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

Judgment reserved on: 06.10.2022

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Judgment pronounced on: 15.12.2022

+ **W.P.(C) 6765/2021 and C.M. Appl. Nos. 21303/2021, 39166/2021**

LT. COL DARYA SINGH DESWAL, RETD. & ORS. Petitioners

Through: Mr. Mukul Talwar, Sr. Adv. along with Mr.
Arijeet Singh and Mr. Rahul Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE
CHAIRMAN & ORS. Respondents

Through: Ms. Shobhana Takiar, SC along with Ms.
Latika Malhotra, Adv. for DDA.

Mr. Anupam Srivastava, ASC along with
Mr. Dhairya Gupta, Ms. Sarita Pandey, Mr.
Ujjwal Malhotra and Mr. Kaustubh
Shrinarain, Advs. for R-2.

Mr. Arjun Mitra, Adv. for R-3.

Mr. Trideep Pais, Sr. Adv. along with
Mr. Surya Prakash, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. This present petition has been filed by the petitioners under Article 226 of the Constitution of India, seeking the following reliefs:-

“(a) Issue Writ in the nature of Certiorari, to quash the Delhi Fire Services’ impugned Sanction No. F 6/DFS/MS/BP/CGHS/2018/4547 dated 30.10.2018;

(b) Issue Writ in the nature of Certiorari, to quash the D.D.A.’s impugned Sanction No. DW12/0575/18-19 dated 24.06.2019;

- (b) *Issue Writ in the nature of Certiorari, to quash the D.D.A.'s Impugned Order No. F23(42)96/Bldg/120 dated 20.07.2020;*
- (c) *Issue Writ in the nature of Mandamus, directing the D.D.A. and the Delhi Fire Services to do immediate Spot Inspection of the Defence Land and Cantonment Service Cooperative Group Housing Society Ltd. (Ashoka Apartments), Plot 8, Sector 12, Dwaraka, Delhi 110078, to assess in advance the possible impact of additional construction on the Structural-stability and Fire-safety, and, to ascertain the amount of violation of UBBL-2016 and other statutory provisions that the Management Committee, Ashoka Apartments has done;*
- (d) *Issue Writ in the nature of Mandamus, directing the I.I.T., Delhi or any other reputed Expert Structural Engineering Institution to undertake the 'Third Party Structural Audit of all the buildings of the Ashoka Apartments, in the interest of life/safety, property and hard earned savings of the old aged residents of Ashoka Apartments;*
- (e) *Issue Declaration/Order that, any additional construction raised/done so far by the Management Committee, Ashoka Apartments, in contravention of any Building Bye-laws and/or any other statutory provision, by taking advantage of the above impugned Orders, as illegal and liable for demolition; and,*
- (f) *Any other or further Order(s) which this Court may deem fit and proper in the facts and circumstances of the case in the interest of justice."*

2. The factual background in the context of which the present petition has been filed is broadly summarized hereinunder:-

- (i) The Defence Lands and Cantonment Service Cooperative Group Housing Society Limited, i.e., respondent no. 4 herein, was formed in 1983. In 1997, the Delhi Development Authority (hereinafter, referred to as 'DDA') allotted and gave possession of land measuring 6500 sq. meters to the said society on perpetual lease. The construction of residential apartments by the name of Ashoka Apartments commenced thereafter, and was completed in the year 2000-2001. Admittedly, the construction was carried out in

compliance with the relevant Building Bye Laws of 1983, (hereinafter, referred to as 'BBL, 1983').

(ii) The relevant sanction from the Delhi Fire Services (hereinafter, referred to as 'DFS') was obtained on 04.04.2001.

(iii) It is notable that the BBL, 1983 contemplated that in respect of the apartments in the aforesaid society (hereinafter, referred to as the 'Ashoka Apartments'), being a high rise building of about 15 meters, there will be two staircases, i.e. (i) an enclosed internal stairway, minimum width of which would be 1.25 meters as per Clause 16.3.5(a) of BBL, 1983; (ii) an external staircase on the external wall of the building opening to an open safety area as per Clause 16.3.4 of the BBL, 1983; minimum width of the external staircase would be 75 cm as per Clause 16.4.4(f) of BBL, 1983.

(iv) Sometime around March/April, 2001, after having obtained necessary sanctions from the DDA and the DFS (hereinafter, referred to as the 'original sanction'), the allotment of flats is stated to have been done by draw of lots, in the presence of the representatives of the DDA and the representatives of the Registrar, Delhi Cooperative Societies. The society constructed a total of 88 flats in three blocks, out of which Block A and B comprised of 3 B.H.K. and Block C comprised of 2 B.H.K. Blocks A and C comprise of stilt and seven upper floors, whereas Block B has no stilt and has eight floors. Each floor in every block has four flats.

(v) In the year 2018, the co-operative proposal for further expansion/alteration of apartments in the Ashoka Apartments' buildings was submitted and was proposed in the following manner:-

Block	Current	Proposed
A	3 bhk, stilt. 7 floors, 460 sq ms covered area on each floor.	275 sq. ft. to be added - 1 room plus toilet and balcony
B	3 bhk, no stilt, 8 floors, 460 sq. ms covered area on each floor	275 sq. ft. to be added - 1 room plus toilet and balcony
C	2 bhk, stilt, 7 floors, 416 sq ms covered area on each floor	375 sq. ft. to be added - 2 rooms plus toilet.

