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

+ W.P.(C) 450/2013 & CM APPL. 876/2013, 3920/2013

SHAIK ABDUL HAMEED Petitioner
Through Ms. Vasundhara Pathak Masoodi,
Advocate

versus

DELHI DEVELOPMENT
AUTHORITY & OTHERS Respondents
Through Mr. Arun Birbal with Mr. D.K. Singh,
Advocates for R-1/DDA.
Mr. Manish Sharma with Mr. Nitin
Sharma, Advocates for R-2, 3 and 6.
Ms. Ferida Satarawala, Advocate for
R-4 and 5.

% Date of Decision: 29th July, 2013.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed under Articles 226/227 of the Constitution of India for quashing and setting aside the letter dated 19th November, 2012 by virtue of which respondent-DDA granted permission to respondent no. 2 to install a lift in Block No. C-4, Usha Niketan, Safderjung Development Area, New Delhi.

2. Ms. Vasundhara Pathak Masoodi, learned counsel for petitioner contends that respondent-DDA's own procedure for issuance of NOC for installation of lifts in group housing flats built up by DDA has not been followed in the present case. She states that neither the location of the lift well nor the petitioner's own affidavit and undertaking had been enclosed along with application dated 11th September, 2012.

3. Ms. Vasundhara submits that since a lift is being constructed to serve the flats situated in two separate blocks, two separate consents should have been obtained, that means, majority of the flat owners of each block should have given their consent. She points out that in the present instance respondent-DDA sanctioned the construction of lift by taking majority of the flat owners of both the blocks together. She emphasises that consent of majority of beneficiaries of the opposite block having Flat Nos. C-6, C-7 and C-8 had not been obtained. In support of her submission, she relies upon Clause D(i) of Procedure of Issue of NOC for Installation of Lifts in Group Housing Flats built by DDA, which is reproduced hereinbelow:-

“D. Pre-requisite for issue of NOC:

While applying for NOC, the following documents/affidavits are required to be submitted:-

- i. Consent for installation of lift in individual block from majority of owners/ Legal Representatives of the flats excluding ground floor owners/legal representatives who shall be the beneficiaries (Annexure-I).”*

4. Ms. Vasundhara also contends that construction of the lift constitutes a safety and security hazard to the petitioner. She states that load of foot-over bridge has been placed upon the petitioner's wall which can cause the

petitioner's flat to collapse. In this connection, she relies upon a certificate issued by Bhudiraja & Associates, Architects. In fact, relying upon Bhudiraja's report she contends that petitioner's property has been punctured and damaged.

5. Ms. Vasundhara lastly states that the construction of the lift in its current location will completely block the petitioner's right to light and ventilation from the window facing the lift well.

6. Mr. Arun Birbal, learned counsel for respondent-DDA states that DDA has followed the procedure as prescribed under its policy. He states that upon receipt of respondent no. 2's application for installation of a lift, the same was referred to the Chief Engineer (South Zone), DDA for technical report. After a site visit by the Executive Engineer, DDA, respondent no. 2 was directed to furnish a structural engineer's report. Subsequently, Mr. Tarun Mathur, Structural Engineer vide his report dated 10th September, 2012 certified that the building plans submitted by the respondent no.2 for approval satisfies safety requirements as per Clause 18 of the Building Bye Laws 1983 and further that the structural design was based on soil condition. The Structural Engineer's certificate was also signed by respondent no. 2's architect. He states that petitioner in the writ petition has not been able to point out any specific reason explaining as to how the structural stability of the building has been endangered. The relevant paragraphs of respondent-DDA's counter-affidavit are reproduced hereinbelow:-

“4. That the application of the Respondent No. 2 for permission for installation of lift at flat No. C-6, Block C-4, Usha Niketan, Safdarjung Development Area, New Delhi-110016 was received at DDA on 13.09.2012. The application

was referred to the Chief Engineer (South Zone) of DDA for technical report as per the policy of installation of lifts in Group Housing Flats of DDA. The site was inspected by the concerned Execute Engineer on 17.10.2012 who submitted his report. The file was then sent back by the Chief Engineer (South Zone) to the Housing Department of DDA. The documents submitted by the Respondent No. 2 were scrutinized and certain deficiencies were noted. In the meantime, respondent No. 2 had also approached the Public Grievance Commission of Delhi for redressal of his grievances. In the circumstances, it was considered appropriate that the sanction letter for installation of the lift in the C-4 Block for flat Nos. C-2, C-4, C-6 at Usha Niketan, New Delhi be issued in favour of the respondent No. 2 who has been authorised by the majority of the flat owners subject to the condition that he will submit all required documents before the start of work of execution of lift in the said block. The competent authority approved the grant of sanction vide order dated 09.11.2012. The sanction letter was accordingly issued and handed over the respondent No. 2 on 08.01.2013. The sanction was granted to the respondent no. 2 subject to the following conditions:

“1. Clearance certificate from the lift inspector as well as Fire Department of Govt. of NCT of Delhi shall be taken by you before making the lift functional.

