

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

+ **W.P.(C) 11248/2022 and CM APPL. 33026/2022**

Date of Decision: 14.12.2022

IN THE MATTER OF:

MR. AJAY SHARMA & ORS. Petitioners

Through: Mr. Aman Mehrotra, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY AND ORS. Respondents

Through: Ms. Prabsahay Kaur, Standing Counsel with Ms. Kamna Singh, Panel Counsel, Mr. Paranjay Tripathi and Ms. Bhavna Vijay, Advocates for respondent No.1.

Mr. Tushar Sannu, Standing Counsel with Mr. Pushpendra Jadon, Advocates for respondent No.2.

Mr. Madhusudan Bhayana and Mr. Suresh Chaudhari, Advocates for respondent Nos. 3 to 8.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioners have sought following reliefs: -

“A) Issue appropriate writ/ order/ direction directing the respondent Nos. 1 and 2 to remove/demolish the illegal and unauthorized construction over the terrace of third floor as is being constructed by respondents no.3 to 6 in BW 13 to BW 16 Block, Shalimar Bagh, Delhi.

B) Issue appropriate writ/ order/ direction thereby quashing/revoking the NOC/permission, issued by the respondent no.2 as the same has been given in violation of relevant provisions of laws, byelaws and guidelines issued by Respondents no. 1 and 2 and also law laid down by the Competent Court of law.”

2. Mr. Aman Mehrotra, learned counsel for the petitioners submits that the impugned permission/NOC dated 29.06.2022 (hereinafter, referred to as '*the NOC*'), granted by respondent No. 2/MCD for installation of lift and connecting bridge in respect of *DDA SFS Flats Nos. 13A to 16D, BW Block, Shalimar Bagh, Delhi – 110088* is in complete disregard of its own policy. It is further case of the petitioners that respondent Nos. 3 to 6 have carried out unauthorized construction on the terrace of third floor of *BW 13 to BW 16 Block, Shalimar Bagh, Delhi* against which respondent No. 2 has not taken any action.

3. Mr. Tushar Sannu, learned Standing Counsel for respondent No. 2 has defended the NOC/permission and submitted that the same was issued to the owners/occupiers of 4 DDA Flats bearing Nos. *BW13-D, BW 14-D, BW 15-D and BW 16-D, Shalimar Bagh, Delhi*. It is also submitted that the NOC issued in the present case is squarely covered by the policy of the erstwhile North Delhi Municipal Corporation which was on the basis of modified policy of Delhi Development Authority for grant of NOC for installation of lifts. The respondent No. 2 has adopted the policy 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 structure with a connecting bridge so that it does not affect the structural stability of the existing structure.

(iii) The NDMC is at liberty to take action 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 preferably on the 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 the existing structure so that the natural light and ventilation of the flat is not affected.

(v) Recommendation of lift manufacturing agency (preferably 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 applicant.

(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 NBC (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."

4. Learned Standing Counsel for respondent No. 2 further submits that the NOC/permission dated 29.06.2022 was granted on completion of requisite formalities, including applicants' obtaining of consent from 50% owners/occupiers of floors in the concerned block (excluding the ground floor), and the same was subject to the condition that the lift shall

not travel up to terrace, failing which the NOC/permission would be treated as *null and void*.

5. Mr. Madhusudan Bhayana, learned counsel for respondent Nos. 3 to 8 submits that the petitioners have preferred the present petition with *mala fide* intentions by suppressing the fact that there are twelve lifts that have already been installed in 30 Blocks of the society after the Corporation had granted similar NOCs. It is also alleged that in absence of the lift they are unable to enjoy their life and property.

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

7. From a perusal of the pre-requisites for grant of NOC/permission as mentioned in the policy adopted by respondent No. 2, 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. It has further 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.

8. A plain reading of the affidavit filed on behalf of respondent No. 2 would show that the subject NOC has been granted after due satisfaction and verification. The relevant extract of the same reads as under: -

“5. That even otherwise, the present petition is not maintainable by way of the present writ proceedings. The NOC issued on behalf of MCD for installation of a lift is in effect a permission granted by the Municipal Corporation for construction of a building under Section 336 of the DMC Act, 1957. Any order granting permission for installation of a lift is in the nature of a permission to erect a building. Thus, such orders are appealable in the Appellate Tribunal: MCD (ATMCD)

under Section 347 B of the DMC Act, 1957. On this account, the present petition is again liable to be dismissed.

6. That this policy as a whole was created in order to help/facilitate the residents / occupants of high rise properties including group housing cooperative societies and DDA Flats for installation of lift. For this purpose, a simplified procedure was devised by the North DMC and modalities were worked out as reflected in office order dated 13.05.2016.

