$-

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 10646/2021 and CM APPL.50388/2023 & 24104/2024**

Between: -

RESIDENT WELFARE ASSOCIATION
12 BLOCK SUBHASH NAGAR
THROUGH ITS PRESIDENT
SHASHI KANT ALAGH

HAVING OFFICE AT
12/2, SUBHASH NAGAR,
NEW DELHI -110027 .....PETITIONER

(*Through: Ms. Sonal Alagh, Mr. Aviral Kapoor and Mr. Rishabh Kapoor, Advocates)*

AND

1. KISHAN DEVNANI
EXECUTIVE ENGINEER- (M-1)/WZ
SOUTH DELHI MUNICIPAL CORPORATION,
HAVING OFFICE AT:
SOUTH DELHI MUNICIPAL CORPORATION,
OPPOSITE VASUDEV PARK,
RAJOURI GARDEN - 110027 .....RESPONDENT NO.1

2. SOUTH DELHI MUNICIPAL CORPORATION
TIRROUGH COMMISSIONER
HAVING OFFICE AT:
SOUTH DELHI MUNICIPAL CORPORATION
DR. S.P.M. CIVIC CENTRE, MINTO ROAD
NEW DELHI - 100002

.....RESPONDENT NO.2

3. DELHI DEVELOPMENT AUTHORITY
HAVING ITS OFFICE AT

D-BLK, 3RD FLOOR,
VIKAS SADAN, NEAR INA MARKET,
NEW DELHI-110016

.....RESPONDENT NO.3

4. SPECIAL TASK FORCE
THROUGH ITS CHAIRMAN,
HAVING OFFICE AT:
BARAPULLAH ROAD,
BESIDES SBI BANK, AVIATION COLONY,
INA COLONY, NEW DELHI 110023 .....RESPONDENT NO.4

5.RAJOURI APARTMENTS
THROUGH PRESIDENT / GENERAL SECRETARY
HAVING RESIDENCE AT
FLAT NO. 62
RAJOURI APARTMENTS, SFS FLATS,
RAJOURI GARDEN,
NEW DELHI-110027 .....RESPONDENT NO.5

(*Through: Mr. Rakesh Mittal, SC for MCD with Ms. Yamini Mittal, Adv. for R-1&2.*
Mr. Shreyash U. Lalit, Adv. alongwith Ms. Runjhun Garg and Mr. Himanshu Vats, Advs. for DDA.
Mr. Sunil Dalal, Senior Advocate with Ms. Manisha Saroha, Mr.Mahabir Singh, Mr. Navish Bhati, Advocates for R-5.)

% Reserved on: 26.07.2024
Pronounced on: 16.08.2024

J U D G M E N T

The instant petition has been filed by the petitioner-Resident Welfare Association Block-12, Subhash Nagar, New Delhi [hereinafter referred as "*petitioner-Association*"] being aggrieved by the purported inaction of the erstwhile South Delhi Municipal Corporation and alleged wrongful closure of the complaints.

2. It is the petitioner-Association's case that members of the petitioner-Association are residents of 12/1 to 12/20 Subhash Nagar,

New Delhi and their houses are located adjacent to SFS Housing at Subhash Nagar (now known as "*Rajouri Apartments*"). It is alleged that the residents of respondent No.5-Rajouri Apartments have wrongfully and illegally constructed a boundary wall, opposite to the residences of the members of the petitioner-Association, thereby, encroaching upon the government land. The boundary wall in question, therefore, caused a public nuisance and blocked the passage of the members of the petitioner-Association to approach public utilities like parks, gymnasium, and recreation centres, including Priyadarshini Park. Aggrieved thereto, the petitioner-Association has filed the instant petition and prayed for the following reliefs:-