(vi) An application dated 31.07.2018, under the signatories of the Secretary, Ashoka Apartments was sent to the Vice Chairman, DDA for sanction/approval of the DDA for the aforesaid proposed construction. Thereafter, the DDA forwarded the aforesaid application of the Ashoka Apartments to the DFS for granting sanction for 'rearrangement of balconies' in all the three blocks.

(vii) On the said proposal, the following sanctions were granted:

Sl. No.	Sanctioning Authority	Date	Particulars
1.	DFS	30.10.2018	Delhi Fire Service Sanction No. F6/DFS/MS/BP/CGHS/2018/4547 (Annexure P1)
2.	DDA	24.06.2019	DDA Sanction File No. DW12/0575/18-19 (Annexure P2)

(viii) After receiving the aforesaid sanctions from the DDA and the DFS (hereinafter, referred to as the 'new sanctions'), the proposed construction was started at the Ashoka Apartments.

(ix) After the aforesaid sanctions were granted, the petitioners being the members/residents of the Ashoka Apartments, aggrieved by the aforesaid sanctions, complained to the Hon'ble Lieutenant Governor of Delhi, who is also the Chairman of the DDA, questioning the validity and legality thereof. Pursuant thereto, DDA vide its order F.23(42)96/Bldg/151 dated 12.07.2019 passed under Section 31 of the Delhi Development Authority Act, 1957 (hereinafter, referred to as 'the DDA Act') directed the President/Secretary, Ashoka Apartments to immediately stop the construction at Ashoka Apartments until a third party assessment of structural stability and safety is carried out by Indian Institute of Technology Delhi (hereinafter, referred to as 'IIT Delhi') and remedial measures are taken as suggested by the IIT Delhi.

(x) The Management Committee of the Ashoka Apartments approached IIT Delhi on 05.10.2019, to conduct the 'Third Party Assessment on Structural Stability', whereupon IIT Delhi vide letter dated 11.10.2019 communicated its inability to conduct the said assessment since the institution was not undertaking any consultancy work for 'Third Party Checking/ Quality Assurance/ Quality Auditing of Building and Structural Stability'. Thereafter, the Management Committee of the Ashoka Apartments got a 'Feasibility Report on Expansion work at Ashoka Apartments' conducted by privately

engaging two faculty members of the IIT Delhi, which was submitted to the DDA.

(xi) The DDA vide the impugned order F23(42)96/Bldg/120 dated 20.07.2020, discharged the Ashoka Apartments from the Stop Construction Order dated 12.07.2019, and the President/Secretary of the Ashoka Apartments was directed to carry out the remedial work of 'Seismic Strengthening/Retrofitting of RCC structure' as per the 'Feasibility Report' submitted to it.

(xii) Thereafter, the petitioners made a number of representations to the DDA and the DFS to look into the new sanctions granted to the Ashoka Apartments without inspecting the buildings, and also alleging that the basic DDA norms of 06.02.2014 were not being followed, and sought that construction be stayed till the structural safety inspection of the buildings in Ashoka Apartments was conducted. The petitioner no. 1 was also informed by the IIT Delhi vide letter dated 08.06.2021, that they issued a feasibility report for the proposed additional construction to M/s Design N Design, and no report was issued for foundation of the existing structure i.e. no Structural Safety Audit was done of the existing structure by them. It was further informed that the 'Feasibility Report on Expansion work at Ashoka Apartments' was submitted by two faculty members of the IIT Delhi, who were privately engaged by the Management Committee of the Ashoka Apartments.

(xiii) On 17.11.2020, DDA vide its notice directed the President/Secretary, Ashoka Apartments to immediately conduct the

structural audit of the building, failing which penal action would be initiated as per the DDA Act. However, there was no impediment for the respondent no. 4/Ashoka Apartments to proceed with the construction activities in view of the impugned order dated 20.07.2020, as a result of which various representations were made by the petitioners seeking that the Management Committee, Ashoka Apartments be restrained from carrying on construction work. Eventually, the present petition was filed by the petitioners seeking the aforesaid reliefs.

(xiv) Vide order dated 08.11.2021 passed in these proceedings, it was directed as under:-

“CM APPL. 39166/2021 (fresh by petr. for directions)

1. Issue notice. Notice is accepted by the learned counsel named above for the non-applicants/respondents.
2. Issue notice to the unserved non-applicants/respondents through Speed Post, approved courier, e-mail, WhatsApp, SMS, Signal, and such other forms of electronic service as may be viable, through counsel as well, returnable on 30.11.2021.
3. The applicants/petitioners contend that the letter dated 30.10.2018 issued by the Chief Fire Officer, GNCTD apropos ongoing construction of balcony in three existing residential blocks of Defence Land & Cantt. Services CGHS Ltd. at Plot No. 8, Sector-12, Phase-I, Dwarka, New Delhi-110075 gives online approval for construction, only on the basis and condition that the proposal is for the rearrangement of balcony exits to be maintained at the time of completion.
4. The learned Senior Advocate for the applicants/petitioners submits that the extension of balconies, which begins at 9 feet, will in all likelihood impede fire safety measures, therefore, the same needs to be examined by an assessment at the site. He further submits that in response to Query No.3 under an RTI application by an identically placed aggrieved resident, as to whether a Fire Safety Clearance has been issued to DL&CS CGHS, Plot- 8 Sector-12, Dwarka, it has been clearly stated by the Fire Department that, "No FSC has been issued to DL&CS CGHS, Plot - 8 Sector-12, Dwarka". He further submits that since the Fire

Department itself has categorically stated that no fire clearance has been given, the DDA cannot possibly wash its hands apropos the ongoing construction, which may pose a hazard to the safety and security of all the residents, and apartment owners in the aforesaid Group Housing Society.

