

(2010) 07 DEL CK 0192

In the Delhi High Court

Case No : Writ Petition (C) No. 12188 of 2009

Ajay Kumar Sanghi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Land Reforms Act, 1954 — Section 81
Delhi Land Revenue Act, 1954 — Section 27, 64, 81, 82(2)
Income Tax Act, 1961 — Section 34
Land Acquisition Act, 1894 — Section 17(3A), 3(A), 4, 6
Penal Code, 1860 (IPC) — Section 23

Citation : (2010) 5 ILR Delhi 705

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Yashraj Singh Deora, for the Appellant; Puneet Taneja, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.

The matter has been received on transfer.

The matter is taken up for final hearing.

1. This order shall dispose of two writ petitions bearing No. W.P.(C) No. 1017/2010 and W.P.(C) No. 12188/2009 filed by the petitioners. W.P.(C) No. 1017/2010 relates to Khasra Nos. 104/2(0-1), 105/2(411) and 106 (1-14), Revenue Estate Village Tajpul, Mathura Road, Delhi while W.P.(C) No. 12188/2009 relates to Khasra No. 97 & 98/2, Revenue Estate Tajpul Village, Mathura Road, Delhi. In the writ petition (W.P.(C) No. 1017/2010) filed under Article 226 of the Constitution of India, the petitioners seek quashing of order and decree dated 29.1.1981 passed by the learned Revenue Assistant in Case No. 127/RA/80. The petitioners also seek quashing of all revenue entries made

pursuant to the said order and decree dated 29.1.1981, reflecting Gaon Sabha as owner of property bearing Khasra No. 104/2, 105/2 and 106 of Village Tajpul. The petitioners also seek directions to direct the respondents to record the name of the petitioners in the revenue records as owners of property bearing Khasra No. 104/2, 105/2 and 106 of Village Tajpul. In W.P.(C) No. 12188/2009, the petitioner seeks quashing of order and decree dated 29.5.1981 passed in Case No. 87/RA/80. The petitioner also seeks quashing of all the revenue entries made pursuant to order and decree dated 29.5.1981, reflecting Gaon Sabha as owner of property bearing Khasra No. 97 and 98/2 of village Tajpul. The petitioner also seeks directions to direct the respondents to correct the revenue records and to record the name of the petitioner along with the co-owners as owner of property bearing Khasra No. 97 and 98/2 of Village Tajpul.

2. In W.P.(C) No. 12188/2009 the petitioner Ajay Kumar Sanghi has claimed to be the owner of the land measuring 6 Bighas 4 Biswa forming part of Khasra No. 97, 98/2, situated on Main Mathura Road in the Revenue Estate of Tajpul, Delhi by virtue of sale deed dated 21.10.1970 duly registered in the office of the Sub-Registrar, while in W.P.(C) No. 1017/2010 the petitioners claim themselves to be the owners of piece of land measuring 6 Bighas 6 Biswa forming part of Khasra No. 106, 105/2, 104/2 situated on the main Mathura Road in Revenue Estate of Tajpul, Delhi.

3. The main grievance raised by the petitioners in both the writ petitions is that they were in peaceful possession of the said land in question since 1970 and it is only when the Government of NCT of Delhi had taken a stand in their counter affidavit in W.P.(C) No. 10518/2009 the petitioners came to derive knowledge of the fact that the decree against them had been passed u/s 81 of the Delhi Land Reforms Act without their knowledge. The petitioners further averred that in the year 2009, Delhi Police took possession of the land bearing Khasra No. 97 on the assumption that the said land belongs to Gaon Sabha and after having learnt the same the petitioner Ajay Kumar Sanghi had filed a writ petition bearing W.P.(C) No. 7641/2009 against the Delhi Police for unauthorized possession of the said land. It is further stated by the petitioners that during the pendency of the said petition (W.P.(C) No. 7641/ 2009) the Government of NCT of Delhi initiated land acquisition proceedings by issuing notification u/s 4 & 6 of the Land Acquisition Act to acquire the said land in question. It is the said land acquisition proceedings which were challenged by the petitioner Ajay Kumar Sanghi in W.P. (C) No. 10518/2009 and it is only in the said proceedings that the petitioners came to know about the said ex-parte orders passed by the Revenue Assistant u/s 81 of the Delhi Land Reforms Act. Necessary steps thereafter were taken by the said petitioners to inspect the relevant records of the Revenue Assistant and after inspection of the same the petitioners learnt that the notices in the said proceedings u/s 81 were never served upon them and in fact were sent to obscure addresses. The petitioners thus have claimed that under Rule 21B of the Delhi Land Reforms Rules, 1954 it was mandatory on the part of the Revenue Assistant to have informed the land owners before initiating any proceedings u/s

