

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/847/2013
IA No.GA/2/2025

M/S. POPAT & KOTECHA PROPERTY &
ANR.

-VERSUS-

THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

WPO/30/2021

M/S. POPAT & KOTECHA PROPERTY &
ANR.

-VERSUS-

THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

WPO/354/2020
IA No.GA/1/2025

M/S. POPAT & KOTECHA PROPERTY &
ANR.

-VERSUS-

THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA DUTT (PAUL)
Date : 18th September, 2025.

Appearance:
Mr. Mainak Bose, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Tanmoy Sett, Adv.
Ms. Sucheta Das, Adv.
...for the petitioner.

*Mr. Ashok Kumar Banerjee, Sr. Adv.
 Mr. Alak Kumar Ghosh, Adv.
 Mr. Biswajit Mukherjee, Adv.
 Mr. Fazlul Haque, Adv.
 Ms. Manisha Nath, Adv.
 ...for the KMC.*

*Ms. Tapati Samanta, Adv.
 ...for the State.*

The Court: All the three writ applications are being heard together.

Vide an order dated 14th February, 2019 the Hon'ble Supreme Court in Popat & Kotecha Property & Anr. vs. Kolkata Municipal Corporation & Ors. in SLP(C) No.22074/2018, upon hearing the parties passed the following order:

“We are informed that Writ Petition (C) No.847/2013 is still pending before a learned Single Judge of the High Court. The petitioners are at liberty to amend that petition to add additional grounds which may cover the grounds already taken in the other two writ petitions being Writ Petition (C) No.109/2016 and Writ Petition (C) No.166/2014. The amendment to be carried out within a period of eight weeks from today. The respondents are given four weeks’ time thereafter to reply to the amended writ petition. The learned Single Judge shall then take up the amendment application and the writ petition and dispose of the same as expeditiously as possible.

The Special Leave Petitions are disposed of accordingly.

Pending applications, if any, also stand disposed of.”

By virtue of the said order, the grounds taken in WPO/354/2020 and WPO/30/2021 was brought on record by way of an amendment in WPO/847/2013 which resulted in WPO/847/2013 being a composite writ application of the said three writ petitions.

IA No.GA/2/2025 has been filed by the petitioner praying for leave to amend the writ application of the year 2013. It appears that the said application for amendment has been filed after 12 long years.

Learned counsel for the Kolkata Municipal Corporation (KMC) has raised the point of maintainability on the ground of alternative remedy, which has been strongly objected to by the writ petitioner on the ground that the said issue has been raised at a belated stage. The said contention of the petitioner has been met by the learned Advocate for the Kolkata Municipal Corporation, who submits that the issue of maintainability was raised at the earliest opportunity i.e., in the affidavit-in-opposition filed by the respondent/KMC.

It appears from the said affidavit-in-opposition that the KMC raised the issue of maintainability at paragraph 4(XXV), which is as follows:

*“XXV. Since the Hearing Officer had passed the orders in respect of annual valuations for the periods w.e.f. 4/1993-94, 4/1999-2000, 4/2005-06 and 4/2011-12 and the **same is appealable** in terms of the KMC Act, 1980, the present proceedings are not maintainable as the petitioners can agitate all points before the Tribunal including the alleged procedural violation.”*

As such, the contention of the writ petitioner that the issue of maintainability has been raised at a belated stage, is not substantiated.

Admittedly, the order in the present case has been passed by the Hearing Officer-XV. The writ application has been preferred challenging the order dated 24th December, 2019 passed by the Hearing Officer-XV.

The petitioner, countering the point of maintainability raised by the Kolkata Municipal Corporation, has relied upon the following judgments:

i) 2023 SCC OnLine SC 95 (Godrej Sara Lee Ltd. vs. Excise and Taxation

Officer-cum-Assessing Authority & Ors.) paragraphs 4 and 8:

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by [Article 226](#) of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under [Article 226](#) is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to [Article 329](#) and ordainments of other similarly worded articles in the Constitution. [Article 226](#) does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under [Article 226](#) that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under [Article 226](#) has not pursued, would not oust the jurisdiction of the high court

and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

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8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 ([Union of India vs. State of Haryana](#)). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is

shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.

ii) (2025) 4 SCC 1 (Tamil Nadu Cements Corporation Ltd. vs. Micro and Small Enterprises Facilitation Council & Anr.) paragraphs 54 and 55

54. The access to High Courts by way of a writ petition under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of their constitutional rights or even statutory rights. This is an inalienable right and the rule of availability of alternative remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle 14 For short, 'CPC'. 15 Section 2(d) of the MSMED Act defines 'buyer' as - (d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration. Civil Appeal a/o. SLP (C) Diary No.3776/2023 Page 18 of 24 applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute.

55. It has been well settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies – i) where there is a violation of

principles of natural justice or fundamental rights; ii) where an order in a proceeding is wholly without jurisdiction; or iii) where the vires of an Act is challenged. Noticeably, the MSEFC as a statutory authority performs a statutory role and functions within the four corners of the law.”