5. The learned counsel for R-4-Society submits that out of 88 members of the R-4/Society, 70 members do not have any objection to the ongoing construction and have expended their hard-earned monies towards augmentation of their residential accommodation.

6. Be that as it may, any construction which is undertaken ought to be in accordance with law ensuring all safety standards and protocols.

7. The learned Senior Advocate for the applicants/petitioners states that the applicants do not have any concern beyond strict compliance of the safety standards. He submits that quite often an individual may join in such construction exercise on the innocent assurance, that the same is as per law.

8. In view of the aforesaid circumstances, it would be appropriate that the R-2/ Delhi Fire Services, GNCTD ensures that the building be inspected in three days by a Senior Officer, who may be deputed by the Chief Fire Officer; the views of the Fire Department shall be communicated to all the parties concerned. The parties through their counsel may assist the Officer so deputed, in inspecting the ongoing construction on 10.11.2021 at 11 a.m.. Should it be necessary, the Fire Department may take the assistance of the local police.

9. The learned Senior Counsel for the applicants/petitioners further submits that the expansion of the building and the ongoing construction is likely to affect its foundations/and structural safety; that it is because of this apprehension that a recent structural audit, conducted under the directions of the Management Committee of the Group Housing Society, has recommended retrofitting of support columns; it has been so necessitated because the building's foundations have become weak and/or are likely to become weak by the ongoing construction or additional weight being imposed on the structural frame. He submits that the matter needs to be examined expeditiously and scientifically.

10. Let the DDA look into the matter afresh, hear the parties concerned within a week and ensure that the construction takes place only as per law.

11. Renotify on 30.11.2021.”

(xv) Vide interim order dated 15.02.2022 passed in these proceedings, it was directed as under:-

“1. A Status Report has been filed on behalf of Delhi Fire Services ('DFS') recording its objections and/or non-compliance of fire safety standards in

the building, which includes non-provision of requisite width of the staircase, the external staircase is stated to be not linked to the various floors of the building so as to provide a fire escape, in case of the need for urgent evacuation.

2. The Fire Department has also highlighted the need for 6 mtr. wide internal road for circulation along the peripheral wall which should be capable enough to bear a weight of 45 tons. Insofar as the requisite fire safety measures are yet to be put in place, no further construction could be undertaken which could well jeopardize the safety of the occupants of the building and the structural safety of the building itself.

3. The learned counsel for respondent no. 4 submits that observation of the Fire Department is contrary to the National Building Code of India, 1983. He refers to Clause 7.6.2 and other provisions thereto. He submits that in terms of the aforesaid Code, the requirement for the width of staircases is 1 mtr. The code was amended in 2016 and the staircase width was mandated at 1.25 meters. He submits that the subsequent amendment will not be applicable to the existing building, otherwise it would entail demolition of the entire multi-storied building, this would cause irreparable prejudice to the residents. Let the Fire Department look into the matter and file its opinion regarding the aforesaid submissions. It will be open to respondent no. 4 to reply to the aforesaid Status Report before the next date.

4. The learned ASC for GNCTD/DFS submits that the approval was given by the DFS on the basis of the representation made by respondent no. 4. However, on inspection shortcomings were noted. The amendment to the Building Code had been made in 2016 and the sanction for additional construction was given in 2018. The learned Senior Advocate for the petitioner submits that the sanction could be granted only as per the extant laws.

5. It will be open to the respondent no. 4 to approach the Fire Department (DFS) in terms of the aforesaid submissions, apropos the non-applicability of the amended code. Respondent no. 4 undertakes not to carry out any further construction till the circumstances/ opinion are altered with respect to the notices of the DFS. Liberty is granted to approach the court in altered circumstances.

6. List on 04.08.2022.”

3. The sanction dated 30.10.2018 granted by the DFS is impugned on the basis that the same was wrongly granted without doing any 'physical site inspection' of Ashoka Apartments and was entirely on the basis of the proposal forwarded by the DDA.
4. The DDA's sanction dated 24.06.2019 is impugned on the basis that the same arbitrarily permitted the Management Committee, Ashoka Apartments to carry out additional construction of bedrooms, toilets and balconies in all the three blocks of the society while ignoring the non-submission of the structural safety certificate with the 'additional construction proposal' (mandated by DDA's Circular No. F.15(10)2013/MP/39 dated 06.02.2014), and by ignoring the presence of glaring violation of the fire and life safety norms prescribed by the National Building Code of India, 2016 (hereinafter referred to as 'NBC') and the Unified Building Bye Laws for Delhi, 2016 (hereinafter referred to as 'UBBL, 2016') and the additional construction proposal.
5. The DDA's letter dated 20.07.2020 discharging Ashoka Apartments from its Stop Construction Order No. F23(42)96/Bldg/151 dated 12.07.2019, was impugned on the basis that the Management Committee, Ashoka Apartments had still not got the mandatory 'Third Party Structural Audit' of its buildings done, and that its proposal was still suffering from violations of structural-safety and fire safety norms.
6. After the aforesaid letter dated 20.07.2020, discharging Ashoka Apartments from the aforesaid Stop Construction Order No. F23(42)96/Bldg/151 dated 12.07.2019, the Management Committee,

Ashoka Apartments started the proposed construction on 09.06.2021. Hence, the present petition.

7. As recorded in the order dated 15.2.2022, the Respondent no. 4 society undertook not to continue with construction work.