81 of the said Act. Counsel thus states that the mandate of the said rule was not followed by the Revenue Assistant and therefore principles of natural justice have been violated by the Revenue Assistant.

4. The contention of counsel for the petitioners is that since principles of natural justice have been violated in the present case by the concerned Revenue Assistant therefore, remedy of writ is available to the petitioner. Counsel has placed reliance on the judgment of the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, .

5. Counsel for the petitioners further submits that in the present case, disputed questions of facts are not involved as from the impugned order itself it is quite explicit that the petitioners were not served at their correct addresses and that this court itself can peruse the records of the Revenue Assistant so as to reach the conclusion. Counsel also submits that so far Khasra Nos. 98/2, 104/2 (0-01), 105/2(4-11) and 106(1-14), Revenue Estate Village Tajpul, Mathura Road, Delhi are concerned, the same were not even acquired by the Government under the Land Acquisition Act and the same continued to be in possession of the petitioners. Counsel further submits that so far Khasra No. 97 (5-5) is concerned, the same has been acquired by the Government for the public purpose of constructing a police station. Counsel also placed reliance on the judgment of the Apex Court in the case of Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, with special emphasis on paras 22 and 38 which are reproduced hereunder:

He invited our attention to the Whirlpool Corporation Case (supra) wherein this Court has held that there are three clear-cut circumstances wherein a writ petition would be maintainable even in a contractual matter. Firstly, if the action of the respondent is illegal and without jurisdiction, Secondly, if the principles of natural justice have been violated and Thirdly, if the appellants' fundamental rights have been violated.

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It is submitted that the impugned order cannot be sustained also on the ground that there is gross violation of the principles of natural justice in the order. The first violation of natural justice took place when Dr. D.K. Shankaran started his enquiry. Dr. Shankaran conducted the enquiry without notice to the appellant and without hearing the appellant. The appellant while submitting their reply to the show cause notice specifically sought for an opportunity of hearing, the same was also not granted to the appellant before passing of the final order and on this ground also the impugned order is liable to be set aside. The appellant was not even given the copy of Dr. D.K. Shankaran report for effective reply of show cause notice.

The impugned order is also liable to be quashed as the same is wholly without jurisdiction. Once a concluded contract has been entered into between the parties, the parties cannot be permitted to resile from the same contrary to the

express terms of the concluded contract. It has been held in the case of Corporation of the City of Bangalore's case (supra) to the effect that CIDCO has no such right to revoke the concluded agreement and hence any action taken by CIDCO contrary to the express terms of the agreement is wholly without jurisdiction. CIDCO cannot take recourse of Section 23 of the Contract Act alleging that the agreement is opposed to public policy because clearly such right is reserved only to the Courts and it is submitted that authorities themselves cannot take recourse to the said section in order to annul a concluded agreement.

6. Refuting the said submissions of counsel for the petitioners, counsel for the respondent has placed reliance on the judgment of the Apex Court in the case of Mukesh Kumar Agrawal Vs. State of U.P. and Others, . The contention of the counsel for the respondent is that in a case where the petitioner disputes the question of facts and where the statutory remedy of filing of an appeal is available to the petitioner, the writ court in such a fact-situation can decline to exercise its jurisdiction. Counsel submits that the remedy to assail the impugned order is available to the petitioners u/s 64 of the Delhi Land Revenue Act, 1954 and so far correcting the entries of revenue records are concerned, remedy u/s 27 of the Delhi Land Revenue Act is available to the petitioners.

