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

+ W.P.(C) No. 2609/2012 & CM No.5582/2012 (for stay)
SATYA PRAKASH JAIN Petitioner
Through: Ms. Sunita Bhardwaj, Adv.

versus

DIRECTOR, DELHI FIRE SERVICES AND ORS Respondents
Through: Ms. Neelam Singh, Adv. for R-1.
Mr. B. Mahapatra, Adv. for R-2.
Ms. Sakshi Popli, ASC with Mr.
Jitendra Kr. Tripathi, Adv. for R-3.
Ms. Renuka Arora, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.01.2016

1. The petitioner, claiming to be an Association of Apartment Owners of Mercantile House situated at 15, Kasturba Gandhi Marg, New Delhi, has filed this petition seeking mandamus to the respondent no.1 Director, Delhi Fire Service, respondent no.2 Secretary, Delhi Pollution Control Committee (DPCC) and respondent no.3 New Delhi Municipal Council (NDMC) to, (i) enforce the provisions of the Delhi Fire Prevention And Fire Safety Act, 1986 and to comply with the fire safety measures inside the building; (ii) to ensure compliance of Environmental (Protection) Act, 1986 and to remove the illegal Diesel Generator Sets being run inside the building; (iii) and to remove the illegal and unauthorised constructions in different portions of the building.

2. The petition came up before this Court on 17th May, 2012 when finding that the petitioner had not impleaded the builder/promoter of the said

building as party, M/s. New Delhi Hotels Limited stated to be the builder/promoter of the building was added as a party.

3. Status Report has been filed by the respondent no.1 Director of Delhi Fire Services. Counter affidavits have been filed by the respondent no.4 New Delhi Hotels Limited, by the respondent no.2 DPCC, by the respondent no.3 NDMC and an additional affidavit has also been filed by respondent no.4 New Delhi Hotels Limited.

4. The counsel for the respondent no.2 DPCC states that pursuant to the representations, show cause notices were issued and with respect where to follow up action was taken and now the building is found to be complying with the norms of pollution.

5. The counsel for the respondent no.3 NDMC states that notices of unauthorised constructions were issued but she is not aware what is the present status thereof.

6. The counsel for the respondent no.1 Delhi Fire Service states that the building is compliant with the norms of fire prevention/fire safety and requisite certificate has been issued to the building. The counsel for the respondent no.4 New Delhi Hotels Limited confirms the same.

7. The counsel for the respondent no.4 New Delhi Hotels Limited also states that the petitioner is not an Association of Apartment Owners of the building and there is different Association of Apartment Owners of the building and which is in management and control of the common affairs of the said building.

8. I have enquired from the counsel for the petitioner Association as to who are the members of the petitioner Association and who is managing and

operating the common areas and amenities in the building and whether the petitioner Association is the Association of Apartment Owners within the meaning of the Delhi Apartment Ownership Act, 1986.

9. The counsel for the petitioner Association states that the list of members of the petitioner Association and the Memorandum of Association and Rules and Regulations of the petitioner Association have not been filed though the petitioner Association is registered as a Society under the Societies Registration Act, 1860. She though also claims that the petitioner is the Association within the meaning of the Apartment Act but she has nothing to support the same. The counsel for the petitioner Association on further enquiry whether there is any other Association or not though admits there is another Association but contends that that is promoted by the builder and not by the flat owners.

10. I am of the opinion that the only direction which can be given in this petition is to the Statutory Authorities aforesaid to comply with their statutory obligations and to if find any violations, take action in accordance with law. This Court in this proceeding cannot adjudicate whether any particular flat owner/occupant is polluting or has raised unauthorised construction or has violated any fire norms inasmuch as the individual flat owners are not even before this Court.

11. On enquiry, the counsel for the petitioner Association states that all apartments in the building have been sold out by the builder/promoter of the building but the builder/promoter of the building has encroached upon the common areas of the building.

12. The petition is disposed of with the following directions:-

- A. The respondent no.1 Delhi Fire Service, respondent no.2 DPCC and respondent no.3 NDMC to on receipt of any complaint with respect to violation of the respective statutory provisions in any portion of the building, to take immediate action in accordance with law with respect thereto including after hearing the person who is alleged to have committed the violation, if so required.
- B. The respondent no.3 NDMC if has not already carried out inspection of the building to within a period of three months of today carry out an inspection of the entire building and if finds any deviations/violations of the sanctioned building plan and/or of the building norms, to take action with respect thereto by issuing notice to the concerned owner/occupant and in accordance with law.

13. In accordance with the direction issued with respect to the another multi-storeyed building namely Sagar Apartments, Tilak Marg, New Delhi vide order dated 6th August, 2015 in W.P.(C) No.2687/2013 titled ***Charanjit Singh Vs. NDMC*** it is further directed that action for demolition/removal of unauthorised construction with respect to the entire building be taken simultaneously at one stage so as to prevent discrimination and practice of pick and choose in the matter of removal of unauthorised construction from the building and piecemeal demolition.

14. The petitioner Association shall also be entitled to make further complaint to the Delhi Fire Service with respect to the violation of the fire

norms if persisting and upon which representation the respondent Delhi Fire Service shall take action in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 08, 2016

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