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

+ **W.P.(C) 16493/2024**

JAI DEVI

.....Petitioner

Through: **Mr. Bharat Malhotra, Advocate.**

versus

**TATA POWER DELHI DISTRIBUTION LIMITED
& ANR.**

.....Respondents

Through: **Mr. Manish Srivastava, Mr. Moksh Arora and Mr. Santosh Ramdurg, Advocates for Respondent No.1/TPDDL.**

Mr. Anuj Aggarwal, ASC with Mr. Yash Upadhyay, Mr. Siddhant Dutt and Ms. Ishita Pandey, Advocates for Respondent No.2/DPCL.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.01.2025

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CM APPL. 69700/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This writ petition is preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to Respondents No.1 and 2 to shift the electricity supplying pole bearing No.523-40/4, allegedly installed within 15 inches of Petitioner's house on Plot No.A-16, situated in residential colony known as Lakhi Ram Park, New Delhi. Petitioner also seeks a direction to ensure provision of an alternate space and to cover up the expenditure for the same.

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4. Learned counsel for Respondents No.1 and 2 takes a preliminary objection to the maintainability of this writ petition and submits that the remedy for the Petitioner lies in approaching the Sub-Divisional Magistrate of the concerned area. In this context, counsel refers to the two orders of this Court in ***Shri Pal Singh v. Govt of NCT of Delhi Through Lieutenant Governor & Ors., W.P.(C)15409/2023*** decided on 1308.2024; and ***Kalyani India Pvt. Ltd. v. Govt. of NCT of Delhi and Ors., W.P.(C)718/2020*** decided 20.01.2020.

5. Having heard learned counsel for the parties and having perused the orders passed by the Coordinate Benches of this Court, this Court finds merit in the preliminary objection, that Petitioner must avail the alternate remedy available to him before the learned SDM. Relevant part of the order in ***Shri Pal Singh (supra)***, wherein a similar contention was raised *albeit* in the context of a transformer, reads as follows:

“2. Learned counsel appearing for the respondent-DISCOM, at the outset, raises a preliminary objection regarding maintainability of the instant writ petition. While placing reliance on a decision passed by this Court in W.P. (C) 718/2020, he submits that the petitioner can resort to an alternate efficacious remedy. The Court, vide order dated 20.01.2020 in the aforesaid case, considered the prayer with respect to removal/relocation/transfer of a transformer from the property of the petitioner company therein and in terms of paragraph Nos.5 to 9 of the said decision, following directions came to be issued:-

“5. Hence, according to the aforesaid provision in case, the owner of a land raises objections in respect of the works to be carried out and shows sufficient cause, the District Magistrate or the Commissioner of Police may direct such work, support, etc. to be removed or altered.

6. Learned counsel for respondent No. 2 states that the advantage of the district magistrate dealing with the matter is that he is in a position to also suggest an alternate site for re-location of the transfer. He states that on shifting of the transformer in question,



there has to be an alternate site and it cannot be removed forthwith as is sought to be urged by the petitioner.

7. In my opinion, the plea of learned counsel for respondent No. 2 has merits. The petitioner has an alternative remedy. It would be appropriate if the concerned district magistrate may deal with the plea of the petitioner.

8. Let the concerned District Magistrate/Divisional Commissioner treat the present writ petition as representation of the petitioner and pass an appropriate order within 12 weeks from today. An opportunity would also be given to the petitioner and respondent No. 2 an oral hearing.

9. With the above, the present petition stands disposed of. Pending application also stands disposed of.”

10. Learned counsel appearing for the petitioner distinguishes the order which is sought to be relied upon by the respondent on the ground that in the instant case, the transformer in question is situated on the adjacent land to the petitioner. He, therefore, submits that he is not covered as per the provisions of Works of Licensees Rules, 2006 [“Licensees Rules”].

4. The Court in another W.P.(C) 9582/2024 vide order dated 16.07.2024, passed the following directions:-

“3. In view of the aforesaid, the instant writ petition is disposed of with directions to the District Magistrate/Divisional Commissioner to treat this petition as a representation to have been submitted by the petitioner and to pass an appropriate order within a period of twelve weeks from the date of receipt of a copy of this order. Let a copy of the petition with all annexures be placed by the petitioner before the authority concerned.

4. Let an opportunity of hearing be also extended to all concerned.”

11. The Court has also considered the provisions of Rule 3 of the Licensees Rules, which read as under:

“3. Licensee to carry out works --(1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supplyline or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;



(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2)When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3)Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4)Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

12. Rule 3(1)(b) of the Licensees Rules stipulates that if the owner or occupier of any building or land on which work is carried out has any grievance, he is entitled to approach the District Magistrate or Commissioner of Police. A meticulous scrutiny of the Licensees Rules would indicate that the said rules do not, explicitly or even impliedly, place any fetters on the aggrieved person to approach the concerned authority. The words „owner or occupier of the building or any land” employed in Rule 3(1)(b) of the Licensees Rules will have to be given a wider connotation keeping in mind the underlying purpose of the provisions. The scheme of the Rules in question endeavours to provide grievance redressal mechanism owing to electric supply line or any other works being carried out by the licensee. Thus, if the said provision would not be construed to take in its sweep the occupiers of adjoining land, the



same would undermine the effectiveness of the provision in question. The said approach would ensure that the remedial provision crafted to address the root cause of the dispute in the instant case may remain relevant in combating the issue at hand.

13. Admittedly, the petitioner is an occupier of the adjoining land and therefore, he cannot be outrightly shorn of his right to approach the District Magistrate. Any other narrower interpretation would lead to absurdity, wherein, though being almost equally affected, the owner of the land would enjoy the right to approach the District Magistrate, whereas, the owner of the adjoining land would lack an opportunity to avail the said remedy. Notably, the order dated 20.01.2020 also records that the Court found merit in the argument put forth by respondent no.2 therein that the District Magistrate shall be in a better position to ascertain the alternative site where the transformer can be shifted. Thus, in light of the aforesaid, the argument of the petitioner is rejected.

14. Since the petitioner has an alternative remedy, therefore, the Court is not inclined to entertain the instant writ petition. Accordingly, the same is dismissed with a liberty to approach the aforesaid authority or to take any other remedy in accordance with law.

15. All rights and contentions of the parties are left open.”

6. In view of the above, this writ petition is disposed of with liberty to the Petitioner to take recourse to appropriate remedy before the Sub-Divisional Magistrate. All rights and contentions of the parties are left open.

JYOTI SINGH, J

JANUARY 22, 2025

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