CONTENTIONS OF THE PETITIONERS

8. Broadly, the following contentions have been raised by the learned senior counsel for the petitioners.

(i) Firstly, it is contended that UBBL, 2016 would be applicable for the proposed additional construction in the Ashoka Apartments. It is submitted that UBBL, 2016 was notified on 22.03.2016. The application for sanction of additional construction having been made on 31.07.2018, therefore, the UBBL, 2016 would be applicable to the additional construction and not BBL, 1983. Reliance is placed on Clauses 1.0, 1.1, 1.2, 1.6 and 1.7.0 of the UBBL, 2016. It is further submitted that provisions contained in UBBL, 2016 regarding specifications of staircase would become applicable to the Ashoka Apartments in view of the additional construction proposed to be carried out. In this regard, reliance is placed upon Clause 8.4.3(c) of the UBBL, 2016 which prescribes the minimum width of staircase (clear width excluding handrail and balustrade) for residential buildings (Group Housing) to be 1.5 meters. Reliance is also placed on Clauses 7.11 (g) and (h) and also Clause 9.3.1 of UBBL, 2016, which prescribe maximum width of riser and conditions stipulated with regard to fire escape staircase. It is further submitted by learned

senior counsel for the petitioners that although the original building plan which was submitted to the DDA by respondent no. 4 on 31.07.2018 had shown two staircases of 1.25 meters clear width, a status report dated 11.02.2022 filed by DFS revealed that the staircases at the society are not even 1.25 meters wide. It is submitted that the findings as recorded in the DFS status report are as follows:-

Sl. No	Staircase Details	Block A	Block B	Block C
1.	Main Staircase (Clear Width)	1.05 m – 1.07 m	1.04 m	1.055m – 1.09m
	Main Staircase (Width with Railings)	1.14 m – 1.24 m	1.14 m	1.14m – 1.24 m
	Step Height (risers)	0.14 m	0.14 m	0.145 m
2.	External Iron Staircase (Clear Width)	0.89 m	0.89 m	0.89 m
	External Iron Staircase (Width with railings)	0.97 m	0.98 m	0.98 m
	Step Height (risers)	0.19 m	0.175 m	0.21 m

9. In view of the aforesaid status report, the respondent no. 4 vide order dated 15.02.2022, was directed not to undertake further construction. It is submitted by learned senior counsel for the petitioners that the attempt on the part of respondent no. 4 to seek modification of this Court's order dated 15.02.2022 so as to proceed with construction cannot be permitted. It is submitted that, at this stage, the respondent no. 4 cannot be permitted to demolish the existing staircase and construct a new wide staircase as the same would be in violation of UBBL, 2016. In this regard, reliance is placed upon Clauses 1.7.1 and 1.7.2 of UBBL, 2016, which provides as follows:-

“1.7.1 Development permission: No person shall carry out any development or redevelopment including sub-division on any plot or land (not forming part of any approved layout plan or scheme) or cause to be done without obtaining approval from the Sanctioning Authority for the Layout Plan.

1.7.2 Building Permit: No person shall erect, re-erect or make addition/alterations in any building or cause the same to be done without, first obtaining a separate building permit for each such building from the Sanctioning Authority.”

10. It is submitted on the basis of the aforesaid that the order for demolition of existing staircases and construction of new staircases afresh can be made only by DDA under Section 30 of the DDA Act, being the sanctioning authority under UBBL, 2016. It is further submitted that the demolition of the existing staircases as well as construction of new staircases at the Ashoka Apartments does not form part of the approved layout plan/scheme as sanctioned by the DDA on 24.06.2019. Therefore, fresh permission from DDA is required for carrying out the above scheme. Moreover, the Court while exercising writ jurisdiction cannot be made to perform the functions of the Sanctioning Authority, DDA. Even otherwise, such permissions for demolition and reconstruction of the staircase cannot be granted because the buildings in Ashoka Apartments are fully occupied with only one staircase for entry or evacuation, and in the event of any fire mishap or earthquake, the lift(s) cannot be used for evacuation. It is further submitted that the modification cannot be allowed since it is not possible to make 1.5 meters clear width staircase in the available space, which presently is not even 1.12 meters wide, as is evident from the above table. Lastly, it is submitted that DDA's sanction dated 24.06.2019 stipulates, *inter alia* (a) violation of building bye-laws will not be compounded (Condition No. 3)

and, (b) the sanction will be *void ab initio* if any material fact has been suppressed or mis-represented or if auxiliary conditions mentioned above are not complied with (Condition No. 26).

As such, it is contended that in view of the above noted misrepresentations and violations of UBBL, 2016, the DDA's sanction dated 24.06.2019 has become *void ab initio*, and no construction of additional bedrooms and balcony at the society can be carried out on its basis.

11. The petitioners have also contended that respondent no. 4 is not complying with the stipulations under UBBL, 2016 regarding 6 meters wide internal road around the building for fire tender movement. In this regard, attention is drawn to Clause 8.2(b) of UBBL, 2016 which mandates that: 'The hard surface approach road to the building all around shall be capable of taking the weight of fire engine, weighing up to 45 ton having 6.0 m width (with 9.0 m turning circle at corners) for building up to 40.0 m height. The said open space shall be kept free of obstructions and shall be motorable'. It is submitted that a conjoint reading of DFS Status Reports dated 27.11.2021 and 11.02.2022, along with DFS' letter dated 29.03.2022, reveals that the width of internal hard surface road all around the buildings of the Ashoka Apartments is not 6 meters, though the respondent no. 4 is claiming otherwise in its Rejoinder dated 20.05.2022. Therefore, as on date the actual correct width of internal hard surface road all around the Ashoka Apartments is not known.

