

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

Pronounced on: 27th March, 2017

+ LPA 687/2016 & CM No.45656/2016

BORDER ROADS CGHS

..... Appellant

Through: Ms.Kumud L.Das with Md.Alam
Ansari and Ms.Reetika Gupta, Advs.

versus

DEEPA BHATT AND ORS

..... Respondent

Through: Mr.Pravesh Thakur, Adv. for EDMC.
Mr.Arun Birbal, Adv. for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

: **MS. G. ROHINI, CHIEF JUSTICE**

1. This appeal is directed against the orders dated 08.11.2016 and 21.11.2016 passed by the learned Single Judge in W.P.(C) No.2240/2016.
2. We have heard the learned counsel for both the parties.
3. The said writ petition was filed by the respondent No.1 herein with a prayer to direct Delhi Development Authority and East Delhi Municipal Corporation to demolish the alleged illegal construction made over the common area in Him Versa Apartments, I.P. Extension, Patparganj, Delhi. The appellant herein i.e. "Border Roads Cooperative Group Housing Society" which claims to be a registered society formed by some of the flat owners of the Apartments, has been arrayed as respondent No.4 to the writ petition.

4. It was alleged inter alia in the writ petition that the owners of Flat Nos. 24 and 27 had indulged in unauthorized and illegal construction over the common areas and have also constructed a lift for personal use on a public land/common area. The writ petitioner is stated to be the owner of Flat No.18. By order dated 08.11.2016, the writ petition was disposed of by the learned Single Judge recording the statement of the counsel for East Delhi Municipal Corporation that the unauthorized and illegal construction carried out by the owners of Flat Nos. 24 and 27 would be demolished/removed in accordance with law within a period of six weeks. The learned Single Judge had also taken note of the fact that the application made by the owners of Flat Nos. 24 and 27 for regularization of the lift was rejected by EDMC vide proceedings dated 28.10.2016.

5. The appellant herein/respondent No.4 in the writ petition filed CM No.42704/2016 with a prayer to recall the order dated 08.11.2016 pleading that the said order was passed in their absence. The learned Single Judge dismissed the said application by order dated 21.11.2016 observing that even if the counsel for the appellant society had been present on 08.11.2016, the order would have been no different. The learned Single Judge had also granted liberty to the appellant herein to challenge the order dated 28.10.2016 in accordance with law.

6. Assailing the above-said orders of the learned Single Judge dated 08.11.2016 and 21.11.2016, it is contended by the learned counsel for the appellant that the learned Single Judge failed to see that the writ petition itself was not maintainable since the owners of Flat Nos. 24 and 27 who have installed the lift were not impleaded as party-respondents. It is also contended that the learned Single Judge should not have entertained the writ

petition since Section 70(1) of the Delhi Cooperative Societies Act, 2003 provides for settlement of disputes by way of arbitration. Further, Rule 55 of Delhi Cooperative Societies Rules, 2007 lays down the mechanism for settlement of such disputes.

7. The learned counsel also sought to raise various other contentions on merits of the case.

8. We do not wish to express any opinion on the said contentions which are beyond the scope of the present appeal. In fact, both the orders under appeal are innocuous and there was no adjudication as such with regard to the rights and contentions of either of the parties. The learned Single Judge had merely taken on record the statement of the counsel for EDMC that the regularization application filed by the owners of Flat Nos. 24 and 27 had been rejected and that the unauthorized and illegal construction would be removed in accordance with law.

9. The fact that the owners of Flat Nos. 24 and 27 have not chosen to challenge the said order itself shows that they are not aggrieved by the orders under appeal. The present appeal by the so-called society of the owners of some of the flats is misconceived and deserves no consideration at all.

10. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

MARCH 27, 2017

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