

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
W.P.(C) 7157/2019, CM APPL. 29824/2019, CM APPL. 44058/2019
and CM APPL. 27607/2021

Date of Decision: 20.10.2022

IN THE MATTER OF:

RAVINDRA SHARMA & ANR

..... Petitioners

Through: Mr. Aly Mirza, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION OF DELHI & ORS

..... Respondents

Through: Mr. Manoj Kumar Sharma, ASC for
respondent No.1

Mr. Anish Tandon, Advocate for respondent No.2

Mr. Sameer Abhyankar and Ms. Nishi S.,

Advocates for respondents No.4 to 7

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioners, who claim to be owners/occupants of *Flat Nos.33 (Ground Floor) and 35 (First Floor), Nehru Apartments, Kalkaji, New Delhi-110019*, have assailed the NOC/permission issued on 06.12.2018 for installation of common lift in *Block 3, Nehru Apartments*.

2. Learned counsel for the petitioners has contended that the NOC/permission has been granted in complete disregard of the Corporation's own policy. He further submits that the application for

installation of lift did not even meet the criteria of consent from 50% of flat owners (excluding ground floor), as one of the applicants namely, *Shri Brij Mohan Bakshi* had expired and another applicant-*Shri H.L. Bhardwaj* has been in coma.

Learned counsel has also contended that the petitioners have suggested alternate site(s), which is more suitable for installation of lifts, however, the said suggestion has not been considered in right perspective by the MCD at behest of the private respondents. He further submits that installation of a lift in terms permitted under the NOC would interfere with the easement rights of the petitioners, inasmuch as air and ventilation to their premises would be affected.

Lastly, it is submitted that even petitioner No.2 has no objection if a lift is installed at the alternate site instead of the site for which NOC/permission has been granted.

3. Learned ASC for respondent No.1, on the other hand, alongwith learned counsel for the private respondents, has defended the NOC/permission granted by the respondent/Corporation. He submits that the application was received from 6 applicants, who met the criteria of consent from 50% of flat owners (excluding ground floor) at the time.

Learned counsel for respondents No.4 to 7 additionally submits that after the demise of *Shri Brij Mohan Bakshi*, his son namely, *Anish Bakshi*, on the basis of authority letter from his mother (transferee of Flat No.38, second floor) joined as a co-applicant in the application. He further submits that so far as applicant-*Shri H.L. Bhardwaj* is concerned, his wife became a co-applicant and signed on his behalf.

4. Learned ASC for respondent No.1 further submits that NOC/permission dated 06.12.2018 has been granted by the answering respondent subject to certain terms and conditions, including applicants' obtaining consent from 50% owners/occupiers of upper floors of the aforesaid block (excluding the ground floor).

5. At this stage, Mr. Tandon, learned counsel for respondent No.2, submits that the society has 10 blocks and lifts in 9 blocks have already been installed at similar spot for which NOC in the present case has been granted.

6. On specific query, learned counsel for respondent No.1, has also submitted that while granting the NOC/permission, all aspects relating to structural safety and security are kept in mind.

7. I have heard learned counsels for the parties and perused the entire material placed on record.

8. The Procedure for issuance of NOC for Installation of Lifts in Group Housing Flats built by DDA is governed by a policy which was initially issued by DDA and later adopted by the Corporation vide Office Order dated 13.05.2016. The pre-requisites for grant of NOC/permission as per the said policy are as under:-

“1.1 Pre-requisite for grant of Permission/NOC:

(i) Consent from owners using common staircase in that block is a pre-requisite (50% or more excluding ground floor) who will be beneficiary due to installation of lift. The consent from ground floor owner is advisable but not mandatory.

(ii) The applicants are advised to propose a separate lift structure independent of the existing building of the existing building structure stability of the existing structure.

(iii) The NDMCE is at liberty to take actions against

unauthorized construction/additions/ alteration and encroachment as per their policy and provisions of DMC Act.

