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

+ **LETTERS PATENT APPEAL No. 585/2016**

Date of decision: 24th October, 2016

SABREENA TALWAR

..... Appellant

Through Ms. Prerna Mehta, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION
(ADMINISTRATION) AND ORS.

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

Appellant-Sabreena Talwar impugns order dated 19th September, 2016 whereby Writ Petition (C) No. 7041/2016 filed by her has been dismissed.

2. Having examined the impugned order and considered the argument raised, we do not find any reason to interfere.

3. Vijay Kumar Mathur, respondent No. 4 herein, as a proposing member and allottee/owner of flat No. 1397 with consent certificates from secondary members, namely, Sarad Kapoor, owner of flat No. 1398, Shabana Zaidi, owner of flat No. 1399 and K.C. Katoch, owner of flat No. 1400 in accordance with the scheme dated 15th February, 2016 of the Delhi Development Authority, vide application dated 29.02.2016 had applied to the South Delhi Municipal Corporation for construction of a lift in the DDA flats at Vasant Kunj. The fourth respondent, it is stated, has undergone knee replacement surgery and is residing on the second floor. Other owner/occupants are also old and aged, who require a lift.

4. Learned counsel for the petitioner submits that one A.P. Revi, owner of flat No. 1396 has filed Writ Petition (C) No. 7682/2012 in which the

question of structural stability of the existing structure is raised and is pending consideration. This writ petition also relates to unauthorised construction carried out by the fourth respondent herein. In this petition Dr. G.V. Ramana, Professor, Indian Institute of Technology, Delhi has filed the report dated 15.02.2016. He has concluded:-

“Conclusions:

Based on the fact that DDA has not indicated that strengthening has been carried out in Block 5 and the fact that visual evidence of strengthening is not observed at site, it becomes apparent that strengthening of foundations of Block 5 where flat No. 1396 is located, has not been carried out. In addition, it is concluded that there is no further reason to undertake excavation for confirmation of strengthening in a block where it was never claimed by DDA that strengthening has been carried out.

The assessment of the structural stability of the foundation (as on date) cannot be made solely on the basis necessary for the regulating agency to assess whether the construction carried out later above the fourth floor complies with the prescribed standards. In case of non-compliance, the increase in the loads would require a complete structural analysis to ensure that the building meets the current revised standards and that the foundations are structurally stable.”

A reading of the conclusions of Professor G.V. Ramana reflects that he has not opined about the structural stability of the existing building or its foundation. It has been stated that the strengthening of the foundations of Block No. 5 where flat No. 1396 is constructed has not been carried out.

5. As per the findings recorded by the single Judge, which are undisputed, the lift is being constructed in a separate structure and has an independent foundation. The existing foundation of the flats is not affected or altered. The South Delhi Municipal Corporation, while granting permission vide letter dated 29.03.2016 took notice of the certificates furnished by the architect and also the structural engineer. The undertakings given by the architect, Deepak Gupta, and the structural

engineer, Sushil Kumar, are on record. The fourth respondent has given an indemnity bond. The resumption/completion of works letter from respondent no. 1 to respondent no. 4 dated 01.08.2016 also notes and acknowledges subsequent certificate issued by Dharampal Babbar, Structural Engineer, who has affirmed on the structural safety.

6. The said A.P. Revi, it appears, had initially raised objection to the construction of the lift. However, his subsequent undated note on the question of construction of the lift states that there should be transparency on the question of lift installation even if the DDA/SDMC did not require consent from all residents of the quadrangle of Block V. The question of flat security, maintenance, regular site cleaning arrangement should be duly taken into consideration. Noticeably A.P. Revi, subsequent to the resumption notice dated 01.08.2016, did not file any application questioning the construction of the existing lift. The South Delhi Municipal Corporation are satisfied.

7. On enquiry put forth, learned counsel for the appellant submitted that the foundation of the lift, though separate, is at a distance of about 20-25 cms from the existing foundation of the flats. It is submitted that the new construction would affect the structural stability of the foundation of the flats in Block V because movement of the lift would cause vibrations. These are technical matters, which have been examined by the South Delhi Municipal Corporation and by the architect and the structural engineers. There is nothing on record to show that the opinions given by the architect and the structural engineers are erroneous or technically questionable. The appellant has not obtained any contrary technical opinion. Technical literature is also not relied upon or referred to.

8. In the aforesaid position, we do not find any reason and cause to accept the submission made.

9. It is clarified that the dismissal of the present Letters Patent Appeal

would not be construed as expression of opinion on any aspects/matters or issue, which are the subject matter of Writ Petition (C) No. 7682/2012, titled *A.P. Revi versus South Delhi Municipal Corporation and Others*.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 24, 2016
VKR