12. Apart from the aforesaid, the petitioners also submit that the respondent no. 4 has not carried out seismic strengthening/retrofitting of

RCC Structure in the buildings of the Ashoka Apartments before undertaking additional construction.

CONTENTIONS OF THE RESPONDENT NO.4

13. Learned senior counsel for the respondent no. 4/ Ashoka Apartments submitted that there are 88 members of CGHS, out of which 73 members have consented to the extension of the flats and have committed their hard-earned money towards the augmentation of their residential accommodation. It was also submitted that 73 members are the residents of Ashoka Apartments and are themselves concerned about their own safety, not in any manner being less than the 7 petitioners who are opposing the extension project.

14. It was averred that the entire basis of filing the present writ petition is incorrect inasmuch as there is no such requirement of any structural safety audit of the already existing structure for grant of sanction for proposed addition/ alteration in an existing residential building. The requirement was only to furnish a 'Certificate of Structural Safety' obtained from a structural engineer with respect to the proposed construction, certifying the structural safety of the design based on NBC and Soil Investigation Report. The said Certificate of Structural Safety dated 31.07.2018 was furnished by the Management Committee, Ashoka Apartments to DDA with its application for grant of sanction for the proposed addition/ alteration in the buildings of the Ashoka Apartments. The sanction for proposed addition/alteration was finally granted by DDA on 24.06.2019 after following the due procedure.

15. It is further averred that pursuant to DDA's general order dated 17.11.2020, for retrofitting in the existing buildings in the background of the city witnessing earthquakes in 2020, was totally unconnected with any proposed additional construction/ extension already sanctioned in favour of the Ashoka Apartments. The structural safety audit found the existing structure safe against earthquake forces considering all factors of Zone-IV. It was submitted that the present writ petition was filed by the petitioners by concealing this material fact and falsely averring that the management committee till date had not taken any step to ensure the Third Party Structural Audit. There is no other non-compliance on any other aspect, particularly the ongoing construction which is the actual subject-matter of the present writ petition.

16. It is contended that UBBL, 2016 is not applicable on alterations, wherein the modification/alteration is in the existing approved building, according to the sanctioned plan. The learned senior counsel relied on Clauses 1.5.1 and 1.5.3 of the UBBL, 2016, which read as under:-

"1.5.1 Part Construction: Where the part of an approved/ regularized building is demolished/ added/ altered or reconstructed, except where otherwise specifically stipulated, these Building Bye-Laws shall apply to the extent of the new work involved.

1.5.3 Existing approved building: Nothing in these Bye-Laws shall require the removal, alteration or abandonment, nor prevent continuance of the lawfully established use or occupancy of an existing approved building unless, in the opinion of the Sanctioning Authority such a building is unsafe or constitutes a hazard to the safety of adjacent property or to the occupants of the building itself."

17. It is further contended that the sanction dated 30.10.2018 granted by DFS and sanction dated 24.06.2019 granted by DDA for the proposed

rearrangement of balcony in the three existing residential blocks of the Ashoka Apartments shall apply only to the proposed extended portion and not to the existing construction. Learned senior counsel relied on the Fire Safety Clearance dated 29.03.2022, wherein the DFS has clarified that the sanction was given to the respondent no. 4 on the basis of the clarification letter No. F23(16)/1998/Bldg./L&I/91 dated 06.06.2017 by the DDA, whereby the DDA has further clarified that the proposed alteration/modification is not a vertical expansion in terms of additional floors beyond the already approved completion certificate. The relevant portion contained in the aforesaid Fire Safety Clearance letter reads as under:

“In view of the above, it is clarified that two staircases of 1.25 meter width and 6.0 meter wide fire tender movement road were clearly marked on floor plans, forwarded by DDA through online system and this is obvious from the letter of DFS bearing No. F.6/DFS/MS/BP/CGHS/2018/4547 dated 30-10-2018 and the Delhi Fire Service was approving such proposals in accordance with the clarification letter, given in a similar case by the DDA vide letter No. F23(16)/1998/Bldg./L&I/91 dated 06.06.2017, wherein, DDA clarified as under:-

“that additional staircase in the existing Housing Towers is not feasible due to non-availability of space. It is also intimated that the completion-cum-occupancy certificate has already been granted after obtaining NOC from your good office, moreover, in the proposal there is no vertical expansion in terms of additional floors beyond the already approved CC. the current proposal is in the form of horizontal expansion of balconies in the existing Dwelling Units where additional bedrooms and toilets on the existing terrace attached with existing one BHK Dwelling unit at 8th floor of existing Housing Towers.”

18. It is averred that the original sanction was granted to the Ashoka Apartments on 08.11.1996, in terms of the BBL, 1983, whereby the minimum width of the staircase is required to be 1.25 meters as per Clause 16.3.5 (a) of the BBL, 1983, and it is mandatory to have minimum two

staircases in the buildings - one shall be an internal staircase and the other being an external staircase/ fire escape, opening to exterior, interior or open space of safety. It was further averred that there are presently two staircases in each of the blocks/buildings in the Ashoka Apartments, one is an internal staircase and the other is an external staircase. The staircases existing in the buildings are in compliance of Clause 16.2 (a), 16.3.4 and 16.4.4 (f) of the BBL, 1983, wherein the exit shall be a doorway or passage to an internal staircase or external staircase/ fire escape, opening to the street or to roof of the building or interior or open space of safety.