> *"a. Direct the office of Executive Engineer SDMC and Commissioner of SDMC to demolish the Boundary Wall constructed illegally opposite to residence of member of Petitioner Association. And/or*
>
> *b. Direct the office of Executive Engineer SDMC (Respondent No. 1), to act in furtherance to its letter dated December 15, 2020 and December 28, 2020 addressed to Respondent No. 6 (SFS Flats) to demolish the Boundary wall AND*
>
> *c. Direct the office of Executive Engineer SDMC (Respondent No. 1), to act in furtherance to its letter dated March 28, 2013 addressed to Petitioner and clear the passage to provide access to Priyadarshini Park , recreation center and other public utilities."*

3. On notice being issued to the respondents, a status report came to be filed by the respondent-Corporation and counter affidavits were filed on behalf of the respondent-Delhi Development Authority [hereinafter referred as "*respondent-DDA*"] and respondent No.5-Rajouri Apartments.

4. On 20.01.2022, this Court noted that there was a dispute with respect to the date on which the boundary wall was constructed and directed the respondent-DDA to verify whether the boundary wall was located within the allotted land to respondent No.5-Rajouri Apartments or outside it.

5. *Vide* another order dated 18.07.2023, it was noted that individual flats were allotted to the members of the respondent No.5-Rajouri Apartments Society and there was no layout plan with respect to the entire colony. The respondent-DDA was, therefore, directed to state as to whether the boundary wall in question was constructed by it prior to the allotment of flats as contended by respondent No.5. Meanwhile, in accordance with the order dated 18.07.2023, petitioner-Association has placed on record copies of the layout map.

6. On 27.09.2023, it was stated on behalf of the respondent-DDA that the layout plan did not include the boundary wall at the time of allotment of land to respondent No.5.

7. Therefore, on a conspectus of the factual matrix as enumerated above, it is seen that on one hand, the petitioner-Association's case is that the boundary wall was constructed by the residents of respondent No.5-Rajouri Apartments after allotment of the land to them, whereas on the other hand, the case of respondent No.5-Rajouri Apartments is that the boundary wall existed since inception.

8. Ms. Sonal Alagh, learned counsel appearing for the petitioner-Association, while challenging the impugned inaction of the respondents, submits that the layout plan as placed on record by her and the stand of the respondent-DDA unequivocally establish that the boundary wall in question has been constructed by the residents of respondent No.5-Rajouri Apartments, without there being any approval from any Authority. She has taken the Court to the concerned layout plan in order to demonstrate that at the time of allotment of the land to respondent No.5-Rajouri Apartments, the said boundary wall was admittedly not in existence.

9. Mr. Rakesh Mittal, learned counsel appearing for the respondent-Corporation submits that the flats were constructed by the

respondent-DDA in the year 1984, which continued to be maintained by the respondent-DDA till 1997. It is revealed from the status report that *vide* notification dated 26.11.1997, those 288 flats were handed over to the respondent-Corporation and at that time, the boundary wall was in existence as per respondent No.5-Rajouri Apartments' letter dated 14.12.2012. It is also stated that since the boundary wall was found to be in dilapidated condition, *vide* Work Order dated 20.11.2012, the dilapidated portion of the boundary wall was reconstructed.

10. It is further stated that the subject issue is nearly 35 years old and when the respondent-Corporation sought for clarification from the respondent-DDA regarding the layout plan, the respondent-DDA informed that the construction took place in the year 1984 and the work was executed as per the layout plan. However, since it's an old case, no record as to who had constructed the boundary wall could be made available.

11. Mr. Shreyansh U. Lalit, learned counsel appearing for the respondent-DDA, while placing reliance on its counter affidavit, submits that the instant case does not fall within its jurisdiction as the same relates to unauthorised construction/ illegal construction which is dealt with by the respondent-Corporation. It further states that the area of respondent No.5-Rajouri Apartments was de-notified *vide* notification dated 20.07.1988 and by virtue of the same, the services of the area were handed over to the respondent-Corporation. He, therefore, submits that any activity relating to unauthorized construction etc. will have to be dealt with by the respondent-Corporation.

