNCTD with Ms. Sheenu Priya, Mr. Atik Gill Mr. Sudhir Kumar Shukla and Mr. Sudhir, Advocates for R-3
Ms. Sonia Saini and Mr. Sushil Lohia, Advocates for Sanghmitra Society/R-5

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Date of Decision: 25th April, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking following directions: -

- i. To direct the DDA officials, to place on record Sangha Mitra Society building plan, its compliance or otherwise in relation to the main structure, water & electricity connections and type of building materials used for the



purpose leading to regular seepage & leakage in the flats, especially in Flat no. B-302, Sector-4, Plot-20, i.e. the flat of the petitioner, and who is liable to pay damages & repair cost to the petitioner in this case.

ii. To place on record as to how the DDA officials gave completion report, to such defectively constructed flats, with leaking water tanks, sub-quality pipe connections & building materials, for which neither the contractor, Architect, or the office bearers of Sangha Mitra society are held responsible. Hence recovery for undue-delay and damages, due to defective - construction & further repair cost has to be borne by whom, with interest, as on date.

iii. To investigate the role played by Mrs. Savitha Yadav of MCD who took special interest in calming the aggrieved members in various flats.

iv. To direct CBI inquiry into nexus of various Govt. officials through co-operative societies & builder mafia network in this case.

v. To direct prosecution of Architect & Contractor along with all the members who are involved in the scam.

vi. To pass such further order(s) as may be deemed fit and proper in facts and circumstances of the present case, in the interest of justice.

2. It is stated in the petition that the Petitioner has been residing and living in flat no. B-302 in the Sangha Mitra Society ('Society') i.e., Respondent No. 5 herein since 2003. The present petition has



been filed in the year 2014 alleging that the construction of the flats is admitted to be defective by the Society. It is alleged that the General Body of the Society in the year 2013 decided to carry out repair work in the Society and demanded funds from each flat owner for the said work. The present petition has been filed aggrieved by the said demand from the flat owners for carrying out repairs/construction and, seeks an enquiry for fixing the liability of the defective construction on the Architect and Contractor who were involved in raising the construction during the period 1995-1998 and recovery of damages from the person responsible for constructing defective flats. The Petitioner has also prayed for a Central Bureau of Investigation (CBI) investigation into the persons responsible for the construction of the Society and issuance of the completion certificate.

3. The Society has filed an affidavit dated 14th October, 2016 stating that the Petitioner herein has failed to make payments towards water and maintenance charges with effect from 01st April, 2007 and has stated that as of 31st March, 2016, a sum of Rs. 9,42,349/- was outstanding. Learned counsel for Respondent No. 5 has submitted that the Petitioner even currently as on date is not making any payments towards water and maintenance charges, however, the Society has not disconnected the said services to the Petitioner.

4. Learned Standing counsel for Respondent No. 3 states that the Petitioner has been expelled from membership by the Society, however, the expulsion proceedings before the RCS have been stayed by this Court vide interim order dated 26th November, 2015 in W.P.(C) 8655/2007.



5. Having heard the learned counsel for the Respondents and after perusing the record we are of the view that the present petition is not maintainable. The issue of non-maintainability of the present writ petition has been raised by the predecessor Bench in orders dated 30th October, 2015 and 19th May, 2017 and the said issue has remained pending.

6. The allegations of defective construction, damages and fixation of liability of individuals concerned, raised in the present petition are all disputed questions of fact which cannot be decided in the writ jurisdiction, without evidence being led. The principles of law governing entertaining of a writ petition under Article 226 of the Constitution are well settled and have been succinctly enunciated by the Supreme Court in **Radha Krishan Industries v. State of Himachal Pradesh And Other.**¹ wherein para 27 reads 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.

¹ (2021) 6 SCC 771



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."

(Emphasis supplied)

7. The present petition is, therefore, not liable to be entertained as none of the exceptions to the rule of alternate remedy recognized by the Constitutional Courts for entertaining a writ petition under Article 226 of the Constitution is attracted in the facts of this case.

8. As regards the relief seeking a direction for CBI investigation and prosecution of the individuals involved in the construction, as held by the Supreme Court in *State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others*², such a direction should be issued only in exceptional situations and in our opinion the facts of the present case do not merit grant of the said prayer. The relevant para of the aforesaid judgment reads as under:

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such

² (2010) 3 SCC 571



power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

(Emphasis supplied)

9. The present petition along with pending applications is dismissed with the aforesaid observations. The Petitioner is at liberty to approach the appropriate forum for deciding her alleged claim of damages in accordance with law.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 25, 2024/msh/MG