2. You will be responsible for maintenance of lift, its operational aspects, safety requirements and shall also be responsible for obtaining necessary clearance at their end and from local bodies and Electricity Regulation Authority with regards to the load requirements etc.

3. The correctness and aspects for installation of lifts, executions of entire work relating to installation of lifts and its maintenance shall remain your responsibility.

4. It shall be your responsibility to shift and restore the services, if any, after obtaining approval of the concerned

authority. The services if any when effected shall be coordinated with the concerned Engineering Department of DDA or the concerned unit of MCD.

5. The passage of passing the staircase will not be effected any hindrance to allottees of concerned block.

6. This NOC shall be effective only once you achieve consent from the majority of owners/legal representatives of the flats (Excluding ground floor) who shall be the beneficiaries due to installation of this and submit documents thereon to this office as per policy.

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7. That insofar as the issue relating to safety of structure of the building is concerned, it is submitted that the case was referred to the Chief Engineer (South Zone), DDA. The Chief Engineer (South Zone) has reported that this is a matter of examination by the qualified Structural Engineer. As per para 3 of the policy circular, the applicant is required to engage a qualified Structural Engineer. The respondent No. 2 in the instant case has engaged a Structural Engineer and has also furnished the report of Structural Engineer wherein it is certified that the structural design including safety from natural hazards based on soil condition has been duly incorporated and these provisions shall be adhered to during construction. The petitioner has also been signed by the concerned Architect. The petitioner in the instant writ petition has not been able to point out any specific reason, by which danger to the structural stability of the building can be inferred.”

7. Mr. Manish Sharma, learned counsel for respondent nos. 2, 3 and 6 states that respondents are all senior citizens who because of their age and illness are suffering from various ailments such as gout, knee replacement, arthritis and degeneration of spine. He contends that to enjoy and make use

of their flats, respondents need to install a lift.

8. Mr. Sharma points out that Himenviro-Fuji elevator is being installed which is a world class elevator. He states that the lift manufacturer has assured the respondents that there are no vibrations.

9. Mr. Sharma states that the lift well is being constructed on vacant common land. He points out that the plan is based on a cantilever design whereby no load is transferred on the wall of the flats be it petitioner's or respondents' flats. He specifically denies the allegation that petitioner's flat has been punctured. He states that only chasing has been done in the space above the petitioner's flat and the hair line cracks on the petitioner's wall shall be immediately rectified/repared. In support of his contentions, Mr. Sharma relies upon the certificate dated 27th January, 2013 issued by respondent no. 2's Architect Yetinder Mathur. The relevant portion of Yetinder Mathur's letter reads as under:-

“Structural Stability and Supervision

The structural design has been prepared by Er. Tarun Mathur, (M Tech – IIT Delhi and partner in our firm since 25 years) technically approved by DDA officials. Works are been supervised by the undersigned.

The lift well has been constructed at a distance more than 1.5 metre (5 feet) from the existing structure and the horizontal corridors / platforms of reinforced concrete at all floor levels are designed modelled as cantilevers from the four Reinforced concrete columns at the corners of the lift well and thus does not transfer structural loads or dead load or live load on the existing structure.

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Statement on issue of interior open space for Light and Ventilation

Issue

To ensure satisfaction of ground floor light and ventilation for the window in front of external staircase of flat no. C5, Usha Niketan, New Delhi at ground floor.

Guideline or Benchmark

The benchmark to be followed for light and ventilation shall be as per Delhi Bye Laws 1983 as per Clause 12.3 read with clause 12.4(b).

Conclusion

Area of external staircase is 6.45m x 1.950m and gives a space of 12.57 sq. m. (while bye law is for 3 m.=9 sq. m) and the other criteria of 3m. space too is provided. Hence, it is concluded that the interior open space for light and ventilation is satisfactory. Care has been taken not to construct any projection above this window. Thus, the light and ventilation to the habitable room is catered.”

