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

+ W.P.(C) 7041/2016

SABREENA TALWAR

..... Petitioner

Through Ms.Pruna Mehta, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondents

Through Ms.Arunima Dwivedi and Mr.Rajan
Sharma, Advocates for R-1 to R-3.
Mr.Manish Sharma and Mr.Abhishek
Aggarwal, Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.09.2016**

1 Petitioner is aggrieved by the permission having been granted by respondent no.1 to the private respondent (respondent no.4) permitting him to install a lift on the ground floor of his Flat i.e. the Flat bearing No.1397, Sector-A, Vasant Kunj, New Delhi. The petitioner is stated to be a resident of Flat No.1394, Sector-A, Vasant Kunj which is adjacent to the flat owned by respondent no.4. Her submission is that if this lift is permitted to be installed, it will

W.P.(C) 7041/2016

Page 1 of 19

destabilize the entire building structure and would also be hazardous to the rights of the petitioner who is living on the ground floor.

2 The averments made in the writ petition have been perused. These averments disclose that on 29.02.2016 respondent no.4 had made an application to the SDMC/respondent no.1 seeking permission to install a lift for Flat Nos.1393 to 1400. Respondent no.4 is admittedly the owner of Flat No.1397. This flat is on the second floor of the building. On 29.3.2016 a No Objection Certificate (NOC) for installation of a common lift for the aforementioned flats was granted (by the Assistant Engineer of the South Zone, SDMC) to respondent no.4. These documents were obtained by the petitioner under the RTI Act. On 25.4.2016 respondent no.4 had commenced the work of excavation for the purpose of the installation of the lift. In spite of a request by the petitioner to respondent no.4 asking him to provide him a copy of the NOC issued by the respondents, the same was not supplied; it was supplied to the petitioner only on 17.5.2016. On 31.5.2016, the petitioner informed the statutory body that the petitioner was objecting to this installation of the lift; the foundation

of the building was weak and the construction of the lift could endanger the life of the building and the owners of the entire block. No response was received. The construction was permitted to be continued by respondent no.4 up to 23.6.2016 when on the same day respondent no.1 was intimated by the respondent no.4 to stop the construction for the installation of the lift. The installation work was stopped on 23.6.2016 but it was again resumed on 04.8.2016. The resumption order had not been furnished to the petitioner. Petitioner had no alternate but to file this present petition. The prayer, at the cost of repetition, is that the respondent no.4 be stopped from installing the lift and the permission granted to him should be revoked.

3 Counter affidavit has been filed by the statutory body i.e. the respondents no.1 to 3. Contention is that this petition is not maintainable; if the petitioner is aggrieved by any act on the part of the respondent qua issuance of the NOC for installation of the lift (in the first instance) he should approach the ATMCD under Section 347A of the DMC Act. On merits, it is stated that permission for

installation of the lift was granted to respondent no.4 vide their communication dated 29.3.2016 which is as per the Policy formulated by the DDA for grant of NOC for the installation of a lift. Further submission is that this Policy is not the subject matter of challenge before this Court. A complaint had been received by the respondent with regard to the structural stability of the building qua the installation of the lift. A writ petition i.e. WP(C) 7682/2012 had also been filed by a first floor owner (of the same block of flats) which is now stated to be pending wherein since the question of the structural stability of the structure was raised a work stoppage notice had been issued by respondent no.1 to respondent no.4 and the work in respect of the installation of the lift was stopped. However, after a letter had been submitted by respondent no.4 through the Structural Engineer and Structural Architect of respondent no.4 along with the drawings, on a scrutiny of the aforementioned documents, respondent no.1 was of the view that the respondent no.4 should be granted a resumption permission to carry out the completion work of the installation of the common lift which had accordingly been granted on 01.8.2016.

