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

+ **W.P.(C) 7818/2017**

SHYAM SUNDER LAHOTI

.....Petitioner

Through: **Mr. Kartickay Mathur, Adv.**

versus

NORTH DELHI MUNICIPAL CORPORATIONRespondent

Through: **Ms. Saroj Bidawat, SC for MCD.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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25.07.2024

1. The petitioner has approached this Court praying for the following reliefs:-

“Issue a Writ of Mandamus thereby directing the respondent to allot a kiosk/ shop to the petitioner as per the terms and conditions of the allotment in City Zone, NDMC”

2. The case of the petitioner is that he was allotted one Kiosk bearing number 1 at S.P. Mukherjee Marg, Delhi by the Municipal Corporation of Delhi (MCD) in the year 1995 at the monthly licensee fee of Rs 8,100/- and he was regularly paying the license fee and earning his livelihood from the same. However, he avers that subsequently, the MCD constructed a public urinal adjacent to the petitioner's kiosk. According to him, this development has adversely impacted the petitioner's physical health causing him illness due to bad odour and hygiene and has also caused him substantial monetary losses.

3. The petitioner contends that the construction of the public urinal



rendered continued operation in the said kiosk unfeasible. Consequently, he requested the MCD to relocate him to an alternative location. The petitioner further avers that he was compelled to continue paying the charges for the kiosk during the period it was unusable due to the construction of the urinal. The petitioner further asserts that he made several representations to the respondent, now MCD, highlighting various disadvantages and hardships he faced because of the kiosk's location, but the said representations were apparently not considered.

4. On 15.05.2008, the petitioner apparently issued a legal notice and repeatedly approached the MCD officials. Following substantial persuasion, the MCD agreed in 2008 to relocate the petitioner to an alternative kiosk situated at TT Post, Old Delhi Railway Station, SP Mukherjee Marg, albeit under fresh terms and conditions.

5. The petitioner deposited a sum of Rs 6,20,000/- as a 50% payment of the amount sought by the MCD along with the other necessary documents.

6. However, the petitioner alleges that he was not granted possession of the alternate site at TT Post despite complying with the payment demands raised by the MCD. Consequently, the petitioner had to approach the MCD with another request for the allotment of an alternative site. Subsequently, another material change occurred with the removal of the urinal adjacent to the initial kiosk, rendering the original kiosk habitable once again. Despite these developments, the petitioner contends that no allotment of the kiosk has been made till date.

7. He further avers that he was recently offered shop No. 1 at Shanti Desai Sports Club, located outside Gate No. 2 of the Chandni Chowk Delhi Metro Station. The petitioner expressed his acceptance of the said offer, but



no action was subsequently taken. As a result, the petitioner still lacks a kiosk or shop to earn his livelihood.

8. Contesting these averments by the petitioner, the respondent, in its status report, has stated that regarding the old kiosk, a sum of Rs.28,66,450/- was due as arrears to be paid by the petitioner.

9. Various other averments have been made, including objections with respect to the maintainability of the instant writ petition. The respondent in paragraph Nos.3 to 5 has taken the following stand:-

“3. That present Writ Petition is not maintainable and the same is hopelessly time barred. It is submitted that the petitioner is agitating the stale claim pertaining to the year 2000 onwards and in view of the law of limitation, the present Writ Petition deserve outright dismissal on the ground of delay and laches. It is stated that the perusal of the Writ Petition reveal that the petitioner has been indolent and not vigilant to pursue his legal remedies as available under law. The mere sending the representations does not extend the cause of action and entertaining the present writ petition filed by the petitioner against the answering respondent shall cause serious prejudice to the answering respondent and will unsettle the settled matters. However, the present short affidavit is being filed reserving the rights of the deponent to file the detailed reply on merits, in case, if the necessity arises or if so, specifically directed by this Hon'ble Court.

