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

Judgment pronounced on 30th November, 2017

+ W.P.(C) 8621/2017

SAURABH JAIN AND ORS

..... Petitioners

Through Mr. Mobin Akhtar and Mr. Noor
Alam, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through Ms. Manisha Agrawal Narain, ASC
for EDMC/R-1.
Mr. Arun Batta, Adv. for R-2 to R-5.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT

A. K. CHAWLA, J. (ORAL)

The instant petition has come to be filed seeking issuance of Writ(s) in the nature of Certiorari and Mandamus, pertaining to the No Objection Certificate issued by the respondent-East Delhi Municipal Corporation for the erection of a lift in the service lane, to cater to 4 (four) of the residential blocks in the society called Dhruva Co-operative Group Housing Society, which, in all, houses 52 blocks. Prayers made in the petition are, as follows:

“(a) Quash the NOC dated 10.3.2017 issued by the respondent no.1 in favour of the respondent no.2 & 4 as illegal, and bad in law.

(b) Direct the respondent no.1/EDMC to demolish the illegal and unauthorized construction.

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2. In sum and the substance, the petition proceeds on the premise that the impugned NOC dated 10.3.2017 issued by the respondent-EDMC could not be issued and was illegal, inasmuch as, it permits erection of the lift in the service lane, which is a common area. Simultaneously, however, the petitioners allege that the erection for the purpose is being raised contrary to the plan submitted for the issuance of the subject impugned NOC. Grounds extending challenge to the grant of NOC read, as under :

“(a) The NOC issued by the respondent no.1/EDMC is illegal since the NOC has been obtained concealing the material facts that the proposed area for installation of lift is common area (service lane) for use of all the flat owners and it is the duty of the Managing Committee to duly inform the respondent no.1/EDMC.

(b) If the common areas (service lane) are permitted for installation of lift, the services of fire vehicle or other vehicle in case of emergency like any natural calamity apart from the difficulty of the commuting by the other flats owners shall be adversely affected.

(c) If the lift installation is permitted in common area to the tower no. 28-29 and 30-31 and further the other flat holders of other towers also demands the same right and permission is granted to them then the whole society will come to stand still and it will be impossible for residents to even walk through to reach there flats.

(d) The NOC has been issued without site inspection by the respondent no.1/EDMC and without applying any rationality, reasoning keeping in mind the other flats holders’ right, conveniences, services and their safety and security.

(d) The area proposed in the layout for the installation and its construction is the existing 18’9”wide service lane that it is

mutually and commonly used by all the residents of the society for parking their cars, movement of traffic and passage of the peddlers. The proposed area is a parking space for 8 cars demarcated with white and yellow lines that can be seen in the colored photographs filed along with this petition. The said common area is mutually and generally used for passage by the peddlers including all the residents and visitors of the society.

(f) The respondent no.1 in collusion with respondent no.2 to 4 concealed the material fact that there is an underground passing of water pipes, electrical lines, inter com and water sewage (at a bare minimum distance) from the proposed area of construction of structure for installation of lift and connecting bridge which shall be adversely affected and in case of damage there will be no space for repair work.

(g) The NOC given to installation of lift in the common area (service Lane) is without the consent of other flats owners in the society who are daily users of the service lane.

(h) The respondent no.2 & 4 has in collusion with respondent no.3 has obtained the NOC dated 10.03.2017 by concealing the material facts from Respondent no.1 grossly misleading the government body and breaching the Building bye-Laws thereby infringing right to passage and freedom of movement of the Plaintiff and other resident members in their own society.

(i) That the proposed construction of lift upon the 18'9" wide service lane is a whimsical proposition of respondent no.3, being an architect has displayed an erroneous and vindictive face of his profession as the said lane is the safety lane to be used in times of an unfortunate incident of fire in the society. The said lane is the widest and most accessible lane to escape in case of fire and any other emergency. Other lanes surrounding the towers 28-29 and 30-31 are narrower than the service lane. By construction of the lift an escape area in case of fire and natural calamity will be obstructed and blocked permanently thereby subjecting the lives of more than 800 people residing in the society in danger.

