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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9948/2016 & CM APPL. 39538/2016

JAYESH & ANR

..... Petitioners

Through

Mr. Hemant Singh, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through

Mr. Harshit Manaktala with Ms. Isha
Garg, Proxy Counsel for Mr. Dhanesh
Relan, Standing Counsel for DDA.

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Date of Decision : 25th October, 2016**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed seeking a direction to respondent-DDA to approve the construction plan in courtyards of Flat Nos.35 and 36, DA Block, Shalimar Bagh, Delhi-110088 without insisting on an 'No Objection Certificate' from other occupants.
2. It has been averred in the petition that on 29th January, 2016, petitioners submitted the sanction plan for courtyards for approval without NOC from other co-owners.
3. Mr. Hemant Singh, learned counsel for petitioners states that despite making number of representations to the respondent, no response has been

received till date.

4. Mr. Hemant Singh submits that a Division Bench of this Court in ***Municipal Corporation of Delhi Vs. Smt. Usha Devi Sharma, 127 (2006) DLT 275 (DB)*** has held that since the bye-laws envisage separate ownership in the property of different dwelling units, there is no requirement in the bye-laws that owners should give the No Objection Certificate and sign the application jointly for sanctioning the construction plan.

5. Learned counsel for petitioners further submits that the consent/NOC from the other occupants is not warranted by any provision of Building Bye-laws 1983.

6. In response to a pointed query, learned counsel for the petitioners admits that the courtyard is a common portion which is neither mutated in petitioner's favour nor owned by the petitioner exclusively.

7. The Division Bench in ***Municipal Corporation of Delhi Vs. Smt. Usha Devi Sharma*** (supra) has approved the following reasoning of learned Single Judge *"Once the property is segregated into different portions and mutated accordingly, there cannot be any requirement of all the co-owners to sign the building plans. If the plot and the building are both co-owned, then only the requirement for such co-owners to sign may at all arise. The segregation of interest of the different co-owners is recognized by the respondent Corporation by mutation of the different portions in individual names of different persons. The fate of an individual owner cannot be dependent on the pen of a persons, who happens to the owner of a different portion of the building. Thus, there cannot be any requirement of signatures of all the co-owners."*

8. Since the courtyards are co-owned by all the owners of the building, there is a requirement for such co-owners to sign the building plan and issue an NOC.

9. Keeping in view the aforesaid interpretation of the Division Bench's judgment in *Municipal Corporation of Delhi Vs. Smt. Usha Devi Sharma* (supra), respondent-DDA is directed to dispose of the application filed by petitioner within four weeks.

10. With the aforesaid observations and direction, present writ petition and application are disposed of.

MANMOHAN, J

OCTOBER 25, 2016

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