(iv) In order to address the concern primarily of the ground floor allottees regarding access to their flat, natural light and ventilation, the applicant should propose the lift and the lift structure preferable on the blind wall i.e. the wall which does not have any door/ window the existing structure so that the natural light and ventilation of the flat is not affected.

(v) Recommendation of lift manufacturing agency (preferable as per approved list of CPWD) with regard to technical feasibility, location of lift well and safety aspects in respect of installation must be followed by the applicants.

(vi) Certificate from registered Structured Engineer/ Architect (on their letter head) stating that the structural design .of the lift well and connecting bridge wherever required is as per provisions of the prevailing NBD (National Building Code).

(vii) Four sets of building plans indicating location of proposed lift well and connecting bridge if required duly/ signed by registered Architect and proposing/ secondary applicants/President of Management Committee (MC) of CGHS.

(viii) Undertaking regarding maintenance/operational aspect, safety requirements and its cost as per Annexure-A.

(ix) Undertaking to obtain NOC from Delhi Fire Service(wherever applicable) Lift Inspector and Power/Electricity Distribution Company.

(x) NOC from registered RWA (in case of DDA Flats)/MC of CGHS in which lift is proposed to be installed in case any shifting of services is required.

(xi) Indemnity Bond from all proposing applicants in case of flats built by DDA/Management Committee (MC) of CGHS*

indemnifying to keep NDMC harmless from any claim which crop-up against the NDMC due to erection of lift/Lift-well and connecting bridge.

**Applicants shall belong to two categories i.e. Proposing Member(s) and Secondary Member(s).*

While proposing Members are those who are currently using one common staircase only and contributing to the cost of installation of lifts, Secondary Members are those who are using common staircase but not contributing to the cost. However, consent for installation of lifts is given by them. Other, residents of the stairway will be Uninterested members. In case they get interested in participating at a later date, they may, with the consent of the Proposing members share the costs (capital+ operation + maintenance cost) and use the lift.”

9. From a perusal of the pre-requisites for grant of NOC/permission, as mentioned in the policy adopted by respondent No.1, it is clear that consent of 50% of the persons occupying flats on the upper floors is required for installation of a lift. The consent of the occupier of the ground floor is only advisory and not mandatory.

10. In the present case, it has been stated that occupiers, who have given their consent for grant of NOC/permission, have old and aged family members who find it difficult to climb stairs. In fact, one of the petitioners has also reportedly undergone heart surgery.

11. This Court is mindful of the fact that at times, families comprise of old and sick individuals. As per the policy framed by the DDA and later adopted by respondent No.1, the installation of lifts comes handy for such people. The said aspect also finds mention in decisions of Co-ordinate Benches of this Court in Shaik Abdul Hameed v. Delhi Development

Authority & Others reported as **2013 SCC OnLine Del 2865**, K.M. Gupta & Ors. v. Delhi Development Authority reported as **2017 SCC OnLine Del 7492**, Deepak Sharma v. Delhi Development Authority and Ors., **W.P.(C) 11913/2016** and Saurabh Jain and Ors. v. East Delhi Municipal Corporation and Ors. reported as **2017 SCC OnLine Del 12140**.

12. A Status Report had been placed on record on behalf of the Corporation on 21.02.2022 with respect to the proposal for alternate site suggested by the petitioners, which reads as under:-

“3. That in pursuance of above order, subordinate officials of deponent conducted inspection on 11/02/2022 and inspected all the alternative sites as proposed by the petitioners. After examining all the proposals, a conclusion was drawn that site for which SDMC has already granted permission is best suited for erection of common lift. It does not affect the provision of natural light and ventilation of any of the flat. As a matter of fact, a number of common lifts are installed at identical place in Nehru Apartment.”

13. Considering the facts and circumstances as well as the Status Report placed on record, this Court finds no ground to interfere with the NOC/permission granted by the respondent/Corporation. Accordingly, the present petition is dismissed alongwith the pending applications. Needless to state, the respondent(s) shall ensure that the lifts are installed with adequate precautions keeping in mind the structural safety of the building/Block.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 20, 2022

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