4 Counter affidavit of respondent no.4 has also been perused. In this affidavit it has been stated that the Policy of the DDA permits installation of lift in a group housing society. This Policy has not been challenged. The work is being carried out by respondent no.4 in accordance with law. Further submission is that respondent no.4 being a senior citizen had undergone a knee replacement surgery because of the degeneration of both his knees. As a consequence he finds it difficult to access his second floor accommodation. For this purpose the installation of lift is necessitated for respondent no.4. This request for installation of the lift is by four persons (residents of Flat Nos.1397 to 1400). There are eight residents in the block. The petitioner is only one person who is aggrieved by the installation of the common lift. The other three applicants who had made a request for installation of the lift are also senior citizens. One of the aforementioned persons had suffered from cancer for which purpose he had undergone a chemotherapy, which has made his constitution weak necessitating the installation of this common lift. She is a resident of Flat No.1398. Another instance is the owner of Flat No.1399 which

has been pointed out. It is pointed out that he is also a senior citizen. He has undergone a hip replacement surgery. Report of Chartered Architect and Planning Consultant has also been placed on record along with counter affidavit pursuant to which the resumption order permitting respondent no.4 to continue with the construction work of installation of the common lift had been granted. Learned counsel for respondent submits that this document may be read in continuation of the earlier structural report of his Architect dated 18.2.2016 which had certified a safety from natural hazards for the installation of the aforementioned lift (page 48 of the paper book). There is another report of the architect qua the same issue (page 46 of the paper book).

5 Rejoinder has been filed by the petitioner to the counter affidavits of respondent nos.1 to 3 as also to the counter affidavit of respondent no.4. Submissions made in the writ petition have been reiterated.

6 On behalf of the petitioner, it is submitted that the structural stability of the building is in issue before this Court in WP(C) No.7682/2012 which is yet to be disposed of by this Court. One of

the occupants of the aforementioned block namely Rear Admiral A.P.Revi has filed that writ petition. That petition relates to the foundation of the block of the aforementioned apartments; the safety requirements of the foundational structure are a matter of grave concern in that petition also. Attention has been drawn to the policy of the DDA permitting installation of lifts. It is pointed out that even as per this policy there are certain pre-requisites for the grant of permission/NOC Clause 1.1 (ii) clearly stipulates that the applicant who is proposing to get a lift installed must have a separate lift structure independent of the existing structure of the building so that it does not affect the existing structure. This does not appear to be adhered to. The permission/NOC is governed by seven basic principles and the first two principles clearly state that there must not be any encroachment on public land; the structural stability of the building, the lift and the connecting bridge wherever applicable must be ensured. These have also not been adhered to. Photographs have been shown to the Court to substantiate a submission that the installation of the lift would be

on a public land as this is a common area. Clause 1.1(iii) stipulates that light and ventilation of the habitable rooms of residents should not be affected. The petitioner is apprehensive that this lift will block her light and ventilation. The Policy has not been adhered to in the correct spirit. The statutory body having granted a NOC thus suffers from an illegality. On all counts the permission to install the lift should be revoked.

7 These submissions have been countered by the respondent Corporation. It is submitted that the proposed lift is as per the norms of the DDA; this policy permits flat owners of a building to get a lift installed in their group housing flats and has been fully adhered to by the Resp.4. There is no reason why the lift should not be permitted to be installed. It is pointed out that this lift is proposed against a blind wall and the apprehension of the petitioner that her light and ventilation would be affected is misconceived. The lift is being installed in a common area. The report of the Structural Engineer (Dharam Pal Babbar) has also been relied upon to substantiate the submission that the structural stability of the lift has been fully taken

care of.

8 Respondent no.4 has also reiterated the stand adopted by him in his counter affidavit. It is pointed out that the lift proposed to be installed is fully in conformity with the policy of the Department. The respondent no. 1 is a resident of the second floor and the other three applicants who have joined him are all senior citizens and their medical conditions have been enumerated supra. The lift is necessary for them to access their individual flats. The structural stability certificates dated 15.02.2016 and 22.8.2016 have been relied upon. It is further pointed out that Rear Admiral A.P.Revi who is also a resident of the same block (Flat No.1396) has also given his consent to the installation of the lift and for this purpose attention has been drawn to a letter signed by him (page 138 of the paper book). Submission being reiterated that the writ petition WP(C) 7682/2012 is in no manner connected with the installation of the lift; in fact that writ petition relates to a construction over the third floor wherein the foundation of the building has been sought to be questioned. The

position being reiterated that this lift being installed in the common passage is not affecting the building in any manner; the foundational stability of the lift has been established; the foundational stability of the lift is distinct from the foundational stability of the building. Learned counsel for the petitioner has again drawn attention of this Court to the photographs showing the manner in which the proposed lift is to be created.

