



2025:DHC:602



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 24th January, 2025

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W.P.(C) 3442/2024

RINA DEVI

.....Petitioner

Through: Mr. Rohit Kathuria, Mr. Sagar Chauhan, Mr. Dhruv Varma and Mr. Shekhar Nehra, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Mehak Nakra, Additional Standing Counsel with Ms. Bhavya Nakra, Mr. Aditya Goyal, Ms. Gunjan Suyal and Ms. Salonee, Advocates for R1.

Mr. Manish Kumar Srivastava, Mr. Moksha Arora and Mr. Santosh Ramdurg, Advocates for R2.

Mr. Mohit Paul, Ms. Rangoli Seth and Mr. Rohit, Advocates for R3.

Inspector Satbir Singh, PS-Jaitpur.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition is preferred by the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

"In light of the submissions made herein above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a writ/order/direction in the nature of a writ of mandamus thereby directing Respondents to pay compensation of Rs. 44,75,080 in favour of the Petitioner, as mentioned categorically:

A. Direct The Respondents to pay the compensation of Rs 5,00,000/- fixed by Victims of Electrical Accident Regulations

B. Direct The Respondents to pay the compensation of Rs 39,25,080/-



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calculated according to minimum wages fixed by Government of NCT of Delhi.

C. Order for investigation and conducting periodical checks on electrical installations and take adequate precautions to ensure that no live parts are so exposed as to cause any danger.

D. Direct The Respondents to award cost of litigation of Rs 50,000/- (Fifty Thousand Only) in favour of the Petitioner.”

2. Case of the Petitioner is that on 20.03.2016, Petitioner obtained the electricity connection from BSES Rajdhani Power Limited ('BSES'). On 11.06.2023, daughter of the Petitioner went to the terrace of his neighbour's house and on coming in contact with the high voltage wires over the rooftop, was electrocuted and succumbed to the injuries after five days of hospitalisation.

3. Learned counsel for the Petitioner submits that it is the sole negligence of the Respondents which caused the electrocution and Respondents are thus liable to compensate the Petitioner. It is urged that as per Rules 46, 50 and 91 of Indian Electricity Rules, 1956 made under Electricity Act, 1910, Electricity Department is bound to conduct periodical checks on electrical installations and take adequate precautions to ensure that no live parts are exposed so as to cause any danger and in the present case, no safeguards/precautions were followed by the Respondents leading to Petitioner's daughter getting electrocuted due to the hanging live wires.

4. It is argued by the learned counsel that in case titled ***Munni Devi v. Government of NCT of Delhi and Another, 2021 SCC OnLine Del 46***, this Court has in similar facts where death occurred due to electrocution held the Respondents guilty of negligence and awarded compensation. Delhi Electricity Regulation Commission has fixed Rs.5 Lac compensation for



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loss of human life as a result of an electrical accident under Chapter-III, Regulation-6.1 of Delhi Electricity Regulatory Commission (Compensation to Victims of Electrical Accidents) Regulations, 2021.

5. It is submitted that Petitioner has quantified the compensation at Rs.42,77,298/- and is entitled to be awarded the said amount on the principle of *res ipsa loquitur* since the facts clearly show that there is conscious negligence on the part of the Respondents for lack of taking effective preventive steps, knowingly fully well that overhead transmission line was in violation of Regulation 63 of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation, 2023. Learned counsel relies on the judgment of the Supreme Court in ***M.P. Electricity Board v. Shail Kumari and Others, (2002) 2 SCC 162***, wherein the Supreme Court held that if a person/entity undertakes an activity involving hazardous or risky exposure to human life and causes harm, then rule of strict liability will apply. In ***H.S.E.B. and Others v. Ram Nath and Others, (2004) 5 SCC 793***, the Supreme Court has held that if there are complaints that wires are drooping and touching the houses, the concerned authority must ensure that required distance is kept between the houses and wires, even if the houses are unauthorized.

6. Learned counsel for Respondent No.2/BSES Rajdhani Power Limited submits that this petition raises disputed questions of fact which cannot be adjudicated without trial and evidence and therefore writ remedy cannot be availed of by the Petitioner. There is no evidence on record to suggest that the unfortunate incidence occurred on account of any negligence on the part of the answering Respondent. The Extra High Voltage ('EHV') overhead electric lines and/or the electricity network is owned and maintained by



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Delhi Transco Limited ('DTL') and are not the assets of BSES and hence no liability can be fastened on BSES.

