



* IN THE HIGH COURT OF DELHI AT NEW DELHI

**W.P.(C) 4093/2022, CM APPL. 12206/2022, CM APPL. 36453/2022 and
CM APPL. 36454/2022**

Reserved on : 23/08/2022
Date of Decision : 30/08/2022

IN THE MATTER OF:

ANUPAMA WADHWA AND ORS

..... Petitioners

Through: Mr. Gautam Das and Mr. Dhinendra
Kumar Jha, Advocates

Versus

DDA AND ORS

..... Respondents

Through: None for respondent No.1.
Mr. Manu Chaturvedi, Standing
Counsel for MCD with Mr. M. Desai
and Mr. A. Lenka, Advocates for
respondent No.2
Ms. Madhu Sudan Bhayana, Mr.
Suresh Chauhan and Mr. Madhav
Shah, Advocates for respondents
No.3 to 5

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. Present none for respondent No.1/DDA.



2. By way of present petition filed under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:-

“A) Issue appropriate writ/order/direction directing the respondent Nos. 1 and 2 to remove/demolish the illegal and unauthorized construction over the terrace of third floor as is being constructed by respondents no.3 to 5 in BW 53 to BW 56 Block, Shalimar Bagh, Delhi.

B) Issue appropriate writ/order/direction thereby quashing/revoking the NOC/permission, issued by the respondent no.2 as the same has been given in violation of relevant provisions of laws, byelaws and guidelines issued by Respondents no.1 and 2 and also law laid down by the Competent Court of law.”

3. Mr. Gautam Das, learned counsel for the petitioners, submitted that grant of the NOC/permission dated 14.01.2022 by respondent No.2/Corporation for installation of lift and connection bridge in *Flat Nos.53A to 53D, BW Block, Shalimar Bagh, Delhi – 110088* is in complete disregard to its own policy framed in this regard. He contended that in view of the said policy, no such permission ought to have been granted. It was also submitted that while installing the lift, respondent Nos. 3 to 5 have encroached upon common courtyard/public land and the same has caused disruption in easement rights of other occupants of the society.

4. Besides others, the petition is contested by respondent No.2/Corporation.

5. Mr. Manu Chaturvedi, learned Standing Counsel for respondent No.2, referred to the NOC/permission dated 14.01.2022 (*Annexure P/4*) granted by the answering respondent subject to certain terms and conditions and the Procedure for Issuance of NOC for Installation of Lifts in Group Housing



Flats built by DDA (*Annexure P/5*), to submit that the grant of NOC/permission for installation of lifts is governed by a policy which was initially issued by DDA and later adopted by the Corporation vide Office Order dated 13.05.2016. The pre-requisites for grant of NOC/permission as per the said policy are as under:-

“1.1 Pre-requisite for grant of Permission/NOC:

(i) Consent from owners using common staircase in that block is a pre-requisite (50% or more excluding ground floor) who will be beneficiary due to installation of lift. The consent from ground floor owner is advisable but not mandatory.

(ii) The applicants are advised to propose a separate lift structure independent of the existing building of the existing building structure stability of the existing structure.

(iii) The NDMCE is at liberty to take actions against unauthorized construction/additions/ alteration and encroachment as per their policy and provisions of DMC Act.

(iv) In order to address the concern primarily of the ground floor allottees regarding access to their flat, natural light and ventilation, the applicant should propose the lift and the lift structure preferable on the blind wall i.e. the wall which does not have any door/ window the existing structure so that the natural light and ventilation of the flat is not affected.

(v) Recommendation of lift manufacturing agency (preferable as per approved list of CPWD) with regard to technical feasibility, location of lift well and safety aspects in respect of installation must be followed by the applicants.



(vi) Certificate from registered Structured Engineer/ Architect (on their letter head) stating that the structural design of the lift well and connecting bridge wherever required is as per provisions of the prevailing NBD (National Building Code).

(vii) Four sets of building plans indicating location of proposed lift well and connecting bridge if required duly/ signed by registered Architect and proposing/ secondary applicants/President of Management Committee (MC) of CGHS.

(viii) Undertaking regarding maintenance/operational aspect, safety requirements and its cost as per **Annexure-A**.

(ix) Undertaking to obtain NOC from Delhi Fire Service(wherever applicable) Lift Inspector and Power/Electricity Distribution Company.

(x) NOC from registered RWA (in case of DDA Flats)/MC of CGHS in which lift is proposed to be installed in case any shifting of services is required.