19. Learned senior counsel for the respondent no. 4 submitted that the Status Report filed by the DFS dated 11.02.2022, in terms of the joint inspection conducted by the DFS and the DDA on 13.12.2021, in compliance of order dated 30.11.2021, reflects that the staircase in the buildings of the Ashoka Apartments are not in compliance with BBL, 1983, being slightly less than 1.25 meters in width. However, he clarified that the respondent no. 4 would rectify/modify the staircase with the width of 1.25 meters as per the aforesaid clauses of the BBL, 1983. An affidavit dated 07.10.2022 has been filed by the respondent no. 4 clarifying the same.

20. It is further submitted by learned senior counsel for the respondent no. 4 that the total existing space i.e., the well of the staircase in the Ashoka Apartments is 1400 cm., and the proposed construction of the staircase will be within the available space, as per the original sanction plan and no additional space will be required for the said re-construction. It is further submitted that in consonance with Clause 16.3.5 (a) of the BBL, 1983, the width of the existing internal staircases will be increased to 1.25 meters.

21. It is submitted by learned senior counsel for the respondent no. 4 that the issue with regard to the new construction hampering the fire tender movement in the Ashoka Apartments has been resolved. It is pointed out that the same was duly recorded in order dated 30.11.2021 passed by this Court, that the grievance of the petitioners have been partly addressed and the issues such as width of the staircase, height of each step and the landing area remain. The relevant portion of order dated 30.11.2021 reads as under:-

“1. The learned Standing Counsel for the DDA submits that the previous order dated 08.11.2021 has been complied with; that the parties concerned have been heard and the grievance is largely addressed.

2. The learned Senior Advocate for the petitioners submits that grievances of the petitioners have been partly addressed and much remains to be done apropos other aspects such as width of the staircase, height of each of the steps and the landing area. The learned counsel for Delhi Fire Services states that another inspection of the premises would be requisite. Let the Delhi Fire Services inspect the premises and forward its views to the DDA. Let the same be also placed on record, supported by an affidavit. Apropos the issue of retrofitting of the building in order to strengthen its structural support, the learned counsel for R-4 submits that in terms of the DDA's directions, retrofitting had to be carried out simultaneously and it is being so undertaken. Let the DDA verify this aspect so that the constructed building subsequently does not suffer from structural infirmity.”

CONTENTIONS OF THE RESPONDENT NO. 1/ DDA

22. It is contended by learned standing counsel for the DDA that the sanction granted by DDA dated 24.06.2019 to the respondent no. 4 is valid and subsisting; that the said sanction contemplates that the width of the staircase would be 1.25 meters. It is further submitted that any modification/ rectificatory work to make the width of the staircase consonant with the approved sanction plan, does not require any further approval. It was further contended that no new permission from DDA is required in case of an

occupied building; if some modification work is required to be done to make the building conform with the sanctioned plan. It is the categorical stand of the DDA that no fresh sanction is required by the society to carry out the necessary construction/ rectification work in the staircases to ensure that the width thereof is as per the original approved sanction plan.

23. Learned standing counsel submitted that the new sanction dated 24.06.2019, in respect of the proposed fresh construction, was granted to the respondent no. 4 as per the provisions of UBBL, 2016, after receiving the building plan application from the concerned Architect, who is responsible to inspect the site and submit the building site plan along with said application. It is further submitted that it is not mandatory for the DDA to conduct a site visit before granting of the sanction as per the UBBL, 2016. Clause 2.1.1 (f) of the UBBL, 2016 relied upon by the learned standing counsel reads as under:

“2.1.1 Plans and Drawings

.....

(f) The Architect, while submitting building plan application, shall inspect the site and ensure that the building plan submitted are as per existing site conditions including existing construction, if any.”

CONTENTIONS OF THE RESPONDENT NO. 2 / DELHI FIRE SERVICE

24. Learned counsel for the respondent no. 2 submitted that although during inspection on 13.12.2021 (in terms of the order dated 8.11.2021 passed in these proceedings) the buildings in Ashoka Apartment were found to be non-compliant, the DFS has not thereafter inspected the Ashoka Apartments, and the current status of the construction is unknown.

ANALYSIS AND CONCLUSION

25. The first issue that is required to be considered is whether BBL, 1983 or UBBL, 2016 is applicable to the proposed expansion of Ashoka Apartments in respect of which sanction was sought by the respondent no. 4 and in respect of which sanction was accorded by the DDA vide impugned communication dated 24.06.2019.

26. Learned senior counsel appearing for respondent no. 4 has rightly relied upon Clause 1.5.1 of UBBL, 2016. It is prescribed therein that in the event of addition/alteration/reconstruction, the UBBL, 2016 would apply only to the “*extent of the new work involved*”. Therefore, in the event of any such addition/alteration or reconstruction being carried out in respect of a part of the building, the same would clearly not require the removal of any other portion of the building. Thus, where only horizontal expansion is proposed by constructing some additional area within the pre-existing flats, the same would not entail that the pre-existing staircases in the concerned buildings be demolished and reconstructed as per the specifications in UBBL, 2016.

27. The applicability of BBL, 1983 is also amply clarified vide letter dated 06.06.2017 of the DDA as referred in letter dated 29.03.2022 of the DFS, in which it is brought out that existing staircase in pre-existing buildings cannot be demolished to comply with the UBBL, 2016 requirement as it is an impossibility, unless, the height of the building is being increased, which is not the case here. As such, the regulations prescribed in BBL, 1983 shall continue to apply in respect of the staircases.