7. Counsel for Respondent No.3/Bhakra Bias Management Board ('BBMB') supports the case of Respondent no.2 to the extent that disputed questions of fact, more particularly, when evidence is required to be led to prove alleged negligence, cannot be adjudicated in a writ petition. Liability of Respondent No. 3 in respect of the alleged negligence is completely denied. It is urged that the 220 KV Ballabgarh-BTPS D/C BBMB Line was commissioned during the years 1968 to 1971 and BBMB complied with the relevant provisions of Indian Electricity Act, 1910 as also the Indian Electricity Rules, 1956 ('1956 Rules'). This line is a very important transmission line which supplies power to Delhi-NCR Region. It emanates from the 220 KV Substation, BBMB, Ballabgarh to BTPS. At the time of commissioning of the line, a right of way was cleared for erection of the line and there was no construction under the High Tension Line.

8. It is further submitted that minimum clearance of buildings/balcony/ boundary wall with respect to HT Transmission Line must be 5.5 Meters (vertical) and 3.8 Meters (horizontal) as per Government of India Gazette dated 24.09.2010. The right of way as per the Chief Electricity Authority Specification 04/2021 must be 35 Meters, which is not being maintained due to illegal construction of the houses in the colony under the HT Line. The house in question bearing no. 648, Lakhpat Colony, Meethapur Extension, New Delhi along with other houses has been constructed by the occupants illegally after the HT Line was commissioned.

9. Every step has been taken by BBMB to ensure that unauthorized constructions are removed /demolished. On 11.04.2015 and 28.10.2022,



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notices were served by BBMB to residents of the colony under Rule 82 of 1956 Rules to demolish the illegal constructions that were in close vicinity to the transmission line, but no action was taken. The owner of the house in question was also notified much earlier, to remove the illegal construction, but he did not do so. It is the responsibility of the Municipal Corporation to carry out period checks with respect to illegal constructions under the HT Line, but this duty was never fulfilled. BBMB had sent a communication to MCD on 02.09.2015 as also a letter dated 09.03.2016 to the concerned SDM, to remove the illegal civil structures in the colony, but there was no action. It is not known exactly how the accident in question occurred but certainly there was no negligence on the part of BBMB in maintaining the transmission lines and in any case, it will be a matter of trial as to who can be held guilty merely on the asking of the Petitioner, no liability for negligence can be fastened on BBMB. For the proposition that disputed questions of fact ought not to be entertained by a writ Court under Article 226 of the Constitution of India, reliance is placed on the judgments of the Supreme Court in ***Chairman Grid Corporation of Orissa Ltd. (Gridco) and Others v. Sukamani Das (Smt.) and Another***, (1999) 7 SCC 298; ***S.P.S. Rathore v. State of Haryana and Others***, (2005) 10 SCC 1; ***Orissa Agro Industries Corpn. Ltd. and Others v. Bharati Industries and Others***, (2005) 12 SCC 725; and ***Union of India and Others v. Puna Hinda***, (2021) 10 SCC 690.

10. Heard learned counsels for the parties and examined their submissions.

11. There can be no dispute that the incident involving the death of Petitioner's daughter is an unfortunate incident. Petitioner calls upon this



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Court to hold that the Respondents are guilty of negligence and award compensation, as claimed. Respondents deny that there is negligence on their part and take a preliminary objection to the maintainability of the petition as it involves disputed questions of fact and also urge that award of compensation/damages is a matter of evidence and trial.

