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

+ LPA 107/2017 & CM No.5381/2017

ASHOK VIHAR RESIDENTS WELFARE
ASSOCIATION (REGISTERED)

..... Appellant

Through: Mr.G.S.Charya, Advocate

versus

NORTH MUNICIPAL CORPORATION OF
DELHI & ANR

..... Respondents

Through: Ms.Puja Kalra, Advocate for R-1
Ms.Rashmi Chopra, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **17.01.2018**

1. The appellant is aggrieved by an order of the learned Single Judge directing the demolition of the boundary wall. The learned Single Judge allowed the respondents' assertions in the writ petition. The respondent had urged that the boundary wall/separation wall (8 foot high wall), constructed by the Municipal Corporation of Delhi, in front of certain properties of Pocket A, Ashok Vihar, was contrary to the bye-laws. Subsequently bye-law 6.2.4.1 was cited. The writ petitioner had relied upon bye-law 6.2.4.1 as well as bye-law 12.4(B) to say that in case of buildings of less than 10 metres high, the exterior open spaces to be left could not be less than 3 metres. After considering all the material on record including status report

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filed by the Municipal Corporation of Delhi (MCD), the impugned judgment concluded that the wall constructed, left only a setback of about 2 metres.

2. Learned counsel urged that the wall is essential as it provides a sense of security and protects the residents in the concerned block in Ashok Vihar. It's need was felt by all and in fact, endorsed by the local Member of Legislative Assembly (MLA). It is also submitted that the wall is further essential because there was rampant misuse of some property facing the wall.

3. This Court has considered the submissions of the parties.

4. The only basis for the learned Single Judge's direction to demolish the wall is that it did not confirm to the essential stipulations in the bye-laws, in that, sufficient space around the margins of the property were not kept. In the opinion of this Court, Bye-laws 12.4.4(A) and 6.2.4.1 have to be read together. Whilst the latter i.e. bye-law 6.2.4.1 speaks of access to fire appliances, width of the main and alternative stair cases and other issues, at the same time, it applies in the case of multi-storeyed buildings, which are more than 15 metres of height. The appellant had contended that the standards specified in bye-law 12.4(B) would apply i.e. the setback or exterior open spaces to be mandatory left open only in the case of buildings covered through bye-law 6.2.4.1. Now, if that contention were to be accepted, the essential requirement of coverage under bye-law 6.2.4.1 is with a threshold of 15 metres height. Nevertheless bye-law 12.4(B) – which expressly refers to bye-law 6.2.4.1, talks of buildings less than 15 metres of height – the first entry in serial is height up to 10 metres. In that case, the exterior open spaces to be left on all sides is 3 metres. Clearly the reference

to bye-law 6.2.4.1 in bye-law 12.4(B) therefore, is indicative of the kind of building but not extensive of the standards. In other words, if bye-law 12.4 (B) is to be construed textually and narrowly, as the appellant urges, there would be no standard at all for buildings that are less than 10 metres, which may be in sensitive areas but for which, it may well be possible for individuals or associations to construct boundaries just in front of other properties. Therefore, the co-joint interpretation of all the bye-laws, which appears to have been resorted to by the learned Single Judge, is not erroneous.

5. This Court is of the opinion that in the event the appellant wishes to secure the premises appropriately through a fence or any other such devise, it may be at liberty to do so since there is no impediment in that regard. At the same time, however the MCD should ensure that whatever as was set up should not become a barrier for free access in the case of emergencies or to other residents.

6. The appeal and the accompanying application are disposed of in the above terms.

S. RAVINDRA BHAT, J.

A. K. CHAWLA, J.

JANUARY 17, 2018

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