

\$~A-11

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

%

Date of decision: 27.11.2019

+ W.P.(C) 11913/2016, CM APPL. 44834/2017 & 38081/2018

DEEPAK SHARMA

..... Petitioner

Through

Mr.Ajay Kumar Tandon, Mr.Lalit
Kumar Gupta and Ms.Purnima Singh,
Advs.

versus

DELHI DEVELOPMENT
AUTHORITY AND ORS

..... Respondents

Through

Mr.Vaibhav Agnihotri and
Mr.Vinayak Harshvardhan, Advs. for
DDA.

Mr.Aajay Harshane, Adv. for Rakesh
Mittal, Adv. for SDMC.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This Writ Petition is filed by the petitioner seeking the following reliefs:-

- a) Pass a writ of mandamus or any other appropriate order or direction thereby declaring NOC dated 22.07.2016 issued by the respondent no.2 in favour of respondents no. 3 to 5 for construction of lift as illegal, void and inoperative; and
- b) Pass a writ of mandamus or any other appropriate order or direction thereby directing the respondents particularly respondent no.1 and 2 to stop the construction of lift and demolish the illegal construction of lift which is being carried out by respondents no. 3 to 5; and
- c) Pass a writ of mandamus or any other appropriate order or direction thereby directing the respondents particularly

respondent no. 1 and 2 to demolish the illegal and unauthorized construction of fourth floor done by respondent no. 5; and

d) Pass a writ of mandamus or any other appropriate order or direction thereby directing the respondents particularly respondent no.1 and 2 to demolish the illegal and unauthorized construction of room with balconies done by respondents no. 3 and 5;”

2. This writ petition is an unfortunate example where neighbours are fighting tooth and nail over construction of a lift to enable the occupants of flats on the higher floors to access their residence through an alternate mode other than the staircase. Needless to add that the petitioner is an occupant of the ground floor and has no use for the lift.

3. In the writ petition the grievance of the petitioner was that the NOC issued by respondent No.2/SDMC in favour of respondents No.3 to 5 for construction of a lift is illegal, void and inoperative. In the petition every conceivable objection to the grant of NOC for installation of the lift has been pleaded. The petitioner pleads that the said NOC is contrary to the policy for installation of the lift and connecting bridge. The various objections against the NOC are as follows:-

- (i) Respondents No.3 to 5 should propose the lift on a blind wall i.e. the wall which does not have any door/window opening or the lift structure should be at an adequate distance from existing structure so that natural light and ventilation of the flat is not affected. In this case respondents No.3 to 5 have failed to do the same.
- (ii) Recommendation of lift manufacturing agency should be from the approved list of CPWD. In the present case respondents No.3 to 5 have failed to do the needful.

- (iii) The lift should be situated so that there is no encroachment on the public land. In the present case the lift is being constructed on a common passage on common land.
- (iv) Light and ventilation of habitable rooms of the residents should not be affected. In the present case the light and ventilation of the petitioner's room including kitchen and toilet is being affected.
- (v) The lift should not travel up to the terrace. In the present case the respondents are installing a lift which is travelling to the terrace of the third floor.
- (vi) Respondents had mentioned the covered area of lift as 28 sq.ft. whereas the actual area utilised is 43 sq.ft. The respondents have mentioned the covered area of connecting bridge as 32 sq.ft. whereas the actual area utilised for construction of connecting bridge is 21 sq.ft.
- (vii) The sanctioned drawing for construction of the lift is upto third floor whereas the lift is actually being constructed upto the fourth floor.
- (viii) It has been strongly stressed that for unauthorised and illegal construction of the lift respondents No.3 to 5 dismantled the sewer pipeline attached to the petitioner's toilet. This was done on the night of 13.8.2016 without permission of appropriate authorities or without consent of the petitioners. It is stated that now the petitioner is unable to use his toilet as this dismantled sewer line is causing blockage in the petitioner's toilet and the flush is throwing back dirty water which is causing grave inconvenience to the petitioner.
- (ix) Respondent No.5 without seeking permission from appropriate authority illegally constructed the fourth floor. Such illegal

construction comprised of more than three rooms which have been given on rent.