12. The moot question that this Court is required to consider is whether this writ petition is maintainable on account of the disputed questions of fact arising between the parties, wherein Petitioner alleges negligence by the Respondents. In ***Chairman Grid Corporation of Orissa Ltd. (Gridco)*** (*supra*), the Supreme Court reversed the decision of the High Court awarding compensation to the legal heirs of the deceased, who came in contact with an electric wire lying across the road and succumbed to the injuries. Negligence was alleged against GRIDCO and its officers for failing to maintain electricity transmission line. The Supreme Court held as follows:-

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised



intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

13. In ***Tamil Nadu Electricity Board v. Sumathi and Others*, (2000) 4 SCC 543**, the question before the Supreme Court was whether the High Court can under Article 226 of the Constitution of India award compensation for death caused due to the electrocution on account of improper maintenance of electric wire or equipment by the Tamil Nadu Electricity Board and/or appoint an Arbitrator to decide the quantum of compensation. The Madras High Court had referred the matter to the Arbitrator at the instance of the legal heirs of the deceased, who died due to electrocution. Taking note of the earlier decisions of the Supreme Court in ***Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and Others*, (1993) 2 SCC 746**, and ***Chairman, Railway Board and Others v. Chandrima Das (Mrs.) and Others*, (2000) 2 SCC 465**, and distinguishing them, the Supreme Court held as follows:-

“12. Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. The appellant had also raised the plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise



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of jurisdiction by the High Court in entertaining the petitions was not proper and the High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act.”

14. In ***Orissa Agro Industries Corpn. Ltd. (supra)***, the Supreme Court held that where complicated questions of fact are involved and matter requires thorough proof on factual aspects, High Court should not entertain the writ petition. In some of the cases no doubt compensation has been awarded by the Supreme Court and the High Courts by applying the strict liability principle in case of death due to electrocution but in my view, these have been the cases where facts are undisputed or as in the case of ***M.P. Electricity Board (supra)***, heavily relied upon by counsel for the Petitioner, where the appeal was against a judgment in a civil suit and there was no occasion to consider the maintainability of a writ petition for the same relief under Article 226 of the Constitution of India. However, whenever facts are seriously disputed, even in cases of death by electrocution, the common thread that runs in the judgments is that a writ Court will not exercise jurisdiction to come to a conclusion of negligence and/or award compensation. In this context, I may also allude to the judgment of this Court in ***Abdul Haque & Ors v. Bses Yamuna Power Ltd. & Ors., 2007 SCC OnLine Del 1001***, wherein Court has held that while the factum of death was not disputed but the electricity distribution company denied its liability on the ground that the live wire with which the victim came into contact was illegally tapped, only remedy was approaching the Civil Court. In the said judgment, the Court also considered the judgments in ***M.P. Electricity Board (supra)***, as also the judgment in ***H.S.E.B. and Others (supra)***, relied on by the Petitioner herein and relevant paragraphs are as



follows:-

“21. Two years later in M.P. Electricity Board v. Shail Kumari (2002) 2 SCC 162 a two-Judge Bench of the Hon'ble Supreme Court applied the strict liability principle to award compensation in a case of death due to electrocution. However, an important distinguishing feature in this case was that the Court was considering an appeal arising out of a judgment in a civil suit filed by the heirs of the victim for compensation. Therefore, the Hon'ble Supreme Court had no occasion to consider the issue of maintainability of a writ petition for the same relief under Article 226 of the Constitution.

22.1 The question of payment of compensation in a writ petition under Article 226 for the death due to the electrocution again came up for consideration before a two-Judge Bench of the Hon'ble Supreme Court in Haryana State Electricity Board v. Ram Nath (2004) 5 SCC 793. The facts here were that a five-year old child died as a result of coming into contact with a high-tension wire which was passed over the roof of her house. It is noticed in the counter affidavit filed in the writ petition there was no denial to these averments except stating that “the entire colony was an unauthorized colony and that unauthorizedly the height of the houses had been raised.” The Hon'ble Supreme Court observed:

“To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the facts that there is a deemed admission that the wires were drooping and touching the roofs.”

22.2 In Ram Nath, the Hon'ble Supreme Court noticed the judgment of Sukamani Das but impliedly distinguished it on the ground that the case being decided by it (i.e. Ram Nath) did not involve disputed questions of fact. The Court found that (SCC, p 795)

“.....the unauthorized constructions have been put up close to their wires it is their duty to ensure that the construction is got demolished by moving the appropriate authorities and if necessary, by moving the court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorized.”

