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**HIGH COURT OF DELHI : NEW DELHI**

**CM (M) No.835/2010 & CM No.11257/2010**

% Judgment reserved on: 2<sup>nd</sup> July, 2010

Judgment delivered on: 5<sup>th</sup> July, 2010

The General Taxi Stand Association (Regd.)  
Front of Kothi No. 57,  
Near IIC Lodhi Enclave,  
New Delhi.  
Through its Hon. Secretary,  
New Delhi.

Through: ....Petitioner.  
Mr. S. D. Ansari, Adv.

Versus

1. New Delhi Municipal Council/Committee,  
Palika Kendra,  
Sansad Marg, New Delhi.  
(Through its Secretary)
2. Goswami Taxi Service,  
Chaar Dukanay, Krishana Menon Lane,  
New Delhi- 110002.  
(Service through Shri Bhupinder Giri Goswami)
3. Shri Anil Kumar,  
SHO, PS Tuglak Road.  
New Delhi.
4. Shri Sohan Lal,  
S/o Shri Panna Lal.
5. Shir Bankey Lal,  
S/o Shri Panna Lal,  
Both of Gate No. 1, I.I.C.,  
Lodhi Estate,  
New Delhi.

Through: ....Respondents.  
Vinod Kumar, Adv. for respondent  
no.1.

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?  | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**V.B.Gupta, J.**

Present petition has been filed by the petitioner under Article 227 of the Constitution of India, against orders dated 3<sup>rd</sup> May, 2010 and 29<sup>th</sup> May, 2010, vide which the Commercial Civil Judge, New Delhi fixed the matter for 26<sup>th</sup> July, 2010 without granting the interim relief as prayed and further dismissed the application of the petitioner vide order dated 29<sup>th</sup> May, 2010 for urgent hearing without making any order on the interim relief filed in contempt petition.

2. Petitioner filed a suit for permanent injunction against respondent nos. 1 and 2, along with application under order 39 rules 1 & 2 CPC.
3. Vide order dated 2<sup>nd</sup> January, 2008, Sh. Soni Agnihotri, the then Sub Judge, directed the parties to maintain status quo.
4. Since, respondent no.2 in collusion with respondent no. 3, prevented petitioner from parking their taxis in the premises in question, petitioner filed contempt petition against the contemnors/respondent nos. 1 to 5 for initiation of contempt proceedings against them and further prayed relief for restoration of the interim order dated 2<sup>nd</sup> January, 2008.

5. Trial court adjourned the case to 26<sup>th</sup> July, 2010 and fixed the matter for recording of evidence on the contempt petition without passing any order on the interim relief/order of status qua ante in terms of status quo order dated 8<sup>th</sup> January, 2008.

6. It is contended by learned counsel for the petitioner that the members of the petitioner association are facing great hardship and immense loss. Without appreciating the facts and circumstances of the case, trial court dismissed the application on 29<sup>th</sup> May, 2010.

7. Learned counsel for the petitioner further contended that during the pendency of the contempt petition, order on the interim relief was necessary to be made in the wake of existing earlier “status quo order”.

8. Another contention is that trial court ought to have allowed the application for pre-poning the matter, keeping in view the utmost urgency.

9. On the other hand, it is contended by learned counsel for respondent no. 1, that trial court rightly observed that the question of breach of status quo cannot be decided without leading evidence and matter is already listed before trial court for 26<sup>th</sup> July, 2010 and there is no illegality in the impugned order.

10. Article 227 of The Constitution of India reads as under;

**“227. Power of superintendence over all courts by the High Court-** (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

11. In *Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1)SCALE71,*

***Supreme Court held;***

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

12. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar, JT 2009*

***(11) SC 258 Supreme Court held;***

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and

Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* (AIR1975SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court's function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.'

13. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, *JT1995(7)SC400*, Apex Court observed;

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

14. Keeping in view the principle laid down by the Supreme Court in above cases, it is to be seen as to whether there is merit in the present petition or not and

whether impugned order passed by the Learned trial court are illegal and irrational.

15. Relevant portion of impugned order dated 3<sup>rd</sup> May, 2010, read as under;

“After hearing the arguments, it is the view of the court that in the present petition, the question of breach of status quo cannot be decided without leading evidence. Once issue is framed as:

1. Whether the respondents has breached order of status quo dated 2.1.08? If so, what is its effect?

Put up for petitioner evidence on 26.7.2010.”

16. Since, trial court held that question of breach of status quo cannot be decided without leading evidence, no infirmity or illegality can be found in this order. Further no prejudice is going to be caused to the petitioner, in directing him to lead evidence in support of its case. Consequently, application for preponment of hearing was rightly dismissed by the trial court.

17. Under these circumstances, I do not find any illegality or irrationality in the impugned orders passed by the trial court. There is no merit in the present petition. Present petition is an abuse of the process of law and has been filed just to waste the time of this Court. Accordingly the same is hereby dismissed with costs of Rs.5,000/-

18. Petitioner is directed to deposit the costs with the trial court within 15 days, failing which trial court shall recover the same in accordance with law.

19. Copy of this order be sent to the trial court.

**+CM No.11257/2010**

20. Dismissed.

5<sup>th</sup> July, 2010  
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**V.B.GUPTA, J.**