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

+ **W.P.(C) 369/2017**

N S SHARMA & ORS

..... Petitioners

Through Mr.Mohan K.Kukreja and Mr.
B.L.Khatri, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through Mr.Surender, Standing Counsel for
SDMC with Mr. Amit Saxena and
Mr. Abhisht Hela, Advocates.
Mr.Rajesh Kumar Gautam for
Mr.K.K.Gupta, Advocate for
petitioner no.6 in WP (C) 2000/2014.
Mr.Sameer Abhyankar, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.01.2017**

C.M. No.1724/2017 (exemption)

1 Exemption is allowed subject to just exceptions. Application disposed of.

W.P.(C) 369/2017 & C.M. No.1723/2017

2 There are nine petitioners before this Court. They are aggrieved by an order dated 25.5.2015 passed by the Executive Engineer of the SDMC wherein permission had been granted to respondent no.2 to install a lift. This lift has been permitted to be

installed between Flats nos. 62 and 63 of the Nehru Apartments, Kalkaji, New Delhi. Submission is that the objections which have been raised by the petitioners have not been addressed by the Executive Engineer. Learned counsel for the petitioners has drawn attention of this Court to the objections which he had filed before the Executive Engineer dated 18.4.2016; the summary of the objections had also been placed before the Executive Engineer on 23.5.2016. Submission of the learned counsel for the petitioners being that the Executive Engineer while passing order dated 25.5.2016 had not answered any of these objections. Learned counsel for the petitioners submits that the building in question is high rise; the policy of the DDA dealing with the installation of lifts does not apply to high rise buildings; this policy pertains only to low rise buildings. For this submission he has drawn attention of this Court to the policy of the DDA dated 08.01.2016; which policy was “for installation of lift and connecting bridge in CGHS (Co-operative Group Housing Society), DDA built Flats (low rise flats) in NCT of Delhi”. Attention has also been drawn to the pre-requisites which are to be followed by the Department before sanction/NOC can be granted for the installation of a lift. Submission being that under Clause 1.1(iii), DDA/local bodies are at liberty to take action against unauthorized construction/additions, alteration and encroachment as per their policy and provisions of Act; in the aforementioned building illegal and rampant unauthorized encroachments and construction is prevalent and this has not been dealt with by the Executive Engineer. The order dated 25.5.2016 thus suffers from infirmity; it is liable to be set aside.

3 On advance notice, learned counsels for respondents have put in appearance. Learned counsel appearing for respondent no.1/SDMC submits that the permission for installation of lift has been granted as per the policy of the DDA. He has drawn attention of this Court to the impugned order (dated 25.5.2016) wherein the Executive Engineer has noted that the “fresh DDA Policy does not link the NOC for installation of lift with the issue of unauthorized construction”; the order has also noted that “the lift shall not be allowed to travel up to unauthorized additional floor at the terrace”. The revised policy of the DDA in this regard (dated 01.9.2014) has also been placed on record; the earlier policy was modified and there was a de-linkage of the installation of lift with alleged illegal construction; the relevant extract reads as under:

<i>Existing para</i>	<i>Modified para</i>
<i>The group of proposing members who are beneficiaries of lift shall give an affidavit on stamp paper that there is no unauthorized construction/construction beyond permissible limit including terrace floor of that particular block (the NOC for installation of lifts shall not be processed till all such unauthorized constructions are removed/regularized). In any case lift shall not be allowed to go up to the terrace level.</i>	<i>This para is withdrawn, however, the issue of NOC for installation of lifts does not directly or indirectly recognize the unauthorized construction in the flats. Further, it does not endorse any illegal construction in the flats. In any case, lift shall not allowed to go up to terrace level at all.</i>