The requirements thereof are embodied in the following provisions of the BBL, 1983:

“16.2 Types of Exits:

(a) exits shall be either of horizontal or vertical type. An exit may be doorway, corridor, and passageways to an internal staircase or external staircase, ramps or to a verandah and/ or terraces which have access or to the street or to roof of a building. An exit may also include:-

(a) horizontal exit leading to an adjoining building at the same level;

16.3.4 For building identified in By-law No.6.2.4.1, there shall be a minimum of two staircase and one of them shall be an enclosed stairway and the other shall be on the external walls of buildings and shall open directly to the exterior, interior, open space or to any open place of safety.

16.3.5 Notwithstanding the detailed provision for exits as per Bye-law No. 16.3.1 to 16.3.3, the following minimum width provision shall be made for each stairways:

(a) Residential building upto 3-1/2 storey ht. 0.9 m

Other residential building e.g. hotels, flats, group housing etc. 1.25 m

(b) Assembly buildings like auditorium, theatres and cinemas 1.5 m.

(c) All other buildings are 1.25 m.

(d) Institutional buildings like hospitals 2.0m

(e) Educational buildings like schools, colleges 1.5m

16.4.4 (f) Fire escapes stairs shall have straight flight not less than 75 cm wide with 25 cm treads and risers not more than 19 cm. The number of risers shall be limited to 16 per flight.”

[emphasis supplied]

28. The mere fact that the respondent no. 4 applied for sanction to carry out additional construction in the concerned apartments, without increasing the height of the building, does not entail that the entire staircase of buildings is to be demolished so as to conform to UBBL, 2016. This position

has been affirmed by learned standing counsel of the DDA upon a specific query from the Court in this regard.

29. It has also been stated by learned standing counsel appearing for the DDA that the sanction that was accorded vide impugned communication dated 24.06.2019 was based on the laid down procedure of UBBL, 2016 and Master Plan for Delhi 2021(hereinafter, referred to as ‘MPD 2021’).

30. Admittedly, the respondent no. 4 in its building plan submitted to the DDA on 31.07.2018 has shown two staircases of 1.25 meters clear width existing in Ashoka Apartments. This was clearly in consonance with BBL, 1983 and it was on this proposal of the respondent no. 4 that sanction was accorded by the DDA. It has been stated by learned standing counsel appearing on behalf of the DDA and also stated in the counter affidavit filed on behalf of the DDA, that sanction was issued by the DDA after following the laid down procedure in the relevant Bye Laws, and after consideration of all the drawings and proposals submitted in online mode by the architects/Managing Committee, Ashoka Apartments. The same was forwarded to DFS and Delhi Urban Art Commission (hereinafter, referred to as ‘DUAC’) by the DDA and was later approved, and NOCs were received from the DFS and DUAC dated 30.10.2018 and 01.11.2018 respectively. Thereafter, the sanction was issued by the DDA on 24.06.2019. Given that the sanction was granted by DDA based on the applicable Building Bye Laws and after following the prescribed procedure, the same cannot be faulted with and there is no ground for quashing the same. Necessarily, however, the respondent no. 4 would be required to carry out the construction strictly as per the sanction accorded by the DDA. The DDA

would be at liberty to undertake necessary inspections to ensure that the construction being carried out by the respondent no. 4 is strictly in conformity with the sanction plan and if any deviation/shortcoming is found it would be incumbent upon the DDA to take necessary and timely action.

31. It has also been pointed out by the respondent no. 4 that necessary compliance has been made by it regarding the requirement of retrofitting, as is evident from the final report on retrofitting filed on 28.07.2022 (Annexure R-1 to the rejoinder filed by respondent no. 4 to C.M. Appl. No.24244/2022). As such, there appears to be no basis for the petitioners' apprehension that the building is unsafe for additional construction. It would be incumbent upon the respondent no. 1/DDA to ascertain and ensure that the retrofitting work has been completed in all respects and that seismic strengthening/retrofitting of RCC Structure has been done so as to ensure that there is structural stability and there is no possibility of any hazard on account of the proposed additional construction.

32. It is also pertinent to mention that the DFS had pointed out in its short reply/ status report filed pursuant to order dated 08.11.2021 in these proceedings, that the 6 meters wide internal road for fire tender movement was reduced because of the new construction/extension of the balconies. However, the said construction was demolished and corrective steps are stated to have been taken by the respondent no. 4, maintaining the clear width of 6 meters of the internal peripheral road for the fire tender movement. The DFS had noted vide its letter dated 29.03.2022, that the mandatory 6 meters wide road around the high-rise buildings for the fire tender movement was in progress at the time of the said inspection. In

response to the aforesaid letter dated 29.03.2022, the respondent no. 4 wrote a letter dated 11.05.2022 to the DFS, clarifying/undertaking as follows:

“In that letter you had also suggested to ensure the width of 6.0 meter Road for fire tender movement which has been complied till now. At the time of joint inspection, when your official had suggested for 6.0 meter wideroad, we had complied your suggestions and even we demolished the structure which was obstructing the passage of 6.0 meter wide road required for fire tender movement. It is futher informed that Sh.S.P.Garg B.E.(Civil) Hauz khas, New Delhi vide letter dated 17.11.2021 has certified that all roads, underground water tank slab and hard surface under green if any has been designed for movement of fire tender to take the load of 45.0 MT. The manhole covers & slab of rain harvesting tank are made in R.C.C. and are strong enough for crossing fire tenders at THE DEFENCE LANDS AND CANTONMENT SERVICES Co-operative Group Housing Society Limited, Plot No. 8, Sector 12, Dwarka, New Delhi. The copy of the letter issued by Sh. S.P.Garg Civil Engineer is being annexed herewith as Enclosure No.4.”

