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

% ***Date of Decision: 12th December, 2024***

+ W.P.(C) 17146/2024 & CM APPL.72822/2024, CM APPL. 72821/2024

SH ANKUR DABASPetitioner

Through: Mr. Harbans Singh, Advocate

versus

DELHI DEVELOPMENT AUTHOR AND ANR.Respondents

Through: Ms. Prabhsahay Kaur, Standing
Counsel with Ms. Palak Mathur,
Mr. Bir Inder Singh Gurm, Advocates
and Mr. Durga Prasad, AEE/HCD-9,
DDA.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner has filed the present petition under Article 226 of the Constitution of India against the respondents challenging terminating of his contract given for maintenance of infrastructure at Baansera, Sarai Kale Khan. The petitioner further challenges the forfeiture of his *Performance Guarantee* and *Additional Performance Guarantee* by the respondent, asserting that these actions were taken without due process and in violation of terms of the agreement.

2. Learned counsel for respondent appears on advance notice and, at the very outset, submits that the present writ petition is not maintainable. It is submitted that the matter is based on contract between the parties and, therefore, interference by writ Court is not warranted at all.



3. It is also claimed that in the present writ petition, the petitioner, while seeking quashing of final notice of termination also seeks compensation for the financial losses including pre-procured materials, business losses, etc. in terms of Section 73 of the Indian Contract Act, 1872 and, therefore, from no angle whatsoever, the present writ petition is maintainable.

4. This Court has gone through the impugned notice dated 17.08.2024 issued by DDA, whereby DDA observed that the petitioner was unable to complete the work by stipulated date and had failed to complete the work even by an extended date of completion and it was on the above said premise that the contract was determined.

5. Thus, the core issue is whether the work was completed within the stipulated period or not.

6. Such issue being a disputed question of fact, is not, actually speaking, required to be evaluated while exercising writ jurisdiction.

7. There is nothing which may indicate infringement of any fundamental right or, for that matter, suggesting violation of any principle of natural justice.

8. It is rather seen that the final action of termination has taken place after issuance of multiple show-cause notices.

9. Respondents have relied upon *Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and ors.: (2023) SCC Online SC 67*, where it has been held that the Courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. It underscores that judicial intervention in such matters is warranted only when a clear demonstration of arbitrariness, malafides, bias, or irrationality is made out. It has been stated that there is no doubt that the



bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution.

10. Reliance has also been placed on *Bharat Coking Coal Limited &Ors. vs. AMR Dev Prabha and Others:(2020) 16 SCC 759*, wherein it has been held that merely because the accusations made are against the State or its instrumentalities, it does not mean that an aggrieved person can bypass established civil adjudicatory process and directly seek writ relief.

11. As observed, the present petition also stems from a contractual arrangement and there is nothing to suggest that this court should invoke its judicial review under writ jurisdiction, on the ground of there being any violation of Article 14 or infringement of any fundamental right. Whether there was any such justifiable reason which prevented the petitioner in not completing the work within stipulated period, is a pure question of fact which is not required to be decided in a writ jurisdiction.

12. Naturally, there would be assertions and denials and, therefore, this forum is not appropriate forum to decide disputed questions of fact.

13. The dispute emanates from contract, having no relation with Public Law.

14. In a judgment passed by Coordinate bench of this court: *IDBI Bank Ltd., through its Authorised Signatory vs. Power Finance Corporation: 2023 SCC Online Del 2909*, it has been held that where any such petition has contractual roots and basis, requires Court to make factual findings on disputed questions of fact, lacks element of public law and does not disclose arbitrariness in the context of Article 14 of the Constitution, it would not be



appropriate to entertain the same under writ jurisdiction as such matters are beyond the scope of judicial review in writ proceedings.

15. In view of the basic and fundamental factual scenario, as stands deciphered from the averments made in the writ petition, this Court does not find any reason to proceed further with the present writ petition.

16. The writ petition is, accordingly, disposed of.

17. Needless to say, the petitioner is always at liberty to take recourse to appropriate action or remedy as available to him under the law.

18. It is also clarified that nothing mentioned in the present judgment shall be construed as expression of opinion with respect to the merits of the case.

(MANOJ JAIN)
JUDGE

DECEMBER 12, 2024/st