In reply, learned Advocate for the Kolkata Municipal Corporation relied upon the following two judgments:

AIR 2009 SC (Supp) 927 (State of U.P. & Anr. vs. U. P. Rajya Khanij Vikas Nigam S.S. & Ors.) paragraphs 42, 43 and 44;

“42. There is yet one more reason. In the High Court, the Corporation filed an application stating therein that regarding absorption of employees, statutory rules had been framed by the State Government in exercise of power under the proviso to [Article 309](#) of the Constitution. A prayer was, therefore, made to allow the application to bring statutory rules on record and to consider them. The Court, however, rejected the prayer. In our opinion, the High Court was not right in rejecting such prayer. If there were statutory rules and such rules provide for absorption of employees on certain grounds and on fulfillment of some conditions [laid down in](#) those rules, it was the duty of the High Court to consider those rules and to decide whether under the statutory rules, such absorption could be ordered.

43. After all, the High Court was considering the prayer of the petitioners to grant a writ in the nature of mandamus. It was, therefore, expected of the High Court to keep in view the relevant provisions of law. The High Court mainly relied upon an assurance said to have been given by the Secretary on behalf of the Corporation that excess employees would be absorbed either in the Government Department or in other Public Sector Undertakings. From the record it appears that it was the case of the Secretary of the Corporation

that no such assurance was given by him to the Hon'ble Court. But even if he had given such assurance, it was of no consequence since in the teeth of statutory rules, such assurance had no legal efficacy. Moreover, an application was made on affidavit by the Secretary of the Corporation clarifying the position and praying for modification of the earlier order passed by the High Court in which such statement on behalf of the Corporation appeared. The High Court, however, rejected even that application. In our considered opinion, even on that ground, the High Court ought not to have issued final directions.

44. It is settled law that there can be no estoppel against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in Government Department or in any other Public Sector Undertaking. Statement, assurance or even undertaking of any officer or a counsel of the respondent-Corporation or of the Government Pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees.”

1992 (Supp) SCC 312 (H.B. Gandhi, Excise & Taxation, Officer-cum-Assessing Authority, Karnal & Ors. vs. Gopi Nath & Sons & Ors.) paragraph 7.

“7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief

under the proviso to Section 39(5) was proper or not, it was not open to the High Court to re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness – as distinguished from the legal permissibility — of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

Section 189 of the Kolkata Municipal Corporation Act, 1980 is the relevant provision to appeal before the Municipal Assessment Tribunal. Section 189 of the Kolkata Municipal Corporation lays down:

189. Appeal before the Municipal Assessment Tribunal.

(1) There shall be a Municipal Assessment Tribunal for hearing and disposal of an appeal against an order passed under section 188.

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From the judgments relied upon by the petitioner, it appears that the Supreme Court, in **Tamil Nadu Cements Corporation Ltd. (*supra*)** has, in paragraphs 56 and 57 further held as follows:

“56. Following the aforesaid dictum, this Court in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], had taken notice of the fact that the High Court had referred to the arbitration clause which the writ petitioner could take recourse to, to hold that the rule of exclusion of

writ jurisdiction is a rule of discretion and not of compulsion. In an appropriate case, in spite of availability of alternative remedy, the writ courts can exercise its jurisdiction at least in three contingencies, as referred to above. In the facts of the said case, this Court interfered observing that there were peculiar circumstances as the dealership had been terminated on an irrelevant and non-existence cause. Therefore, there was no need to drive the parties to initiate arbitration proceedings.

“57. Following the judgments in Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], this Court in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : (2021) 88 GSTR 228] laid down the following principles : (Radha Krishan Industries case [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : (2021) 88 GSTR 228], SCC p.795, para 27)

“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.

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.”

The matter was then referred to a five Judge Bench and as such the judgment in Radha Krishan Industries vs State of Himachal Pradesh & Ors., Supra) still stands.

The judgment of the Supreme Court in Radha Krishan Industries vs State of Himachal Pradesh & Ors., (Supra), was followed in Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Anr.,(Supra).

In the present case, this Court finds that there is no prima facie case of any infringement of fundamental right been made out.

There has been also no prima facie violation of the principle of natural Justice.

Finally, the controversy involved in this case relates to facts based on records, provisions of the KMC Act, 1980, etc. And, as such, the controversy is **not purely legal one**. Hence, the writ Court is not required to hear the writ petition on the basis of the findings in *Godrej Sara Lee Ltd. (supra)*.

A case of the order or proceedings being without jurisdiction is also not *prima facie* made out and is an issue which is to be considered by the appellate authority and finally there is also no challenge to the vires of a legislation in the present case, which though the petitioner has tried to bring in after 12 years.

The petitioner further submits that as the Supreme Court has permitted amendment of the writ application of 2013, the petitioner cannot be relegated to the appellate authority. It appears that the amendment allowed by the Supreme Court was regarding the facts of the other two writ applications to be brought on record in WPO/847/2013. As such, the point of maintainability which is being now considered by this Court, was not before the Hon'ble Supreme Court. And in view of the observation as made above, this court finds that this is a fit case where the petitioner should have been invoked the provision of appeal.

Accordingly, WPO/847/2013 along with IA No.GA/2/2025, WPO/354/2020 and WPO/354/2020 with IA No.GA/1/2025 and other pending applications, if any, are disposed of with the direction that the petitioner shall be at liberty to prefer an appeal against the order under challenge in the present writ application within 30 days from the date of this order. Leave is also granted to the petitioner to raise all issues in the present writs before the appellate authority.

The period of limitation is accordingly extended for a period of 30 days from the date of this order in the interest of justice.

The point of limitation is decided accordingly.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent certified website copy of this Order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)