23.1 The question of maintainability of a writ petition for claiming compensation for a death due to electrocution was again examined by a



two-Judge Bench of the Hon'ble Supreme Court in *SDO, Grid Corporation of Orissa Limited v. Timudu Oram* (2005) 6 SCC 156. The petitions were in fact part of a batch of writ petitions that were disposed of by the judgment in *Sukamani Das*. However, for some reason, they were not taken up along with that batch. The facts were more or less similar. A co-villager of the deceased had taken power supply to his LI point. Some other villagers had illegally taken power supply from this line by using a hook from the LI point to their houses by means of an uninsulated GI pipe. The unauthorized line got disconnected and fell on the ground. On 22.8.1978 when the father of the respondent was coming along that way, his bullock came in contact with the live GI wire and got electrocuted. His wife came to his rescue and hearing her cries, her father while trying to rescue her also got electrocuted. A writ petition under Article 226 of the Constitution claiming compensation was filed. In the counter affidavit GRIDCO denied its negligence pointing out that the electric wire got snapped on account of the illegal hooking.

23.2 In *Timudu Oram*, an attempt was made to get the Hon'ble Supreme Court to distinguish its earlier ruling in *Sukamani Das* by referring to the decisions in *Shail Kumari* and *Ram Nath*. Nevertheless, the Supreme Court held that the case would be covered by *Sukamani Das* since it involved disputed questions of fact. It was held that the High Court erred in entertaining the writ petition under Article 226 of the Constitution after a lapse of ten years.

24. The approach of the Hon'ble Supreme Court in certain other cases where writ petitions have been filed claiming compensation for constitutional wrongs, involving death or injuries not due to electrocution, has been different. The most prominent among these decisions are *Rudul Sah v. State of Bihar* (1983) 3 SCR 508, *Nilabati Behera (supra)* *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 and *Chairman, Railway Board v. Chandrima Das (supra)*. Significantly, some of these judgments have been noticed in *Tamil Nadu Electricity Board v. Sumathi (supra)* and it has nevertheless been held that in cases of electrocution involving disputed questions of fact a writ petition under Article 226 is not maintainable. It is in the electrocution cases as can be seen from the discussion hereinabove, that the approach has been different. In *Ram Nath*, the Hon'ble Supreme Court upheld the award of compensation by distinguishing *Sukamani Das*. Later, in *Timudu Oram*, after noticing and distinguishing *Ram Nath* the Hon'ble Supreme Court reiterated and followed the decision *Sukamani Das* holding that a writ petition under Article 226 was not maintainable. The decision in *Sumathi* is also to the same effect. All these decisions are of two-Judge benches. *Timudu Oram*, being the most recent decision, and consistent with *Sukamani Das* and *Sumathi* must be held to express the present status of the law and is binding.



25. The net result is that in cases involving claim for compensation on account of death due to electrocution, where the facts are disputed, the Hon'ble Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution. The remedy in such cases will obviously be only before the Civil Court.

26. Resultantly, the question whether the alleged illegal tapping of electricity, even if proved in a given case, will provide a defence to the electricity distribution company to avoid the applicability of the strict liability principle, need not be examined in the present proceedings.

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33. In the cases on hand, the victims belong to the economically weaker section of the society. The deaths of the victims have indeed occurred in tragic circumstances. The fact of death due to electrocution in each case is not disputed. However, the respondent electricity distribution company has denied liability on the ground that the live wire with which the victim came into contact was illegally tapped. In *Sukamani Das* it was held that "mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation." The facts of the cases on hand are in that sense not very different from the facts that arose for determination in the electrocution cases decided by the Hon'ble Supreme Court which have been referred to hereinabove.

34. This Court is conscious that relegating these petitioners to the civil court may delay the resolution of their claims but, in light of the binding decisions of the Hon'ble Supreme Court in *Sukamani Das*, *Sumathi* and *Timudu Oram*, this Court cannot possibly entertain these writ petitions and grant compensation by applying the principle of strict liability or *res ipsa loquitur*.

35. This Court accordingly upholds the preliminary objection of the respondents that since these petitions involve adjudication of disputed questions of fact, they are not maintainable as such under Article 226 of the Constitution. However, it is made clear that it will be open to the petitioners to avail of other appropriate legal remedies in accordance with law. It is also made clear that the petitioners would be able to claim the benefit of Section 14 of the Limitation Act to explain the delay if any in approaching the civil court."