10. Mr. Manish Sharma also states that the window constructed by the petitioner facing the proposed lift is illegal. However, without prejudice to the rights of the respondents, he states that respondent no. 2's Architect has undertaken not to cover or to project vertically above the petitioner's window. In this connection, he draws this Court's attention to e-mail dated 12th January, 2013 of respondent no. 2's Architect.

11. Having heard learned counsel for parties, this Court finds that by virtue of the order dated 27th August, 2012 it is only DDA which is the competent authority to grant permission for installation of lifts in group

housing flats built by DDA. The relevant portion of the order dated 27th August, 2012 is reproduced hereinbelow:-

“The competent authority has decided that all concerned should approach the DDA for grant of requisite permission for installation of lifts for Group Housing Flats built by the DDA as the DDA has detailed structural knowledge about such complexes constructed by them. Copy of procedure of issue of NOC for installation of lifts in Group Housing Flats built by DDA circulated by Sh. D.K. Gupta. Director (Housing)II DDA (Housing Department (N&C) is enclosed with this order.”

12. DDA while granting permission for installation of lifts has been following its own policy circular which details the procedure for issuance of an NOC for installation of lift in group housing flats. As per said procedure, the request for seeking NOC has to be filed with DDA along with the consent from majority of the owners excluding ground floor owners, who shall be the beneficiaries due to installation of the lift.

13. This Court has perused the DDA's original file and finds that respondent-flat owners' own affidavit, undertaking as well as consents of majority of the beneficiaries and location of the lift well had been furnished to DDA prior to the consent letter dated 19th October, 2012. Though some of the consent letters had not been furnished by the respondents along with its application but the important fact to be noted is that they had been furnished prior to the grant of sanction. In the opinion of this Court even a defective application can be cured either by removing defects or by filing a fresh application. In the present instance, as the procedural defects were cured prior to the grant of sanction, DDA was entitled in law to take into account the additional documents and grant permission.

14. As far as the petitioner's argument with regard to Clause D(i) of the Procedure for Issuance of NOC is concerned, this Court is of the view that it talks of installation of lift in individual block. This Court is of the opinion that as in the present case a single lift is being installed to serve two blocks, the respondent-DDA was right in clubbing the flat owners of both the blocks and counting the majority of beneficiaries of both the blocks together. This Court is also of the opinion that a liberal interpretation of clauses of procedure for issuance of NOC should be accepted so long as it does not endanger safety and security. It is pertinent to mention that lift is a technological tool which permits all residents of a multi-storied building in particular, the aged and sick to enjoy and use their residences to the fullest extent.

15. As far as the petitioner's allegation of load of foot-over bridge upon his flat is concerned, this Court is of the view that it is misplaced in view of Mr. Manish Sharma's submission that design of the lift well and foot-over bridge is based on a cantilever design whereby no load is transferred to the wall of any flat. In any event, this Court records the undertaking of learned counsel for respondent no. 2 that the foot-over bridge as well as the slab when constructed will have a gap of 10 mm from the wall of the petitioner's flat and will not in any manner touch the wall of the petitioner's flat. This undertaking of learned counsel for respondent no. 2 is accepted by this Court and respondent no. 2 is held bound by the same.

16. Moreover, in view of the contrary reports submitted by Yetinder Mathur and Bhudiraja & Associates, Architects, this Court is of the view that the petitioner's argument that his light and ventilation has been affected is a disputed question of fact which cannot be adjudicated upon in the

present writ proceeding. This Court also finds that the majority of the grounds urged by the petitioner during the course of hearing have not even been urged as grounds in the writ petition. In fact, they have been taken for the first time in the rejoinder affidavit. In any event, this Court does not sit in appeal over a decision of the statutory authority. It only examines the decision making process. In the present instance this Court is of the opinion that the DDA has followed the procedure as prescribed under its policy.

17. Consequently, present writ petition is dismissed. However, respondents are directed to scrupulously comply with the conditions imposed by the DDA while granting the sanction. The Superintendent Engineer of Usha Niketan, Safderjung Development Area, New Delhi is directed to visit the site once a week and supervise the construction. The Superintendent Engineer shall also ensure that respondent no. 2 abides by its undertaking furnished to this Court.

MANMOHAN, J

JULY 29, 2013

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