7. I have heard learned counsel for the parties.

8. In both the matters the concerned Revenue Assistant vide orders dated 29.5.1981 and 29.1.1981 had passed the ejectment order u/s 81 of the Delhi Reforms Act based on the report of the Halka Patwari reporting violation on the part of the petitioners using the land in question for non-agricultural purposes. In both the matters the petitioners were served by way of affixation and after recording the ex parte evidence of the Gaon Sabha, ejectment orders u/s 81 of the Delhi Land Reforms Act were passed. Section 81 of the Delhi Land Reforms Act states as under:

81. Ejectment for use of land in contravention of the provisions of this Act.-(1) A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the land holder, as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and also pay damages equivalent to the cost of works which may be required to render the land capable of use for the said purposes.

(2) Notwithstanding anything contained in sub section (1) the Revenue Assistant also may, on receiving information or on his own motion, eject the Bhumidhar or Asami, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be prescribed.

9. Under Rule 21-B of the Delhi Land Reforms Rules, 1954 the Revenue Assistant before proceeding u/s 81 of the Delhi Land Reform Act based on the report of the Halka Patwari must issue notice to the parties in L.R. Form 48 and shall call upon them to show cause why action should not be initiated against them u/s 81 of

the said Act. Rule 21-B of Delhi Land Reforms Rules is reproduced as under:

21-B. Disposal of reports by Revenue Assistant (Section 81) -The Revenue Assistant, on receipt of the report referred to in Rule 21-A or on receipt of information otherwise regarding user of land for non-agricultural purposes shall issue notice to the parties in L.R. Form 48 and shall call upon them to show cause why action should not be taken against them u/s 81.

10. The principal contention raised by the counsel for the petitioners is that the said order u/s 81 of the Delhi Land Reforms Act was passed by the Revenue Assistant without serving a notice as envisaged under rule 21-B of the Delhi Land Reforms Rules, on any of the co-owners of the land in question. No notice was also served, as per the petitioners, u/s 82(2) of the Delhi Land Reforms Act after passing of the said decree of ejectment. The petitioners have thus claimed that the said ejectment orders in both the matters have been passed in violation of the principles of natural justice as a result of which the same are rendered illegal and void in the eyes of law.

11. Counsel for the respondent on the other hand submits that the statutory remedy of filing an appeal is available to the petitioners and without exhausting the same the petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India. Counsel for the respondent also submits that pure disputed question of facts have been raised by the petitioners and, therefore, the petitioners should be relegated to the remedy of either approaching the same Court or the Appellate Authority.

12. The Apex Court in the case Whirlpool Corporation (supra) while dealing with the powers of the High Court under Article 226 of the Constitution of India observed as under:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some

old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed Vs. The Municipal Board, Kairana, , laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

17. Specific and clear rule was laid down in The State of Uttar Pradesh Vs. Mohammad Nooh, , as under:

But this rule requiring the exhaustion of statutory remedies before the Writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

18. This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and was affirmed and followed in the following words:

The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.

19. Another Constitution Bench decision in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, laid down:

Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will

issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction u/s 34 I.T. Act.

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

13. Counsel for the petitioners also referred to the judgment of the Apex Court in the case of Popcorn Entertainment and Anr. (supra) where the Apex Court while dealing with the issue of maintainability of the writ petition under Article 226 of the Constitution of India held as under:

We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong by the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corpn. (supra) has been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court.

14. Counsel for the respondent on the other hand has placed reliance on the judgment of the Apex Court reported in the case of Mukesh Kumar Agarwal (supra) with special emphasis on the following para:

The appellant in invoking the writ jurisdiction of the High Court Order raised contentions involving disputed questions of fact. Ordinarily, the disputed questions of fact are not determined in a writ petition. We would, however, hasten to add that the same would not mean that the High Court cannot exercise its discretionary writ jurisdiction for determination of disputed questions of fact or only because some dispute had been raised in the writ proceedings itself the same would deter the High Court from exercising its jurisdiction. The appellant has raised pure questions of fact for determination in the writ proceedings in respect whereof the Licensing Authority itself was required to go into the

materials brought on record by both the parties. It is neither denied nor disputed that the order passed by the Licensing Authority cancelling the licence of a dealer is an appealable one. The Appellate Authority is entitled to go into the questions of both law and fact. The High Court, therefore, in our opinion, cannot be said to have committed any error in refusing to entertain the writ petition. It is, thus, not a case where the ratio laid in Whirlpool (supra) is applicable.