9 Arguments have been heard. Record perused.

10 The policy of the DDA granting permission for installation of a lift in Group Hosing Societies of the DDA had been approved by the DDA which was subsequently modified by an office order dated 15.02.2016. A simplified procedure for granting permission to applicants on their fulfilling criteria contained in the policy was devised. This modified policy is applicable to the DDA Flats as also as to Cooperative Group Housing Societies. The permission/NOC for installation of the lift and connecting bridge has to be obtained by the owners using the common staircase of that block; 50% or more must conjointly apply. This criteria had admittedly been fulfilled. The

application must also contain a proposal that a separate lift structure, independent of the existing building with a connecting bridge will not affect the stability of the existing structure. This has also been complied with. A perusal of the photographs filed by the respective parties show that the lift is proposed in the common area from where the staircase to the block of flats start. The excavation process is already complete. This Court has been informed that the lift was almost more than 50% complete when this petition was filed. A status quo order has since been passed. The photographs further show that the lift will be created against a blind wall and after reaching the top level there is a cantilever system from where the incumbent will travel i.e. from the lift of his respective flat. This cantilever projection can be seen in the photographs filed by respondent no.4. There is no quarrel on this aspect of the matter. It is not the case of the petitioner that the lift will not be created in this manner. This lift which starts from the common passage in the common area where the staircase starts would thus in no manner affect the walls of the main building. The submission of the petitioner that this lift will encroach

upon public land is misconceived. The foundational structure of the lift has been certified by various reports which will be discussed herein below; the structural stability of the lift is distinct from the structural stability of the building.

11 The first report filed by the petitioner is dated 15.02.2016. This report states that an IIT Engineer Team had made a preliminary visit of the site on 02.9.2015. On 29.9.2015, there was a meeting of the Executive Engineer and Assistant Engineer and the second visit of the site was made on 23.11.2015. The IIT Engineer Team had noted that as per their observations and information obtained during site visits and the drawings worked out by them strengthening of work has been carried out in 8 blocks out of 12 blocks. Flat No.1396 (flat in question) falls in Block 5 which is not covered under the strengthening measures. The visual evidence did not suggest that any strengthening of the foundation had been taken place. It was further concluded that the assessment of the structural stability of the foundation could not be made solely on the basis of this report and a

complete structural analysis would be needed if an increase in load was contemplated. This report has been submitted pursuant to an order (dated 20.5.2015) passed in the connected WP(C) 7682/2012 by a Bench of this Court wherein the controversy related to whether any rectification work had been carried out. This was to find out whether the foundation of the building was structurally stable or not. This writ petition filed by Rear Admiral A.P.Revi prayed that a restraint order be passed against the offending respondent (who as per the petitioner-A.P.Revi) was carrying out an illegal construction on the third floor. Submission of A.P.Revi was that the foundation of the block was not structurally stable to take on this extra load. It was in this context that the Bench of this Court on 20.5.2015 directed an IIT Engineers Team to carry out an inspection. This inspection report dated 15.02.2016 has been discussed supra. Heavy reliance by the petitioner on this report is misplaced. This report was filed pursuant to the averments of A.P.Revi (in WP(C) 7682/2012) that the foundational structure of that block was not strong enough to take on a third floor. That petition is in no manner connected with the present

petition which relates to the installation of a lift in the common passage areas unaffected the building on either side; the foundational structure of the building would remain unaffected.

12 The letter of the Architect, Deepak Gupta dated 25.02.2016 shows that a physical inspection of the site has been carried out. The site has been cross checked on the line of the sanctioned plan. There was no encroachment on public land; this sanctioned plan was sent to the Executive Engineer on the same date by the concerned architect. It may also be noted that this block of flats has 8 flats including the flat on ground floor which is in occupation of the petitioner. This is Flat No.1394. The staircase is being used by 6 flat owners. 50% of the occupants have admittedly consented for the installation of the lift. The certificate of the architect Mr.Deepak Gupta and Structural Engineer, Mr.Sushil Kumar certifying that the construction/installation of the lift and the connecting bridge in this DDA block comprising of 8 flats (Flat Nos.1393 to 1400, Vasant Kunj, New Delhi) will be carried out under their supervision and all specifications would be adhered to is noted. The Structural Engineer