(j) The EDMC/respondent no.1 cannot overlook the provisions of Delhi Co-operative Housing Societies Act 2003 and Rules 2007 while issuing the NOC for installation of lift in the common area (Service Lane).

(k) There is no provision of either covered or stilt car parking in the society and in the event of installation of lift in service lane/common area, the other 200 flats owners will face hardship even to entry and exit of the cars, parking of cars and further if the lift installation is allowed in all the towers then there will be no place for emergency service in case of any unnatural events.

(l) The construction of the lift at the proposed common area is illegal and bad in law as the construction lacks valid and legal NOC or approval from the competent authorities. The NOC dated 10.03.2017 is obtained by Respondent no.2 illegally by keeping the authorities in dark and concealing the material facts and thus in light of non-compliance of condition 4, the NOC dated 10.03.2017 stands revoked and cancelled.

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Perusal of the grounds extending challenge to NOC, leave no doubt that the petition proceeds on the premise that service lane is a common area, and, thereby, every member of the society has a right to its use. The whole premise, on which the petition is founded, is misconceived. Relevant to the concern, with which the petitioners have approached this Court, the Division bench of this Court in **LPA no. 738/2013 titled Shaik Abdul Hameed Vs. Delhi Development Authority & Ors.** has observed, as under:

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8. It has to be borne in mind that the aforesaid policy circular of the DDA is for the benefit of the flat owners on the upper floors who did not have the provision of access to their flats by lifts. It ought, further, to be borne in mind that about 40 years ago when the group housing floors were constructed, lifts were not in vogue. The aforesaid circular is a policy decision aimed to cater to such flats so as to make them more accessible and habitable. Most of the flat owners, who may have purchased the same 30-40 years ago, would be old and infirm. It is often not possible for them to take the staircase up

to the first, second and third floors. In the absence of the facility of a lift the prospect of having to take the stairs to reach the ground or to access a higher floor apartment can be very daunting, especially for the old or infirm. Often they would feel marooned because of inaccessibility leading to further complications for aged “emptyness”. Medical emergencies too would pose their own set of logistic problems. Thus a policy permitting the improvement of common facilities for the general good of the Society would be a salutary and welcome step. The land where the lift-well is to be erected has been clearly demarcated and in any case is in a common area over which no particular individual can claim an individual or proprietary right. A lift, after all, is a technological contraption which makes it convenient for all residents and visitors to higher floors of a multistoried building, in particular the aged and sick, to enjoy and use their residences to the fullest extent.

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Observations foregoing made by the Division bench of this Court in judgment (supra), totally negate the premise, on which the petition is founded. In that view of the matter, the policy to issue NOC for the purposes of erection of the lifts in a Group Housing Flats built by DDA or Group Housing Societies, falling within the jurisdiction of the different Corporations, cannot be faulted with. Interestingly, during the course of hearing, on being queried, it surfaces that, out of total 206 members of the society, only one member i.e. the petitioner no.1 besides three other residents are aggrieved by the decision of the society in granting permission for erection of the subject lift. Petitioners by themselves are also not the residents of the abutting blocks, where the subject lift is getting created. Filing of the petition, in the given facts and circumstances, raises serious doubts of bonafide of the petition. Contentions

strenuously raised by the Id. Counsel for the petitioners that a common area is meant for a common use by anyone and anyone can come forward to assert one's individual right, on the face of it, is wholly misconceived. Societies cannot function in the manner, it is sought to be propounded by the Id. Counsel for the petitioner. Once, a decision is taken by the society through its elected executive, all the members of the society are bound by it. It also does not lie in the mouth of the petitioners that the permission granted by the society for the issuance of impugned NOC is not in the larger interest of the occupants of the four blocks, where the lift is getting erected. Contention raised to the contrary is therefore, rejected.

3. As for the other prayer for the demolition of the unauthorized construction, nothing has come to be pointed out for any such construction getting raised in violation of the plan submitted, on the premise whereof, NOC has come to be issued.

4. In view of the foregoing, I do not find any merit in the petition. The petition, as also the pending application(s), are hereby dismissed. Interim orders stand vacated.

A. K. CHAWLA, J

NOVEMBER 30, 2017

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