15. There cannot be any dispute with the legal position as enunciated by the Apex Court in the above judgments. The power of the High Court under Article 226 of the Constitution of India is very wide and that is the reason the Apex Court in a catena of judgments has put a note of caution by saying that the plentitude of the powers of the High Court under Article 226 of the Constitution of India requires the High Court to exercise the same under exceptional and rare circumstances. Undoubtedly, wherever there has been a violation of the principles of natural justice or the writ petition has been filed to seek enforcement of the fundamental rights or where the proceedings are wholly without jurisdiction or vires of the Act are under challenge, the High Court in the given facts of the case can exercise jurisdiction under Article 226 of the Constitution of India. There also cannot be any dispute that even where the alternative remedy is available to the petitioner there also such alternative remedy would not operate as an absolute bar but such an alternative remedy should afford an efficacious remedy to the petitioner to seek redress and, therefore, the writ petition under Article 226 of the Constitution of India has been held to be maintainable and can be entertained without exhausting the alternative remedy. The Apex Court in the Constitution Bench decision in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, as referred in Whirlpool Corpn.(supra) has held that application of the laid down principles depends upon each particular case and variety of individual facts for the proper exercise of the discretion of the Court and it would not be possible and desirable as well to lay down inflexible rules which should be applied with rigidity in a given case.

16. The precise question to be answered in these two petitions is whether the disputed questions of facts canvassed by the petitioners should be tried before the writ Court or before the appropriate Forum as provided under the said Statute of Delhi Land Reforms Act, 1954. The ejectment orders against the petitioners have been passed u/s 81 of the Delhi Land Reforms Act. It is therefore, quite evident that the petitioners will have to establish before the Court of Revenue Assistant that at the relevant time there was no contravention on their part to change the user of the land. Therefore, it is not a mere question of service or non-service of the petitioners in the said proceedings as in the event the petitioners succeed in establishing the fact that they were not properly served, then still they may be required to contest the said proceedings either by leading evidence or otherwise to prove that the land in question at the relevant time was not a Gaon Sabha Land or the petitioner never changed the agricultural use or to even prove the fact that the proceedings against them were without

any jurisdiction. The Hon''ble Division Bench in W.P. (C) No. 7641/2009 has clearly observed that the question as to whether notice mentioned in the orders of the Revenue Assistant was served or not cannot be assailed in the writ proceedings and if the petitioners are aggrieved from the ejectment orders passed by the Revenue Assistant then they will have to take the recourse to the remedy provided in the Act. It would be appropriate to reproduce the observations of the Hon''ble Division Bench in the said writ petition.

29. It was also contended by the learned counsel for the petitioners that the respondents were required to tender 80% of estimated compensation to the petitioners before taking possession of land in question, as required by Section 17(3A) of Land Acquisition Act. It would be appropriate at this stage to examine the order dated 29th May, 1981 passed by the revenue assistant u/s 81 of Delhi Land Reforms Act in case No. 87/RA/80. A perusal of the order shows that a report was received by the Revenue Assistant from Halka Patwari regarding using of land in question for non-agricultural purposes. Thereupon notice was issued to the respondents to appear before the Revenue Assistant. Since they did not turn up despite service of notice, the matter was taken ex-parte against them. The Revenue Assistant held that the respondents had violated the provisions of Section 81 of Delhi Land Reforms Act and ordered their eviction from land in question. It was further directed that the decree shall not be executed if the respondents repair the damage within 3 months and that if they do not do so, land in question shall stand vested in the Gaon Sabha from after 3 months after the date of decree/order. It was contended by the learned counsel for the petitioner that the notice mentioned in the order of the Revenue Assistant was never served upon the petitioners as it was sent at the address of 7, Hanuman Road where none of them was residing and in fact only one of them was residing at 7, Humayun Road, New Delhi. It was also his contention that the land did not vest in Gaon Sabha as the petitioners were not ejected from the land in question despite order passed by the Revenue Assistant on 29th May, 1981. In our view, the question as to whether the notice mentioned in the order of the Revenue Assistant was served or not cannot be assailed in these proceedings. If the petitioners are aggrieved from the ejectment order passed by the Revenue Assistant u/s 81 of the Delhi Land Reforms Act, they have to take recourse to the remedy provided in the Act. In these proceedings, the petitioners cannot assail the order of the Revenue Assistant on the ground that the notice mentioned in the order of the Revenue Assistant was not actually served upon the petitioners. So long as the order passed by the Revenue Assistant on 29th May, 1981 stands, it remains binding on the petitioners. Though, there is no specific provision in Delhi Land Reforms Act to the effect that on passing of ejectment order u/s 81 of Delhi Land Reforms Act, the land, subject matter of the ejectment order would vest in Gaon Sabha, the scheme of the Act, in our view, indicates such an effect. It cannot be accepted that even after passing of ejectment order, the person against whom ejectment order is passed continues to enjoy the status of a Bhumidar or an Aasami, as the case may be. In fact the order of the Revenue

