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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 718/2011

% ***Judgment Delivered on: 19.05.2011***

AUROBINDO PLACE ASSOCIATION Petitioner

Through : Mr. Naveen Chawala and Mr. Madhok
Chaturvedi, Advs.

versus

DDA AND ORS Respondents

Through : Mr. Arun Birbal, Adv. for respondent no.1 DDA.
Mr. Sanjeev Sindhvani, Adv. for respondent no.2.
Mr. Gautam Gupta, Adv. for respondent no.3.
Mr. Ashish Tanwar, Adv. for Mr. Sanajay Poddar,
Adv. for respondent no.4 MCD.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.
2. Necessary facts to be noticed for disposal of the present writ petition are that petitioner is an association of shop owners having shops at Aurobindo Place Market Complex, Hauz Khas, New Delhi. The association is stated to be registered under the Societies Registration Act with the object of advancing and protecting the interest of shop owners in Aurobindo Place Market Complex. The association is aggrieved by the permission granted by respondent no.1 DDA for installing a lift in the office Unit No.208, 2nd floor, Aurobindo Place, Hauz Khas, New Delhi.

3. Learned counsel for the petitioner while replying on the policy framed by the DDA, a copy of which has been placed on record, submits that before installing a lift permission, as per the said policy is required from the DDA, MCD, Fire Department and Electrical Regulatory Authority regarding electric load requirement. Counsel further submits that necessary permissions were not obtained by respondent no.1.
4. Learned counsel for the respondent DDA submits that there is no illegality on the part of the DDA neither the petitioner has brought out or disclosed as to how by granting permission the petitioner has been prejudiced in any manner. It has also been clarified that permission has been granted after levying all costs of the space, which is required for the purposes of installation of the lift and the right over the land continues to vest with the DDA and, thus, installation of lift does not amount to encroachment on the public land as the land will continue to vest with the DDA.
5. Learned counsel for respondent no.2 has placed on record various documents to show that permission was obtained in accordance with law and after following due process of law. Counsel for respondent no.2 has drawn the attention of the Court to the communication dated 1.12.2004, addressed to the Deputy Director, (CL), DDA and the no objection granted by the association of the shop owners of Aurobindo Place, Hauz Khas whereby the market associated had recommended the installation of a Hydraulic

Levitor alongside the outside wall of the office premises at 208, Aurobindo Place, Hauz Khas. Attention of the court has also been drawn by counsel for respondent no.2 to the letter dated 4.8.2005 addressed by the Commercial Estate Branch, DDA, to respondent no.2, by which, respondent no.2 was informed that their request has been approved by the Screening Committee, subject to charging the land cost (required for installation) at the current market price rate. It has been pointed out that by a subsequent letter the DDA informed respondent no.2 to deposit ₹5.94 lakhs as the current cost of the land, which was deposited by respondent no.2 and informed DDA on 25.8.2009. Supporting payment challan has also been placed on record. It is, thus, contended by learned counsel for respondent no.2 that the permission were not granted overnight and it is after the DDA had completely satisfied itself about the viability of installing a lift the permission was granted after following the due process of law. Counsel for respondent no.2 has also drawn the attention of the Court to the communication dated 22.12.2009 addressed by BSES, by which, BSES confirmed that they visited the site on 18.1.2009 and 83.69 KW load was verified at the premises against the sanctioned load of 100 KW and, thus, they had 16.31 KW load to install lift or any other equipment.

6. It is, thus, contended by counsel for respondent no.2 that all the necessary permissions have been granted and, thus, the present writ petition cannot be entertained.

7. I have heard counsel for the parties and also carefully perused the pleadings and the annexures filed along with the pleadings.
8. Notice in this matter was issued on 4.2.2011. This court had also granted interim relief on the last date of hearing and further work of erection of hydraulic levitator/lift in respect of office No.208 at 2nd Floor in LSC, Aurobindo Place Market Complex, Haus Khas, New Delhi, was stopped. A status report has been filed by the respondent MCD wherein it has been stated that since the DDA has already granted permission for installation of hydraulic lift no separate permission is required by the MCD for the same purpose.
9. In the counter affidavit, which has been filed by the DDA, it has been stated that respondent no.2 has been granted permission for installation of hydraulic levitator/lift at Shop No.201, 2nd Floor in LSC, Aurobindo Place, Hauz Khas, New Delhi. Further it has been stated in the counter affidavit that permission has been granted as per the policy circulated vide no.ACA-II/HUPW/DDA 77 dated 27.6.2008, which provides for a lift in community centers developed by DDA and residential flats built by DDA. As per the counter affidavit, this permission has been granted after respondent no.2 has completed the requisite conditions laid down by the policy and on payment of the space required for the lift at the current market rate. In the counter affidavit, it has been categorically denied that there has been any illegality on the part

of respondent DDA in any manner while granting the permission to the respondent no.2.

10. The sole grievance of the petitioner is that permission has been granted to respondent no.2 for installing a lift without the DDA complying with the terms of its own policy. Various documents, which have been placed on record show that respondent no.2 has complied with all the necessary terms and conditions and satisfied the DDA and consequent thereto the permission has been granted by the DDA as per the policy circulated vide no.ACA-II/HUPW/DDA 77 dated 27.6.2008. Various documents, which have been referred hereinabove show that respondent no.2 has paid costs of additional land amounting to ₹5.94 lakhs. The MCD has categorically stated that once the permission has been granted by the DDA no permission is required by them. Communication dated 1.12.2004 shows that the association has itself given its no objection as far back as in the year 2008 and it is only consequent to this permission that the work has commenced at the site, in question. In view of above, I find no ground to entertain the present petition and the same is accordingly dismissed.

CM NO.1514/2011.

11. Application stands dismissed in view of the order passed in the petition.

MAY 19, 2011
'msr'

G.S. SISTANI, J.