4. That the deponent further states that the petitioner is guilty of suppression and concealments of facts in as much as the petitioner is the defaulter and have not paid the license fees as demanded from time to time despite considering his grievance of shifting the Kiosk for the reasons as mentioned in the Writ Petition. It is submitted that the records reveal that the shifting of initial allotment of the Kiosk was allowed subject to clearance of dues on account of enhanced license fee of shifting of Kiosk No. 1, SPM Marg to TT, Post near Gate No. 1, Old Delhi Railway Station. Since, the petitioner has failed to clear government dues and despite issuance of the demand letters for deposit of all government dues amounting to Rs. 2866450/- accumulated, the said Kiosk No. 1, SPM Marg, Old Delhi Railway Station was sealed. Thus, the shifted site at TT, Post near Gate No. 1, Old Delhi Railway Station was not handed over to petitioner due to non compliance and nonpayment of the government dues. It is specifically denied that the petitioner was offered shop No. 1, Shanti Desai, Sports Club, Outside Gate No. 2 of Chandni Chowk, Delhi, Metro



*Station as alleged in the year 2016 by the answering respondent. The photocopy of the demand letters dated 04.09.2009 and 19.01.2010 issued to the petitioner are annexed herewith as **Annexure R-1**.*

5. *That it is further stated that further action for recovery of the government dues is under contemplation in accordance with law. It is further submitted that the grievance of the petitioner for shifting from Kiosk No.1, as above due to adjacent urinal was considered but for the reasons non to the petitioner, the government due were not cleared resulting that the answering respondent has left no option except to seal the Kiosk under reference. It is denied that the petitioner was harassed and the nonpayment of the government dues is an impediment for not allowing the petitioner to operate at the initial site No. 1 or at the shifted site as mentioned above. It is denied that the petitioner is entitled for alternative Kiosk in view of the aforesaid peculiar facts of the case and further the contentions of the petitioner from Para No.1 to 26 are denied.”*

10. Looking at the facts and circumstances involved in the instant case, it is seen that, at best, the petitioner is seeking the enforcement of contractual rights. It is, however, trite that the remedy under Article 226 of the Constitution of India is a public law remedy and is not amenable to the enforcement of private rights. It is significant to refer to the decision of the Supreme Court in the case of ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd***¹, wherein, it has been held as under:-

*“82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. **Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner,** the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.”*

¹ (2023) 2 SCC 703



11. Reliance can also be placed upon a decision rendered by this Court in the case of *M/S Diamond Entertainment Technologies Pvt. Ltd. & Ors. v. Religare Finvest Limited through its Authorized Officer*², wherein, it was observed as under:-

“38. It is to be noted that in the case of Sagar Thomas (supra), the Hon’ble Supreme Court while rejecting the claim of a private banking company to be falling in the category of instrumentality of State under Article 12 of the Constitution, has held that a private body or a person may be amenable to the writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligation which may be of public nature, casting positive obligation upon it. It was further discussed that any business or commercial activity, may be banking, manufacturing units or such other kinds of businesses which generate resources, employment, production and results into circulation of money are undoubtedly impacting the economy of the country in general. However, these activities cannot be termed to be falling in the category of discharging public functions.

40. While striking a distinction between public law vis-à-vis private law obligations of the public authorities, the Hon’ble Supreme Court in the case of K.K. Saksena v. International Commission on Irrigation and Drainage, has opined as below:-

43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is —State within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the

²2023:DHC:5750



domain of public law as distinguished from private law.

[Emphasis supplied]

12. Further, the Supreme Court in the case of ***Union of India v. Puna Hinda***³, took a view that while the writ jurisdiction is wide, but in regard to pure contractual matters in the field of private law, without any statutory backing, the writ court lacks the necessary expertise in technical matters or on matters pertaining to disputes on fact. It was further noted that such disputes can be better adjudicated by relevant forums. The relevant paragraph of the said decision is extracted below:-

*“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. **Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties.** The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.”*

13. In the instant case, the petitioner is unable to establish any legal or vested right in his favour for allotment of kiosk without being insisted by the respondent for deposition of the balance dues. The veracity of the demand is admittedly not challenged in the instant case. So long as the respondent's

³ (2021) 10 SCC 690



action is not shown to be illegal, perverse, arbitrary or discriminatory, the petitioner cannot succeed. Considering the controversy and the nature of prayer made in the instant petition, the Court is not inclined to issue any direction and thus, the petition stands dismissed.

14. It is clarified that the Court has not commented on the merits of the case and all rights and contentions of the parties are left open. The petitioner is at liberty to explore and pursue any other civil remedies available under the law, should they deem it necessary.

15. All rights and contentions are left open.

PURUSHAINDR KUMAR KAURAV, J

JULY 25, 2024/p