12. Learned counsel appearing for the petitioner, therefore, taking a cue from the submissions made by the respondent-DDA in its counter

affidavit and also by the respondent-Corporation, strengthens her arguments to justify the petitioner-Association's case arguing that had there been any permission or sanction plan of the boundary wall, the corresponding record must have been produced by the respondent-DDA or by the respondent-Corporation. According to her, in the absence of there being any record relating to the valid construction of the boundary wall, the same has to be treated as unauthorised.

13. Mr. Sunil Dalal, learned senior counsel appearing for respondent No.5- Rajouri Apartments submits that the instant petition is bereft of any merit and is misconceived. He contends that the same deserves to be dismissed as the petitioner-Association is seeking a direction for the removal of the boundary wall with vested interests and to expand their shops which are unauthorisedly constructed and operated in their apartments.

14. It is the specific case of respondent No.5-Rajouri Apartments that on account of the construction carried out by the residents/members of the petitioner-Association encroaching the public land, the width of the road has been reduced substantially from 11 meters to 8 meters and in order to hide their encroachment, they are trying to grab the land of respondent No.5-Rajouri Apartments.

15. Learned senior counsel further submits that the letter dated 17.09.2019 of respondent No.5-Rajouri Apartments clearly states that the boundary wall has existed for almost 30 years. He has also placed on record various photographs to indicate that the same is necessary in order to maintain the privacy between the two resident societies and since it has been in existence since 1988, it could not be said that the same is causing any nuisance in any manner, whatsoever. He, therefore, submits that the Court in the instant writ petition should not entertain the nature of grievance which is put forth by the petitioner.

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

17. The focal issue that requires consideration is whether, keeping in view the disputed factual matrix, the Court should exercise the discretionary power under Article 226 of the Constitution of India or should relegate the parties to take appropriate recourse as per the private law?

Article 226 of the Constitution of India is a Public Law Remedy

18. It is tritely etched in stone that Article 226 of the Constitution of India is a public law remedy. The powers vested under Article 226 of the Constitution of India have to be used sparingly and, in a manner, to proliferate the bonafide aim of the Constitution of India. It is elementary to posit that the writ being a public law remedy should not be exercised to settle the disputes pertaining to private law.

19. The Supreme Court in the case of ***Dwarkanath v. ITO*** [1], discussed the phraseology of Article 226 of the Constitution of India as compared to English Law and emphasised on the prerogative nature of such writs in public law. The relevant extract of the said decision reads as under:-

> *"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of*

[1] (1965) 3 SCR 536.

> *the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary from of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."*

20. Stressing upon the public law character attached with the writ remedy under Article 226 of the Constitution of India, the Supreme Court in the case of ***Life Insurance Corporation of India v. Escorts Ltd. and others***[2], laid impetus on the fact that the Constitutional Courts, as a matter of prudence, should not be venturing into the disputes of private law flavour in the writ jurisdiction. The pertinent observation of the Supreme Court in the said case reads as follows:-

> *"102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder."*

21. The concepts of public law and private law are not always separated with a fine line. At times, the distinction is thin and in such

[2](1986) 1 SCC 264.

circumstances, the task before the Court is complex and delicate. The nature of action, nature of activity carried out by the State or its instrumentality, effect of such action on the public at large, infringement of any statutory or legal right etc. are some of the indicators which could influence the determination in this regard.

Violation of Rights as pre-requisite for invoking Writ jurisdiction

22. In a petition under Article 226 of the Constitution of India, no doubt, the High Court can ensure that no government land is encroached upon by any private individual or no unauthorised construction takes place. This Court in W.P (C.) 638/2024 titled as ***Jamia Arabia Nizamia Welfare Education v. DDA*** in the order dated 20.02.2024 has categorically observed that encroachment is one of the worst forms of civil wrongs as it is like committing a 'dacoity' in which the landowning agency itself loses its land and the public at large loses a valuable asset.

23. It is unequivocally stated that encroachment upon government land must be met with a stern action because in such cases, encroachers are not only unjustly enjoying the government land but also curtailing the rights of citizens at large from accessing the public land. However, the petitioner, in such cases, has to establish the violation of the statutory rules or regulations and the corresponding failure on the part of the respondent Authority against whom the writ is sought to be issued.