4. Based on the above, it has been strongly urged that the NOC granted to the respondents to construct the lift is illegal and liable to be revoked.

5. During pendency of this Writ Petition the respondents No.3 to 5 completed the construction of the lift. On 16.3.2017 this court passed an interim order that the lift shall not be made functional/operational till further orders. On 22.11.2017 SDMC/respondent No.2 has granted a completion certificate with regard to the lift to respondents No.3 to 5.

6. Private respondents No.3 and 4 have filed their counter affidavit. They have denied the contentions of the petitioner. It is stated that NOC for installation of a common lift was granted by SDMC on 22.07.2016. According to the norms, the permission of 50% of the residents (other than the residents of ground floor of the flats) was required in this case. Other than the petitioner all other residents of the flats in question have given their consent. It is stated that lift is being constructed after due permission from SDMC and after follow up of the stipulated norms and conditions. It is also stated that the petitioner has filed two writ petitions with the same cause of action. First one being W.P.(C) 9381/2016 and the second one is the present writ petition.

7. Respondent No.2/SDMC also filed a counter-affidavit. In the affidavit it is stated that DDA has approved the modified policy for obtaining NOC for installation of lifts in DDA built flats as well as co-operative group housing society which was notified on 7.1.2016. Based on this, respondent SDMC has formulated a detailed policy for installation of lifts and

connecting bridges in Co-operative Group Housing Society and DDA flats. It is pleaded that the NOC for installation of common lifts in this case was granted in terms of the policy formulated. 50% owners who are using common staircase in the said block had applied for permission for installation of the lift and had submitted all requisite documents.

8. Pursuant to order dated 16.3.2017 passed by this court an additional affidavit has also been filed by SDMC. As per the Additional Affidavit to ascertain unauthorised construction in respect of flats of respondents No.3 to 5, same have been inspected. On noticing unauthorised construction the same was booked on 11.5.2017 in the shape of deviation/excess coverage. The flat of the petitioner was also inspected and unauthorised construction in the shape of deviation/excess coverage was also noticed. The necessary demolition action was also initiated against the same.

It is also stated that on inspection the field staff noticed that sewage connection of pipeline of the flats have been diverted for which NOC of the concerned RWA and Delhi Jal Board was required.

9. This court on 31.1.2019 had directed the respondent No.2/SDMC to file status report clarifying the following aspect:-

- “(a) Whether all requirements for installation and operation of a lift under the revised policy have been fulfilled in the present case;
- (b) Whether the alleged existence of unauthorised construction in the block of flats is relevant and material for permitting the installation and operation of a lift as aforesaid;
- (c) Whether there is any other impediment - in terms of non-compliance with the sanctioned plans for installation of the lift or non-compliance with any other relevant law, rule or regulation – by reason of which the lift in question ought not to be permitted to be put in operation.”

10. Status Report was filed pursuant to order of this court dated 31.1.2019.

The report states as follows:-

S.No.	Query of the Court	Response/clarification
1.	<i>Whether all requirements for installation and operation of a lift under the revised policy have been fulfilled in the present case</i>	The permission/NOC and completion certificate bearing No.2355/EE(B)-II/SQ/2017 dated 22/11/2017 has been accorded by the department after ensuring that the case is eligible and fulfilling all requirements under the prevalent policy as per Office Order No.D/27/Addl.Com(Engg)/SDMC/2016 dated 15/02/2016.
2.	<i>Whether the alleged existence of unauthorised construction in the block of flats is relevant/and material for permitting the installation and operation of a lift as aforesaid;</i>	As per policy, there is no embargo to this effect. However, as per the said policy, the SDMC/Department is always at liberty to take action against unauthorised construction/additions/ alterations and encroachment as per the policy and provisions of DMC Act. As already informed vide earlier affidavits/status report that the department is taking necessary action against the alleged unauthorised constructions noticed in the flats of the block. -Kindly refer Clause 1.1 (iii) of the policy in this regard.
3.	<i>Whether there is any other impediment- in terms of noncompliance with the sanctioned plans for installation of</i>	The applicant seeking issuance of NOC for installation of lift are required to comply with the aforesaid policy dated 15/02/2016 and the Corrigendum bearing no. South DMC/B/191/SE(B)HQ/Addl.Comm.(Engg.) /2018 dated 30/07/2018. --Kindly refer Clause 8 of the aforesaid

