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

+ **W.P.(C) 9830/2017 & CM APPL 39999/2017**

SAMEER VERMA

.....Petitioner

Through: Mr. Amitesh Gaurav, Adv.

Versus

**RESIDENT WELFARE ASSOCIATION, H BLOCK, SAKET &
ORS**

.....Respondents

Through: Ms. Shobhana Takiar and Mr. Kuljeet
Singh, Advs. for R-1
Ms. Saroj Bidawat, SC for MCD

CORAM:

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER
01.08.2024

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1. The petitioner in the instant petition has prayed for the following reliefs:-

- a) *Issue a writ of mandamus and any other appropriate writ, order, or direction whereby directing the respondents to open the motorable gate no 3 of H-BLOCK, SAKET for public and motorable usage in terms of Order dated 06.02.2004 and extend the benefit of Order dated 26.04.2006 passed by the Hon'ble High Court of Delhi in CRL. REV. 177/2003 and CRL. M.A. 300, 1134/2003 to the residents of HBLOCK, SAKET, NEW DELHI-110017*
- b) *Issue directions to Respondent No 2 to file a status report in terms of the Gates installed by MCD under the My Delhi-I Care Scheme and in terms of its Circular dated 25.06.2007 with respect to Gates at H-Block, Saket;*
- c) *Issue directions to Respondent No 3 to file Action Taken/Status Repoil: in terms of the orders of the Hon'ble High Court as stated above with respect to Gates at H-Block, Saket;*



d) Pass any order or other orders as in the interest of justice this Hon'ble Court may deem just and appropriate. ‘

2. Learned counsel for the petitioner submits that the gate policy which is sought to be implemented has been framed as per the directions passed by this Court. He takes the Court to various clauses of the gate policy and submits that the same is not being implemented by the Resident Welfare Association [“RWA”]. He, therefore, seeks for issuance of a writ of mandamus against the respondent-Corporation to ensure that the gate policy be implemented.

3. Learned counsel for the petitioner has placed reliance on the decision dated 17.07.2020 passed by this Court in W.P.(C) 4277/2020. Learned counsel for the petitioner has also placed reliance on the decision dated 11.01.2023 passed by this Court in W.P.(C) 1340/2020 and takes this Court to the order passed by this Court on 02.02.2023 in the present petition. He endeavours to show that the learned counsel for the Corporation stated that the directions contained in the order dated 11.01.2023 Court in W.P.(C) 1340/2020 are being complied with. He, therefore, submits that even the said undertaking and the directions contained in paragraph No.7 of the order dated 11.01.2023 are not being obeyed.

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

5. A perusal of paragraph No.8 of the decision dated 17.07.2020 in W.P.(C) 4277/2020 would indicate that the Court has referred the guidelines and in terms of paragraphs Nos. 9 and 10, certain directions came to be issued.

6. The Court is of the considered opinion that the controversy in the said



petition was limited to the factual position as was obtained in that case. Since the decision dated 17.07.2020 is on the basis of facts and situation of that case, therefore, the same would not come to aid in the instant writ petition.

7. Needless to state that the Court in the order dated 02.02.2023 in W.P.(C) 1340/2020 has recorded the stand of the respondent-Corporation's counsel. The Court did not pass any positive directions as to whether the order dated 11.01.2023 in W.P.(C) 1340/2020 will have to be implemented in the instant case. If the petitioner is aggrieved by the non-compliance of any of the directions passed in the W.P.(C) 1340/2020, the remedy would lie elsewhere, in accordance with the law.

8. The respondent-Corporation has already placed on record its Status Report and has taken the following position:-

"3. That considering the relief pertaining to answering respondent SDMC is concerned in this regard at the outset it is submitted that the alleged Gates as referred in the instant Petition have been installed under the Sanction order of SDM(HQ/HOO) bearing 5(4)/MDIC/Bhagi/DC(S) 10/10964-72 no. F Dated 23/ 12/2010 executed by the Executive Engineer, Civil Division-V, I&FCD of Govt of NCT of Delhi. The Copy of the sanction order in this regard is annexed herewith as Annexure-A.

4. That it is also pointed out that for installation of the colony Gates for security purpose the answering respondent SDMC has its own Policy also which stands circulated vide bearing no D/664/SE(P)-I Dated 25/06/2007. However as per our record the alleged gates have not been installed under the said policy by the RWA but the same have installed by Executive Engineer, Civil Division -V, I&FCD under the Sanction order of SDM of Govt Of NCT of Delhi as mentioned above. The copy of the Policy of the Corporation as circulated vide dated 25/06/2007 is already annexed by the Petitioner herein alongwith the instant writ petition as Annexure-P-3."

9. As per the Status Report filed by the respondent-Corporation, it is evident that the gates in question have not been installed under the said



policy by the RWA but the same has been installed under the sanction order passed by SDM(HQ/HOO), Government of NCT of Delhi bearing 5(4)/MDIC/Bhagi/DC(S) 10/10964-72 no. F dated 23/12/2010. It is thus, seen that the issue raised in the instant writ petition as to whether the concerned gates have been installed as per the policy of the respondent-Corporation or as per the directions passed by the SDM, Government of NCT of Delhi stands resolved. The petitioner who seeks for implementation of the Gate policy against respondent No.1-RWA is not remediless. The various disputed questions of facts are sought to be agitated as to whether the particular terms and conditions of the gate policy are being followed scrupulously or not.

10. The aforesaid aspect in the exercise of powers under Article 226 of the Constitution of India cannot be looked into. The Supreme Court in the case of *Shubhas Jain v. Rajeshwari Shivam*¹, has held that it is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts.

11. In *Union of India v. Puna Hinda*², the Supreme Court has observed as under:-

"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

¹ 2021 SCC OnLine SC 562

² (2021) 10 SCC 690



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."

12. In view of the aforesaid, the Court is of the considered opinion that the petitioner has to avail alternative remedy and the Court, in exercise of powers under Article 226 of the Constitution of India, declines to accept the relief as prayed for in the instant petition.

13. Accordingly, the petition stands dismissed alongwith the pending application.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 1, 2024

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