(xi) Indemnity Bond from all proposing applicants* in case of flats built by DDA/Management Committee (MC) of CGHS indemnifying to keep NDMC harmless from any claim which crop-up against the NDMC due to erection of lift/Lift-well and connecting bridge.

*Applicants shall belong to two categories i.e. Proposing Member(s) and Secondary Member(s).

While proposing Members are those who are currently using one common staircase only and contributing to the cost of installation of lifts, Secondary Members are those who are using common staircase but not contributing to the cost. However, consent for installation of lifts is given by them. Other, residents of the stairway will be Uninterested-members. In case they get interested in participating at a



later date, they may, with the consent of the Proposing members share the costs (capital+ operation + maintenance cost) and use the lift.”

He also submitted that the NOC/permission dated 14.01.2022 was granted on completion of requisite formalities, including applicants' obtaining of consent from 50% owners/occupiers of floors in the concerned block (excluding the ground floor), and the same was subject to the condition that the lift shall not travel up to terrace, failing which the NOC/permission would be treated as null and void.

6. Learned counsel for the petitioners additionally submitted that respondent No.2/Corporation being hand in glove with respondent Nos. 3 to 5 has issued fresh NOC dated 18.07.2022 with respect to *Flat No.53A to 56D, BW Block* during the pendency of the present petition, in terms of the new policy dated 07.07.2022. He further submitted that in the 'check-list' annexed with the new policy dated 07.07.2022, the Corporation has intentionally included the words '*construction to be regularized*' while seeking four sets of plans from the applicant, whereas the said words were not appearing in the 'check-list' annexed to the earlier policy.

7. Learned Standing Counsel for respondent No.2, on the other hand, referred to the short affidavit dated 22.08.2022 placed on record to submit that vertical stacks 53 and 54 are connected by one staircase, while vertical stacks 55 and 56 are connected by another, and all four stacks would be serviced by the lift through two connecting bridges. Relevant excerpt from the aforesaid affidavit is reproduced hereunder:-

“a. Required procedure for obtaining permission of



Installation of lift as per Respondent No. 2's policy

xxx

3. That accordingly, the Lift Installation Policy required that consent from 50% owners/ residents (excluding ground floor) using the common staircase must be obtained before permission for installation of lift is granted by Respondent No. 2. The requirement of consent from owners/residents before Respondent No. 2 can permit installation of lift can therefore be summarized as:

- i. Consent of 50% owners/ residents that use the common staircase in that block (and not of all owners/ residents) is required.
- ii. The owners/residents living on the ground floor are to be excluded in the computation of 50% owners/residents mentioned above.

4. That BW Block , Shalimar Bagh, Delhi comprises of 120 vertical stacks (See: Map of BW Block, Shalimar Bagh, Delhi annexed hereto as **Annexure A- 1**). That the Hon'ble Court had posed a query during the hearing dt. 11.07.2022 in the Present Writ Petition as to which of the vertical stacks herein are connected with each other. In this regard, a site inspection was conducted by Respondent No. 2 and it was found that:

Vertical stacks 53 and 54 (the property that is the subject matter of the Present Writ Petition) consist of a four floored block (with 1 owner/ resident on each floor) that has a common staircase connecting the two vertical stacks (53 and 54). Significantly, vertical stacks 53 and 54 are connected only to each other and are not connected to any other vertical stack by a staircase or otherwise. The same connection scheme is true for all horizontally adjacent vertical stacks in BW Block. For e.g.: Vertical stacks 55 and 56 are also connected in a similar manner to each other by a connecting staircase,



but vertical stacks 53-56 and 54-55 are not connected in this manner vide a staircase or otherwise.

5. That considering the fact that vertical stacks 53 and 54 are not connected to any other vertical stack, it is clear that only owners/residents living in these 2 vertical stacks use the common staircase that connects these 2 vertical stacks. That accordingly, to obtain valid permission for lift installation vis-a-vis the block consisting of vertical stacks 53 and 54 in terms of Clause 1.1 (i), Lift Installation Policy; consent of 50% of owners/residents living in the first to third floor (as ground floor is to be excluded) in vertical stacks 53 and 54 was required. Considering there is 1 owner/resident on each floor, consent from 50% of 6 owners/residents was required. In this regard, reference is made to the application made for permission for lift installation in the aforementioned vertical stacks ('Application') (Annexed as Annexure A to Counter Affidavit filed by Respondent No. 2 dated 23.03.2022 in Present Writ Petition). A bare perusal of the Application clarifies that 3 owners/residents have signed the same and accorded their consent to lift installation, as is required by the Lift Installation Policy. Accordingly, the permission for lift installation in the block consisting of vertical stacks 53 and 54 granted by Respondent No. 2 vide letter dated 14.01.2022 ('Permission') (Annexed as Annexure B (Colly) to Counter Affidavit filed by Respondent No. 2 dt. 23.03.2022 in present Writ Petition) was as per the Lift Installation Policy."