The report of Sh.S.P.Garg B.E.(Civil) Hauz khas, New Delhi, referred to in the aforesaid communication is attached as Annexure No.7 to the C.M. Application No. 24244/2022 filed by the respondent no. 4.

33. The only other aspect of the matter is with regard to the width of the staircases. The status report dated 11.02.2022, filed by the DFS reveals that the staircases at the society are not even 1.25 meters wide, which is the requirement under BBL, 1983.

34. Learned senior counsel for respondent no. 4 submits that the proposed rectification work in respect to the interior staircase is only to make the staircase conform to the requirement of having width of 1.25 meters as prescribed by the BBL, 1983 and as submitted in the original sanction plan in respect of the concerned buildings of the Ashoka Apartments.

35. On a specific query to Ms. Shobhana Takiar, learned standing counsel for the DDA as to whether any permission is required by the respondent no. 4 from the DDA to carry out the rectification/construction work in the

staircases so that they have 1.25 meters width, it is stated that no permission of the DDA is required for the same, inasmuch as, the original sanction plan itself contemplates that the width of the staircases would be 1.25 meters. As such, carrying out this rectification would not tantamount to any addition/alteration in the building, and therefore, no fresh permission from the DDA is required for doing the needful.

36. In view of the stand taken by the DDA, there appears to be no impediment for the respondent no. 4 to carry out the proposed rectificatory/construction work in the staircase of the buildings. It cannot be lost sight of that the respondent no.4/ Ashoka Apartments has been inhabited by residents for more than two decades. It is imperative that if any rectification/construction work is required to be done to make the building compliant with applicable fire safety requirements and the approved sanction plans, the same should be completed expeditiously. None of the official respondents/regulatory authorities, have opposed the construction work proposed to be carried out.

37. In view of the aforesaid, the undertaking of the respondent no. 4, as recorded in the order dated 15.02.2022, that it would not carry out any further construction need not continue. There is also no merit in the prayer of the petitioners seeking quashing of the sanctions granted in favour of the respondent no. 4/ Ashoka Apartments, which are accorded based on the procedure laid down in the applicable building bye laws and the MPD 2021. The respondent no. 4 would be entitled to carry out the construction in terms of the sanction granted and also to carry out the necessary work in respect of the staircase of the buildings. It would be incumbent upon the DDA as also

the DFS to carry out inspection of the premises so as to ensure that the construction being done is in accordance with the applicable Bye Laws and sanctions accorded. If any shortcoming is found in this regard, the DFS and the DDA are directed to take necessary action as may be warranted under the applicable Rules/Bye Laws.

38. Before concluding, there is one other aspect of the matter which is required to be addressed. After hearing respective counsel for the parties at considerable length, the judgment in the instant case was reserved on 06.10.2022. On 10.10.2022, a short note came to be filed on behalf of the petitioners wherein the petitioners sought to raise a fresh contention in the following terms:-

*“1. On 06.10.2022 during arguments the DDA has incorrectly submitted that, no new permit/ sanction would be required by R-4 for carrying out modifications/ rectifications in the existing staircases in the buildings of the society [Defence Lands & Cantonment Services CGHS (Ashoka Apartments), Sector 12, Plot 8, Dwarka, Delhi 110078], if they are as per earlier sanctioned plan. However, a perusal of DDA’s own Bye-laws – UBBL 2016’s Bye-law No. 2.0.1 (d); and BBL 1983’s Bye-law No. 6.4.1 – show that such nature of alteration is not exempted from the requirement of obtaining fresh building permit. Moreover, as per section 334, Delhi Municipal Corporation Act, 1957, every person intending to remove or reconstruct the principal staircase or to alter its position, shall apply for sanction by giving notice in writing of his intention in such form and containing such information as may be prescribed by bye-laws made in this behalf. The BBL 1983’s Bye-law No. 6.4.1; UBBL 2016’s Bye-law No. 2.0.1 (d); and Delhi Municipal Corporation Act, 1957’s Section 334 (1) (g) are filed with this short note as **Annexures –A, B and C, respectively.**”*

39. This Court is constrained to express its dismay at the practice of making additional filing(s) after judgment in the matter has been reserved, without taking leave of the Court, and seeking to raise fresh contentions/ rely upon material which was never referred to at the time of arguments. In any event, the interpretation sought to be accorded by the petitioners to the

relevant Bye laws, and the insistence on the part of the petitioners that fresh sanction/ building permit is required from the DDA to carry out the modification/ rectification in the existing staircases in the buildings of the Ashoka Apartments, is contrary to the categorical stand taken by learned standing counsel for the DDA in these proceedings. Given the factual conspectus of the matter as noticed in the foregoing paragraphs, the petitioners are granted liberty to make a representation to the DDA raising the aforesaid contention. The DDA is directed to decide such a representation if and when filed by the petitioners, and pass a reasoned and speaking order thereon under due intimation to the petitioners and to the respondent no.4/ Ashoka Apartments.

40. With the aforesaid directions, the present petition along with any pending applications are, accordingly, disposed of with no order as to costs.

DECEMBER 15, 2022
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SACHIN DATTA, J.