15. Recently, a Division Bench of this Court in ***Harpati and Others v. State of NCT of Delhi and Others***, 2023 SCC OnLine Del 4607, observed as follows:-



“16. In the present case, the Petitioners have sought compensation from the Respondents for causing the death of Naveen due to their mismanagement and criminal negligence, which has resulted in a violation of their fundamental rights. The Respondent Hospital however has disputed the facts stated by the Petitioners in the present writ petition, including material details such as the date and time on which the patient was brought to the Respondent Hospital by the Petitioners, the treatment given by the doctors and the conduct of the staff and officials of Respondent No. 3. It is in dispute whether there has been any misconduct or criminal negligence on the part of the doctors while treating the patient which led to the death of the patient, or if the death has occurred despite best efforts made by the doctors. It is also not clear whether the death of the Petitioner has occurred due to a shortage of oxygen in Delhi during the peak of the COVID-19 Pandemic. GNCTD and NDMA have also stated that they have come out with policies and guidelines for the grant of compensation to the next of kin of those who have died due to the COVID-19 virus, however it is not clear from the facts whether the Petitioner would be entitled to compensation under these policies. These are all important questions of fact which are in dispute and need to be answered to decide the question of whether the Petitioners are entitled to any compensation.

17. It is settled law that a High Court should not exercise its jurisdiction under Article 226 of the Constitution of India when it raises disputed question of facts. The Hon'ble Supreme Court in the case of Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das, (1999) 7 SCC 298 was dealing with the question of whether the High Court had made an error in entertaining a writ petition filed seeking compensation for the death of a person due to electrocution, which had allegedly been caused due to the negligence of the authorities. The Apex Court in the said case observed as under:

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence



of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”

(emphasis supplied)

18. The aforesaid judgment has been relied/reiterated by the Apex Court in *S.P.S. Rathore v. State of Haryana*, (2005) 10 SCC 1 wherein it observed as follows:

“16. In Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In T.N. Electricity Board v. Sumathi [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.”

(emphasis supplied)

19. Similarly, the Hon'ble Supreme Court in *Shubhas Jain v. Rajeshwari*



Shivam, 2021 SCC OnLine SC 562 has held as under:

“26. 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. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

20. Subsequently, in *Union of India v. Puna Hinda*, (2021) 10 SCC 690, the Hon'ble Supreme Court has observed:

“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.”

21. Recently, the Hon'ble Supreme Court in the case of *M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*, (2023) 2 SCC 703, while dealing with the issue of exercise of writ jurisdiction by a Court in matters arising out of a contract, has stated:

“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.”

(emphasis supplied)



22. A reading of the aforesaid judgments makes it clear, that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. Particularly in cases where tortious liability and negligence is involved, it has been held that the remedy under Article 226 may not be proper. In the instant case, the relief of compensation sought by the petitioners is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated only on the basis of affidavits. In view of the aforesaid, it would not be appropriate for this Court to entertain the instant writ petition as there are disputed questions of fact involved, the resolution of which is necessary, as an indispensable prelude to the grant of the relief sought.

23. The Petitioners are at liberty to take recourse to other alternate remedies available to them under the law.”

16. Therefore, in light of the aforesaid judgments and taking into consideration that Respondents have seriously disputed their liability as also that there was no deficiency in maintaining the transmission line and have also taken a categorical stand that the high tension transmission line was commissioned way-back in 1968 to 1971 in accordance with the 1956 Rules and thereafter the occupants of the colony in question have raised illegal constructions resulting in the height between the transmission line and the roof of the houses reducing, the question of alleged negligence cannot be decided in a writ petition. Significantly, a stand is also taken by BBMB that several notices have been issued to the occupants to demolish the unauthorized constructions followed by notices to the MCD, but no action has been taken. This Court accordingly upholds the preliminary objection of the Respondents that writ petition is not maintainable and the same is accordingly dismissed.

17. It would be open to the Petitioner to avail of the appropriate remedy in accordance with law. It is made clear that this Court has not expressed



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any opinion on the merits of the case. It is also made clear that if the Petitioner takes recourse to a civil remedy where limitation may arise, the appropriate Court may while considering the delay, take into consideration the filing of this writ petition, in light of provisions of Section 14 of the Limitation Act, 1963.

18. Writ petition stands disposed of.

JYOTI SINGH, J

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