4 This modified para of the Policy (dated 01.9.2014) shows that

the linkage/connection of illegal construction would have no bearing on the instalment of the lift if the lift is otherwise installed as per the norms of the DDA. On this count, learned counsel appearing for respondent no.1 further submits that action in accordance with law qua the illegal and unauthorized construction shall also be taken and this has been noted by the Executive Engineer in his impugned order; since the private respondent (respondent no.2 and others but not arrayed as parties) had complied with the parameters for the grant of an NOC for the installation of the lift the same had been granted to them. Attention has also been drawn to an order passed on 16.8.2016 in W.P.(C) No. 2000/2014 titled R.K. Garg & ors. Vs. Delhi Development Authority which was an earlier round of litigation inter se the same parties wherein the petitioner before that Court was respondent no.2 namely R.K.Garg. The Court while disposing of that writ petition on 16.8.2016 had noted that the order passed by the Executive Engineer (dated 25.5.2016- now impugned) had found that there was no force in the objections filed by respondent nos.2 to 16 (petitioners before this Court). The writ petition had been disposed of noting that the installation of the lift by the petitioners (R.K.Garg and Ors) needs to be processed as per fresh policy of the DDA; the NOC has also since been granted to respondent no.2. Learned counsel appearing for respondent submits that this order has deliberately not been placed on record by the petitioners as this order reads against them. Submission being that the impugned order (dated 25.5.2016) already having been examined the controversy is now at rest. This Court notes this submission. This Court notes in the earlier round of

litigation i.e. on 08.11.2012 respondent no.2 herein (R.K.Garg) has filed an application seeking the installation of a lift; an NOC had been granted in his favour; writ petition {WP(C) No.193/2013)} had been preferred by petitioner (N.S. Sharma and Others); the DDA had thereafter withdrawn the NOC granted to R.K.Garg. That writ petition was disposed of on 03.02.2014.

5 Thereafter the present petition was filed wherein R.K.Garg had challenged the withdrawal of the NOC granted to him earlier. Meanwhile a fresh policy for issuance of NOC for lifts in DDA Flats had been issued by the DDA which was in June, 2014 (noted supra). The order delinking the issue of encroachments/ unauthorized constructions qua grant of an NOC for installation of lifts has also been noted. The petitioner had in fact approached the Lt. Governor on this count who vide his order dated 20.4.2015 had directed the DDA to review the delinking order. The DDA thereafter came up with a fresh policy which (dated 08.1.2016); an NOC could be granted to an applicant who was seeking installation of a lift only after he had complied with the requirements required.

6 At this stage, learned counsel for petitioner submits that as late as on 21.7.2016 the Chief Fire Officer had written to the SDMC informing them that there are certain illegal constructions in the building and the before the NOC for installation of lift is granted fire clearance had to be obtained. Today this Court has been informed that pursuant to the order passed by the Coordinate Bench on 16.8.2016 (while disposing off WP(C) 2000/2014) an NOC has already been granted in favour of respondent no.2. The conditions for

the NOC have been perused. One such condition is that fire clearance has to be obtained from the Chief Fire Officer before the lift is made operational.

7 Learned counsel appearing for respondent no.2 (R.K.Garg) submits that the NOC has since been granted but the lift has not been made operational. Before the lift is made operational all these clearances will be obtained by respondent no.2.

8 This Court also notes that there are certain directions which have been sought for by the petitioners against other persons who have not been arrayed as parties. The only person arrayed as a private respondent is respondent no.2. Learned counsel Mr.K.K. Gupta appearing for petitioner no.6 (in WP(C) 2000/2014) submits that he has put in his appearance in the present matter but he has not been made a party when the prayer in the writ petition seeks an order against him as well. On a query has been put to the learned counsel for petitioner on this score, he has little answer.

9 This Court thus endorses the submission of respondent no.2 (R.K.Garg) that this appears to be a personal vendetta which the petitioner is harbouring against him. The litigation dates back to the year 2012; this fight is not being permitted to come to a close. The order passed on 16.8.2016 has already examined the order dated 25.5.2016 (now impugned) in WP(C) 2000/2014. The order was passed in the presence of the present petitioner; in fact the counsel appearing for N.S.Sharma and others was also appearing for the same parties on 16.8.2016; he did not raise any objection to the withdrawal of that petition at that time. The arguments propounded today are the

same which were the subject matter of his objections. The NOC has also been granted in favour of respondent no.2 (R.K.Garg) as per the directions contained in the order (dated 16.8.2016); the petitioners have approached this Court five months later. This Court is not inclined to entertain this writ petition.

10 At this stage, learned counsel for the petitioners submits that he would also be laying a challenge to the policy of the DDA for grant of NOC for the installation of the lift; this policy is not as per law. This Court notes that this is not a prayer in the present petition. This petition is without any merit. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 16, 2017

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