Assistant, which has not been challenged so far in appropriate proceedings expressly directs that if the respondents do not repair the damage within 3 months from the date of order, the land shall stand vested in Gaon Sabha after 3 months from the date of the order. It is also not in dispute that pursuant to the order passed by the revenue assistant, land in question was entered in the name of Gaon Sabha, in the revenue records. The respondents have placed copies of Khatoni for the year 1988-89 which shows that the land comprised in Khasra No. 97 of Village Tajpul stands mutated in the name of Gaon Sabha u/s 81 of Delhi Land Reforms Act. It cannot be said that even if the land in question vested in Gaon Sabha, Tajpul, in view of the order of the Revenue Assistant, the 80% of the estimated compensation envisaged in Section 3(A) of Land Acquisition Act was required to be tendered only to the petitioners, and not to Gaon Sabha.

17. Although the said observations were made by the Hon"ble Division Bench concerning one of the khasra numbers i.e. khasra No. 97 of Tajpul village of Mathura Road, Delhi on which land the Delhi Police had proposed to construct the police station, but so far provision of Section 81 of the Delhi Land Reforms Act is concerned the remedy of the petitioner to challenge the order of the Revenue Assistant in relation to land in other khasra nos. would also be the same as that of khasra No. 97 for which the aforesaid observations have been made by the Hon"ble Division Bench.

18. The jurisdiction of the High Court under Art. 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 Article. 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 to 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 Art. 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 to determine disputed questions of facts which demand an elaborate enquiry or examination through evidence in the exercise of writ jurisdiction. 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 Art. 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 authority for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution by-passing the machinery created under the statute.

19. It would be useful at this point to refer to the observations of the Apex Court in the case of New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti, which are referred herein below:

It is fairly well settled that disputed questions of fact should not be gone into by the High Court in writ proceedings.

12. A High Court is not deprived of its jurisdiction to entertain a petition merely because in considering petitioner's right to relief question of fact may fall to be determined as pointed out in *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, . In a petition under Article 226, the High Court has jurisdiction to try issues of law and fact. Where, however, the petition raises complex question of fact, the Court should not entertain the petition. In *Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others*, the High Court refused to go into the question as to whether Trusts were public or private trusts as the question had involved investigation of complicated facts and recording of evidence. The view was upheld. Thus, if there is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence, it should not be decided in a writ proceeding (See *Union of India v. T.R. Verma*: (1958) 1 ILLJ 259 SC). If disputed questions of fact arise and the High Court is of the view that those may not be appropriately tried in a writ petition, the High Court has jurisdiction to refuse to try those questions and relegate the party to his normal remedy to obtain redress in a suit.

13. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact which may, for their determination, require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition. Thus, a High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right, question of fact may fall to be determined. Ultimately, the question is one of discretion which is to be exercised in conformity with judicial principles.

Hence, in the background of the aforesaid facts, this Court is not inclined to entertain the present writ petitions as pure disputed questions of facts, be the same relates to service of the petitioners or on merits to challenge the proceedings u/s 81, can only be tried either before the concerned Revenue Assistant or before the Appellate Authority. Hence, there is no merit in the present petitions and the same are hereby dismissed.