	<i>the lift or non-compliance with any other relevant law, rule or regulation- by reason of which the lift in question ought not to be permitted to be put in operation</i>	policy. For obtaining the Completion Certificate for putting the lift in operation as per the Clause 8.3 of the said policy, the owners are also required to submit copy of NOC from Delhi Fire Service, Govt. of NCT, Certificate from Lift Inspector and NOC from Power of Electricity Distribution Company
--	---	---

11. I have heard learned counsel for the parties. Learned counsel for the petitioner has also filed written submissions. The learned counsel for the petitioner repeated the same submissions which have been noted above as made in the writ petition.

Much stress was, however, laid on the fact that the height of the building in question is more than 15 meters and hence the policy of SDMC would not apply to this case. The petitioner would also require an NOC from the Fire Department.

It is also pleaded that the fourth floor which has been constructed by respondent No.5 is unauthorised and illegal.

Much stress has been emphasised that the sewage lines of the petitioner have been changed and have been brought closer to the residence of the petitioner. The changes have resulted in the backflow of the sewage in the house of the petitioner.

12. Learned counsel for the respondents No.3 to 5 have denied the above contentions. As far as the issue of the objections to the NOC are concerned it has been pointed out that the respondents No.3 to 5 have received NOC from

the Fire Department, BSES, the Residents Welfare Association, Govt. of NCT of Delhi for working of a lift. Thereafter SDMC has granted a completion certificate.

It is also pointed out that DJB has also approved the changes in the sewage line. Learned counsel further submits that without prejudice to the rights and contentions of the respondents No.3 to 5 and to bring quietus to the issue respondents No.3 to 5 are willing to pay to the petitioner a sum of Rs.25,000/- to enable him to get his sewage line rectified in case there is any defect in the same. It is repeated that this offer is only to settle the issue and may not be construed as an admission of any defect in the line.

It is also pleaded that as far as the fourth floor is concerned the same has been partly demolished by NDMC pursuant to the demolition orders. It has also been pointed out that pursuant to the orders of this court dated 20.11.2019 respondent No.5 has filed an affidavit stating that the terrace of the third floor of the flat is not occupied by any tenant or person. It has been reiterated in the affidavit that the terrace of the third floor was demolished by SDMC on 5.3.2018. A demand for demolition charges to the tune of Rs.10,500/- as demanded by SDMC has also been paid by respondent No.5 on 27.2.2019.

It is further pleaded that the contention of the petitioner that after adding the construction on the terrace of the third floor, the height of the building exceeds 15 meters is completely incorrect.

Learned counsel for the private respondents states that even if the height of the terrace is added, the total height of the building would be less than 15 meters.

13. The basic two grievances of the petitioner appear to be that respondent

No.4 has constructed a terrace over the third floor. On account of the construction, it is claimed that the height of the building has crossed 15 meters and the policy for installation of lifts by SDMC would not apply to buildings whose height is more than 15 meters. Further the private respondents would require an NOC from the Fire Department.

14. The respondent No.2/SDMC in their additional affidavit has clearly stated that the unauthorised construction on the terrace of third floor was booked under section 343 and 344 of the DMC Act. The demolition action has been taken against the terrace above the third floor. Respondent No.5 has also placed on record an affidavit showing that the said terrace is not occupied. He has also attached a copy of the bill of demolition charges raised by SDMC of Rs.10,500/- which states that demolition action was carried out on the property on 05.03.2018.