Sushil Kumar, on inspection of the property, had also given an undertaking (as required under the policy) informing the Department that the structural aspect of the lift and its connecting bridge are as per the provisions of National Building Code. The lift installer i.e. Navsri Home Stair Lift has also certified (on 08.2.2016) that as per the drawings the lift can be installed with all safeties from ground to 2nd and 3rd floor; the structure made of steel would not obstruct any pass or neighbour light. The certificate of Safety from Natural Hazards has again been certified by the same architect and the structural engineer. Noting all these reports, permission for the installation of the lift has been granted by the Corporation to the respondent. This was on 29.3.2016. However, thereafter a work stop notice was given on 23.6.2016. This was in view of the pendency of WP(C) 7682/2012 titled 'Rear Admiral A.P.Revi Vs. SDMC & Ors', it has been brought to the notice of the Department that the DDA was required to inspect the block in question to consider whether necessary rectification work as suggested by the IIT had been executed at the site or not. This work remained stopped from 23.6.2016 upto 01.8.2016 when again a

communication was given by the Assistant Engineer, SDMC to the respondent informing him that in terms of his representation dated 30.6.2016 and the report of the Structural Engineer (Dharam Pal Babbar) permission to complete the installation of the lift had been granted. The report of Dharam Pal Babbar (the Structural Engineer) is on record. It clearly certifies that the proposed lift structure and the connecting bridge are independent of the existing building structure and does not affect the stability of the existing building. Further the proposed lift structure is safe, not posing any danger to the stability of the existing building and is in accordance with the bye-laws. This report was given separately by the Structural Engineer, Dharam Pal Babbar as also by the Architect Ved Prakash Gupta certifying the same safety standard. It was in view of these two reports, that permission to resume the construction work for the installation of the lift was granted by the SDMC to respondent no.4 on 01.8.2016.

13 The Policy circular of the DDA which is a circular circulated for the benefit of the flats owners of the above floors to access their flats by a lift appears to be fully adhered to. This Policy, in fact, aims

to cater to those flat owners who are unable to access their flats easily either because of medical conditions or because of age and who over the passage of time have become old and infirm. The medical evidence qua three of the flat owners in that block (who have given consent to the installation of the lift) has been noted. It is more than precarious. It is difficult to understand, how they would be able to access their first and second floor apartments in the absence of the facility of a lift. The prospect of their having to resort to climbing stairs to access their houses/apartments would be more than daunting. In such circumstances, it would not be unimaginable to state that most of them would rather stay put in their respective premises and not venture out because of their medical/old age conditions.

14 This policy had been formulated by the Government to deal with these kinds of situations. The photographs perused by this Court also show that the lift has to be erected in a common area; this common area does not belong to any particular individual. It is not a public land but a common area. The photographs further show that

the cantilever system has been designed and there would be no load which would be transferred upon any wall of any flat. This lift would also be facing a blind wall; the benefits of this lift would be much more than vice-versa. The submission of the petitioner that the foundational structure of the building is affected is wholly negated as there is a cantilever projection to enable the occupants of the flats on the first, second and third floor to access their houses. At the cost of repetition, there would be no load which would be transferred on any wall of the building. The structural stability certificate, by the Structural Engineer and the Architect certified about the structural stability of the lift cannot be doubted. They are experts in their field. The structural stability of the lift is distinct from the structural stability of the building; the walls of the building would remain untouched. It is also not as if lifts are not being permitted in DDA flats. Learned counsel for respondent no.1 has in fact drawn attention of this Court to a judgment passed by a Division Bench of this Court in LPA No.738/2013 titled Shaik Abdul Hamid Vs. DDA (22.10.2013) wherein the same policy of the DDA dealing with the

procedure for issuance of NOCs has been considered and while permitting the flat owners in that case to install a lift it had noted similar submissions and had rejected the plea of the petitioner seeking a revocation of the permission to install a lift.

15 Rear Admiral Revi (petitioner in WPC 7682/2012) has also given a letter duly signed by him wherein a perusal of the same clearly depicts that A.P.Revi was not objecting to the installation of the lift. His advice in this letter was that transparency should be maintained in the installation; too much reliance on the integrity of the lift provider should not be placed; in the same context it has been advised that the long standing issue of raising the floor level to prevent flooding should also be undertaken. Submission of the petitioner that the connected writ petition raises the same issue is clearly misunderstood.

16 This petition has no merits. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 19, 2016
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W.P.(C) 7041/2016

Page 19 of 19