8. Learned counsel for respondent Nos. 3 to 5 had further submitted that petitioner Nos. 3 to 5 are residents/occupiers of Ground Floor and have filed the present petition with *mala fide* intention, ignoring the fact that there are total 30 blocks in the society, wherein 11 lifts have already been installed and are functional. It was pressed that the families of answering respondents comprise of senior citizens, who are not only suffering from various serious



health ailments but have also gone through some major surgeries, and thus, are unable to climb the stairs. It was urged that in absence of any lift they would be unable to enjoy their life and property. Learned counsel also submitted that the answering respondents, by way of abundant caution, have obtained fresh NOC/permission from respondent No.2 vide communication dated 18.07.2022.

9. On specific query, learned counsel for respondent No.2, also submitted that while granting the NOC/permission, all aspects relating to structural safety and security are kept in mind.

10. I have heard learned counsels for the parties and perused the entire material placed on record.

11. From a perusal of the pre-requisites for grant of NOC/permission, as mentioned in the policy adopted by respondent No.2, it is clear that consent of 50% of the persons occupying flats on the upper floors is required for installation of a lift. The consent of the occupier of the ground floor is only advisory and not mandatory.

12. In the present case, learned counsel for respondent No.2 has categorically stated that the relevant policy provides for installation of lifts as well as connecting bridge between two blocks, and as such, vertical stacks 53-54 and 55-56 have been considered together while granting the requisite NOC/permission.

13. It has further been stated that occupiers, who have given their consent for grant of NOC/permission, have old and aged family members who find it difficult to climb stairs. In fact, one of the residents has also reportedly undergone heart surgery.



14. This Court is mindful of the fact that at times, families comprise of old and sick individuals. As per the policy framed by the DDA and later adopted by respondent No.2, the installation of lifts comes handy for such people. The said aspect also finds mention in decisions of Co-ordinate Benches of this Court in Shaik Abdul Hameed v. Delhi Development Authority & Others reported as **2013 SCC OnLine Del 2865**, K.M. Gupta & Ors. v. Delhi Development Authority reported as **2017 SCC OnLine Del 7492**, Deepak Sharma v. Delhi Development Authority and Ors. **W.P.(C) 11913/2016** and Saurabh Jain and Ors. v. East Delhi Municipal Corporation and Ors. reported as **2017 SCC OnLine Del 12140**.

15. An apprehension has been shown by learned counsel for the petitioners that respondent Nos.3 to 5 are likely to use the lift(s) for accessing the unauthorised construction existing at the terrace, but the same is misplaced as learned counsel for respondent No. 2 has submitted that the NOC/permission granted in the present case is subject to the condition that the lift would not travel to the terrace. Insofar as unauthorised construction at the terrace is concerned, it has additionally been submitted on behalf of respondent No.2 that requisite action in accordance with law is being undertaken.

Even otherwise, the issue of unauthorised construction is to be de-linked from permission for installation of lift in view of the aforementioned submission and also in line with decision of a Co-ordinate Bench of this Court in K.M. Gupta (Supra). At this stage, it is also worthwhile to take note of the submission made on behalf of respondent Nos. 3 to 5 that in the entire society, total 11 lifts have already been installed pursuant to similar



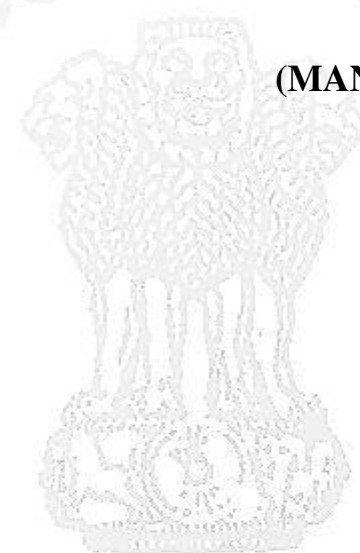
NOC/permission granted by respondent No.2 and the same are presently operational.

16. In view of the foregoing discussion, this Court does not find any merit in the present petition and the same is dismissed. However, it is directed that respondent No.2 shall ensure that all safety measures are scrupulously followed during installation of the lift and connecting bridge in question. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 30, 2022

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