15. It is clear from the above fact that the terrace of the third floor is not functional and stands demolished/partly demolished. The petitioner is mischievously trying to add the height of the unauthorised construction that was raised on the terrace of the third floor to claim that the height of the property in question is above 15 meters. Private respondents state even if the height of the floor which is not functional and is partly demolished is added, the height of the building does not exceed 15 meters. Other than a bald assertion by the petitioner there is nothing to show that the height of the building is above 15 meters. Hence, there is no basis to claim that the policy of SDMC does not apply to the facts of this case.

16. Regarding the plea of shifting of the sewage line is concerned it is a matter of fact that the concerned Zonal Engineer has in his note of 26.7.2017 stated as follows:-

“Sewer lines which have been re-routed for installation of the lift have been checked and found satisfactory work done and damages have been made good.”

17. The Residents Welfare Association has also issued a NOC regarding diversion of sewage connection of pipeline of flats in question. There appears to be on the face of it no reason to believe the contention of the petitioner that the sewage line has not been properly fixed. I may also note that without prejudice to their rights and contentions respondents No.3 to 5 have offered to pay to the petitioner a sum of Rs.25,000/- for rectifying any persisting defect that may be there in the sewage connection of the petitioner as has been claimed by the petitioner. Learned counsel for the petitioner had of course refused to accept the said offer. However, I bind respondents No.3 to 5 to the said offer and direct them to make the payment if so demanded by the petitioner.

18. As noted above, there are large number of other minor issues which have been raised by the petitioner to challenge the NOC granted to respondents No.3 to 5. As noted above, all the departments have given their no objection certificates. BSES Rajdhani Power Limited has issued an NOC for the lift completion certificate on 19.6.2017. The Delhi Fire Services has on 4.8.2017 stated that installation of lift is not covered under the Delhi Fire Safety Act, 2007 and the Rules therein. Hence, it was stated that reference to the said Departments is not required. The Delhi Jal Board has already on 26.7.2017 given its NOC stating that the re-routing of the sewage line has been found to be satisfactory. The Residents Welfare Association has also given their NOC on 31.7.2017. Govt. of NCT of Delhi has also given a license for working of the lift on 3.8.2017. Based on the above documents,

SDMC has granted the completion certificate on 22.11.2017.

19. In this regard reference may also be had to the judgment of a Division Bench of this court in the case of *Shaik Abdul Hameed vs. Delhi Development Authority & Ors., 2013 SCC OnLine Del 4354*, where the court held as follows:-

“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 “emptynestness”. 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.”

20. In the present case it is clear that it is the owner of the ground floor flat who appears to have issues regarding construction of the lift. The occupants of the upper floors, however, have strongly urged that on account

of their old age and infirmity they require a lift to access their residence.

21. Reference may also be had to the judgment of the Supreme Court in the case of *West Bengal Central School Service Commission & Ors. vs. Abdul Halim & Ors.*, 2019 SCC OnLine SC 902, in which the Supreme Court held as follows:-

“27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.

xxx

29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision

founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.”

22. In this context reference may again be had to the judgment of a co-ordinate Bench of this court in ***Shaik Abdul Hameed vs. Delhi Development Authority & Others, (supra)***. That was also a case where the petitioner had sought quashing of the letter granting permission to install a lift in the Safdarjung Development Area, New Delhi. This court had rejected the contentions of the petitioner and stated as follows:-

“16.... In fact, they have been taken for the first time in the rejoinder affidavit. In any event, this Court does not sit in appeal over a decision of the statutory authority. It only examines the decision making process. In the present instance this Court is of the opinion that the DDA has followed the procedure as prescribed under its policy.”

23. In the present case the petitioner has failed to show that the decision of the statutory authorities suffers from arbitrariness or is capricious or is such

that no reasonable person could have arrived at the same.

24. There is accordingly no merit in the present petition. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

NOVEMBER 27, 2019/n

Corrected and released on 24.12.2019