24. The Supreme Court in the case of ***Hindustan Petroleum Corporation Limited and others v. Dolly Das***[3] has held that for invoking the writ jurisdiction, involvement of any constitutional or statutory right is essential and in the absence of a statutory right, the

[3] (1999) 4 SCC 450.

remedy under Article 226 of the Constitution of India could not be availed to claim any money in respect of breach of contract, tort or otherwise. It was reiterated that in absence of any constitutional or statutory rights being involved, a writ proceeding would not lie to enforce a contractual obligation even if it is sought to be enforced against the State or its authorities.

25. This Court in the case of ***Rajendra Motwani v. MCD***[4], has categorically held that illegal construction *per se* does not give any person, a right to knock on the doors of the Constitutional Courts under Article 226 of the Constitution of India unless and until his individual or legal right was infringed. The relevant extract of the said decision reads as under:-

> *"10. The second reason for rejecting the argument urged on behalf of the appellants/plaintiffs is that an illegal construction in itself does not give any legal right to a neighbor. An illegal construction always no doubt gives locus standi to the local municipal authorities to seek removal of the illegal construction, but, a right of a neighbor only arises if the legal rights of light and air or any other legal right is affected by virtue of the illegal construction of the neighbor. Legal right to light and air is only in terms of Section 15 of the Easements Act, 1882 which requires a cause of action to be laid out and proved that right to light and air has been enjoyed for 20 years and only on completion of 20 years there is a right to acquisition by prescription in the easementary rights. It is relevant to note that even after acquisition of easementary rights of prescription, yet, right to injunction for a neighbor is not absolute and is covered by Section 33 of the Easements Act which requires that disturbance to the easementary rights must actually cause substantial damage to a neighbor and the infraction materially diminishes the value of the dominant heritage with the fact that there is material interference in the physical comfort of* the *neighbor of living in his own house or prevents the neighbor from carrying on his accustomed business in the dominant heritage/his own house. All these are factual aspects and admittedly there is no cause of action which is laid out in the plaint in terms of Sections 15 and 33 of the Easements Act that right to easement of the appellants/plaintiffs has become*

[4] 2017 SCC OnLine Del 11050.

> *absolute as it has been enjoyed for 20 years and that in fact after rights to easement are acquired by prescription there is also a substantial damage to the appellants/plaintiffs or there is material interference in the physical comfort of the appellants/plaintiffs or the appellants/plaintiffs being prevented from carrying on his accustomed business in their own dominant heritage/own property."*

26. The same principle was also upheld in the decisions of this Court in the case of ***Vishwas Pathak v. MCD***[5], ***Shiv Kumar v. South Delhi Municipal Corporation***[6], ***Shiv Kumar v. South Delhi Municipal Corporation***[7]**,** wherein, it was reiterated that the Writ Court cannot entertain a petition when the individual or legal rights are not infringed.

Writ Jurisdiction in Cases involving disputed questions of facts

27. Yet another facet of the writ remedy under Article 226 of the Constitution of India is that the Constitutional Courts cannot be expected to conduct a roving or fishing enquiry in cases where contentious issues of facts exist. The Supreme Court in the case of ***Radha Krishan Industries v. State of H.P.***[8] has held that in cases where the disputed questions of facts are involved, the Court may decline to entertain the writ petition on that perspicuous count. The relevant extract of the said decision reads as follows:-

> *"(vi) 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."*

[5] 2024 SCC OnLine Del 4171.
[6] 2021 SCC OnLine Del 4323.
[7] 2021 SCC OnLine Del 4323.
[8] (2021) 6 SCC 771.

28. The Supreme Court in the case of ***Shubhas Jain v. Rajeshwari Shivam***[9], has held that the Constitutional Courts, while exercising the writ jurisdiction, should restrain themselves from adjudicating the hotly disputed question of facts. The Court 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."*

29. Furthermore, in the case of ***Union of India v. Puna Hinda***[10], the Supreme Court has observed that in cases where disputed questions of facts are involved, the writ jurisdiction is not amenable. The relevant observations of the Supreme Court as observed in the said case read 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 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."*

30. At this juncture, it is apropos to lend credence to the observations of the Constitution Bench decision of the Supreme Court

---

[9] 2021 SCC OnLine SC 562.

[10] (2021) 10 SCC 690.

in the case of ***Thansingh Nathmal v. Supdt. of Taxes*** [11] which reads as under:-

> *"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations.* ***Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.*** *The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

31. This Court as well, in the case of ***Harpati v. State (NCT of Delhi)***[12], has held that where there are disputed questions of facts involved, the High Court should not be entertaining the writ petition. The relevant extract of the said decision reads as under:-

> ***"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*

[11] 1964 SCC OnLine SC 13.
[12] 2023 SCC OnLine Del 4607.

> *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."*

32. An upshot of the above discussion clearly elucidates that the Constitutional Courts while exercising the extraordinary powers under Article 226 of the Constitution of India *inter alia* have to scrupulously ascertain ***i) whether the petition has been filed with any oblique motive or vested interest, ii) whether disputed and complex questions of facts are involved that require a shred of evidence, iii) whether there exists an alternate and equally efficacious remedy to address the grievance, iv) whether any individual or legal right of the petitioner has been violated along with consequential breach of obligations on part of authorities concerned thereto, v) whether the nature of action and nature of activity under question falls in the domain of public law etc***. The aforesaid exigencies are only illustrative in nature and not exhaustive. Without such a meticulous exercise, if writ petitions are being readily entertained, then the Constitutional Courts would be committing a breach of trust against the genuine and bonafide litigants who have reposed faith in the constitutional machinery and have been longing since ages in the hope of justice. Undoubtedly, the scheme of Article 226 of the Constitution of India does not envisage such a practice and therefore, the Courts should be mindful while exercising the extraordinary writ jurisdiction. This self-imposed fetter on the discretionary extraordinary power of the Constitutional Courts was kept keeping in mind the spirit of Article 226 of the Constitution of India.

33. Any petition wherein the rights involved are not fully exposited and are in fact, rooted in complexity of disputed facts, the

Court is constrained to start a roving enquiry and that may not be an appropriate recourse while exercising the writ jurisdiction. Writ being discretionary and prerogative in nature, should not be exercised liberally without establishing the individual or legal rights and consequential breach of obligations on the part of the authorities concerned.

34. On this fulcrum, this Court also expresses its displeasure when petitions with vested interests are being filed under the writ jurisdiction. These cases lead to an undesirable docket explosion and often end up burdening the already saddled judiciary. Moreover, entertaining such writ petitions results in a domino effect and propels other litigants to file similar cases by frequently knocking on the doors of Constitutional Courts under Article 226 of the Constitution of India. Consequentially, these writ petitions, if being entertained, will consume not only judicial time but also resources, which can effectively be utilised in cases where parties have been awaiting the fate of their cases since ages. In a judicial system with mounting pendencies, it is necessary for the Courts to ensure that judicial time is used judiciously. Judicial time, in principle and in fact, is public's time and the principles discussed above are only meant to ensure that it goes to the deserving causes so that the constitutional promise of guaranteed protection of rights is fulfilled in a time-bound manner. This Court, in the W.P. (C) No. 9828/2015 titled as ***Kotak Mahindra Bank Ltd. v. Bank of Baroda***, has considered the consequences of the liberal approach being adopted while entertaining the writ petitions under Article 226 of the Constitution of India. The relevant extract of the said decision reads as under:-

> *"The jurisdiction of the High Court under Article 226 of the Constitution of India is an extraordinary remedy, to be not invoked or allowed to be invoked ordinarily, as is found lately*

done increasingly, leaving very little time for the High Court to deal under Article 226 with issues really deserving consideration there under. Supreme Court, as far back as in Rashid Ahmed v. Municipal Board, Kairana 1950 SCC 221 : AIR 1950 SC 163 and Nain Sukh Das v. The State of Uttar Pradesh AIR 1953 SC 384 held that ***prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which the ordinary legal remedies are not adequate but in the last over half century the said principle appears to have been forgotten, with the writ remedy being considered as a cure for all ordinary ailments also and for which the ordinary legal remedies under the civil law are adequate. The same has resulted in the High Court being inundated with writ petitions, the disposal whereof axiomatically is found to be taking, in most cases, as much time as the disposal of an ordinary civil lis, and which has resulted in the High Court facing difficulty in providing immediate relief even in deserving cases in writ jurisdiction and/or being left with little time to ponder over the important constitutional issues coming before it in the writ jurisdiction. In my humble view, a time has thus come for the High Court to send out a clear message of the writ remedy being an extraordinary remedy not available as an alternative to the remedy already available under the civil and general laws****."*

35. This Court as well, in W.P.(C). 2873/2022 titled as ***Purandeep Singh v. BSES Yamuna Power Ltd.,*** has noted the detrimental effect of entertaining the writ petitions wherein disputed questions of facts exist or where the alternate remedy was not exhausted before approaching the writ Court.

36. The High Court under the writ jurisdiction cannot possibly entertain all the cases where public nuisance, encroachment over government areas etc. are being alleged. Furthermore, it is not a case where the petitioner does not have any legal remedy. There exist alternate legal remedies under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023, Special Task Force constituted *vide* Notification dated 25.04.2018 by the Ministry of Housing and Urban Affairs or a Civil Suit etc., which are also equally efficacious. The

Court in the decisions of ***DDA v. Rajbir Singh***[13], ***Nemai Bagdi v. State of W.B.***[14], ***Rita Dalal v. Inspector-in-Charge/Officer-in-Charge***[15], ***Protap Chandra Naskar v. State of W.B.***[16], ***Jai Prakash Yadav v. State of Bihar***[17] and ***Sanjeet Kumar Singh v. State of Bihar***[18]**,** wherein, a similar controversy relating to the boundary wall was agitated, declined to entertain the writ petition and rather, gave the liberty to approach the competent Civil Court or avail any other remedy available as per law.

37. In the instant case, it appears that the boundary wall in question has been in existence for more than atleast 30 years. As to when the boundary wall came to be constructed, no party has any authentic documents to assert its claim. It is stated that repairing of the boundary wall took place in the year 2012. This in itself indicates that in the year 2012, the boundary wall may have been at least 10 to 15 years old. Even going on this basis, the boundary wall in question might have been constructed at least before the year 2000.

38. Be that as it may, in the instant petition, various disputed questions of facts exist as to i) when exactly the boundary wall in question was constructed? ii) who constructed the boundary wall in question? iii) whether it was on private land or public land? iv) which layout plan was accurate? v) whether the shops in question were constructed by the petitioner-Association members? vi) whether the shops in question are encroaching the public land or violating the extant rules or regulations? vii) whether the boundary wall in question obstructs the petitioner-Association's members to access public parks,

[13] 2008 SCC OnLine Del 676.
[14] 2012 SCC OnLine Cal 8143.
[15] 2016 SCC OnLine Cal 7583.
[16] 2012 SCC OnLine Cal 4250.
[17] 2015 SCC OnLine Pat 1306.
[18] 2023 SCC OnLine Pat 7013.

recreation centres etc? All these are undoubtedly debatable questions of facts and if such controversies are entertained in the writ petitions, the Constitutional Courts would be engaging in roving enquiries into such contentious facts, which would mandatorily require thorough leading of evidence from both the parties and adjudication thereupon. Such an exercise may not be amenable to writ jurisdiction under Article 226 of the Constitution of India, as discernible from the above discussion.

39. In view of the aforesaid, while reserving the liberty in favour of the petitioner-Association to avail appropriate remedy available as per law, the instant petition stands dismissed, alongwith the pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 16, 2024/p