7. That Shri Vijay Sharma, Proposing Member (Flat No. BW-13C), Sh. Harish Rohra, Proposing member (Flat No. BW-13D), Smt. Kavita Jaitely, Proposing member (Flat No. BW-14D) & Smt. Ranjana Gupta, Proposing member (Flat No. BW-15D) and Smt. Poonam Chhabra owner of property no. BW-16C and Smt. Meenakshi Saini owner of Flat No. BW-16D secondary/interested members had applied with the corporation for permission/NOC for installation of lift in respect of SFS Flat Nos. BW-13A to BW-16D, Shalimar Bagh, Delhi and submitted the requisite documents, etc. As per the aforementioned policy, consent from owners using common staircase in the said block is pre-requisite (50 % or more excluding ground floor) who will be the beneficiary due to installation of lift. The consent from ground floor owner is advisable but not mandatory. In the present matter as per the submitted proposal/document there were sixteen flats in the proposed block which included four flats at ground floor, whose consent was not mandatory. Thus, the resulted flats came out to be twelve. Out of these twelve flats, six flat owners i.e. 50% of the resultant flats had given their consent for installation of the lift. Accordingly, the condition of consent from 50% or more members was fulfilled.

8. That it is further submitted that in the modified policy it has been specifically provided that there shall not be any encroachment of public land and as far as unauthorised construction is concerned, the Corporation

shall be at liberty to take action against the unauthorised construction, additions and alterations as per the provisions of DMC Act.”

9. As far as other contentions relating to unauthorized construction is concerned, the same have been adverted to in detail in the Status Report filed by respondent No. 2, relevant extract of which is reproduced as under :-

“9. That it is respectfully submitted that after the receipt of the copy of the petition, the site in question was inspected by the officials of answering respondent and during the said inspection, neither any construction activity was found nor any building material was found stacked at site except certain finishing work was going on terrace of Flat No. BW-13D. It is submitted that the record was perused and it was noticed that unauthorized construction was booked and actions were taken by the department. The details thereof are as under:-

a) It is submitted that as per record, the unauthorized construction in property/flat bearing no. BW-13DO, Shalimar Bagh, Delhi was booked vide U/C file No. 15/UC/B-I/KPZ/2018 dated 11.01.18 for "U/C in the shape of deviation against Standard DDA Plan and projection on municipal land and one extra floor on the roof top of BW-13D, Shalimar Bagh, Delhi and the show cause notice was served upon Sh. Harish, owner/occupier/builder and after following the due process of law, demolition orders under Section 343 of DMC Act were passed on 22.01.18 with the direction to Sh. Harish, owner/occupier to demolish the unauthorized construction. Since, the owner/occupier failed to comply with the instruction contained in demolition order, demolition programs were fixed on 07.02.18, 15.02.18, 07.03.18, 16.03.18 but action could not be taken due to action taken on another property/non-availability of police force/shortage of time. Further demolition program was fixed for 02.09.22 and during the said demolition action, one room roof slab was demolished by

using gas cutter with the help of police force. The photographs of demolished portion are annexed herewith as ANNEXURE-'R2'.

b) It is submitted that as per records, the unauthorized construction in property/flat bearing no. BW-14D, Shalimar Bagh, Delhi was booked vide U/C file No. 35/UC/B-I/KPZ/2018 dated 05.03.18 for "U/C in the shape of deviation against Standard DDA Plan and open area land and projection on municipal land and one extra floor on the roof top of BW-14D, Shalimar Bagh, Delhi and after following the due process of law, demolition orders under Section 343 of DMC Act were passed on 13.03.18 with the direction to owner/occupier to demolish the unauthorized construction. Since, the owner/occupier failed to comply with the instruction contained in demolition order, demolition programs were fixed on 26.03.18, 05.04.18, 12.04.18, 02.05.18 & 19.06.18 but action could not be taken due to action taken on another property/non-availability of police force/shortage of time. Further demolition program was fixed for 02.09.22 but as the property was found occupied action could not be taken. A vacation notice dated 05.09.22 was issued to owner/occupier and sent to concerned SHO PS Shalimar Bagh for getting the property vacated. Further action in the matter is under contemplation. The vacation notice dated 05.09.22 is annexed herewith as ANNEXURE-'R3'.

(c) It is submitted that as per records, the unauthorized construction in property/flat bearing no. BW-15D, Shalimar Bagh, Delhi was booked vide U/C file No. 66/UC/B/RZ-I/2017 dated 02.05.17 for "U/C in the shape of rooms with toilet at the roof top of BW-1 SD, Shalimar Bagh, Delhi and the show cause notice was served upon owner/occupier. After following the due process of law, demolition orders under Section 343 of DMC Act were passed on 18.05.17 with the direction to the owner/occupier to demolish the unauthorized construction. A vacation notice dated 05.09.22 was issued to owner/occupier and sent to concerned SHO PS

*Shalimar Bagh for getting the property vacated. Further action in the matter is under contemplation. The vacation notice dated 05.09.22 is annexed herewith as annexed herewith as **ANNEXURE-'R4**.*

(d) It is submitted that as per records, the unauthorized construction in property/flat bearing no. BW-16D, Shalimar Bagh, Delhi was booked vide U/C file No. 146/UC/B/RZ-I/2000 dated 05.07.2000 and proceedings under section 343 of the DMC Act was initiated against the unauthorized construction.”

10. The Status Report filed by respondent No. 2 also mentions that installation of lift does not affect the structural stability of the existing structure and the proposal of lift is in accordance with respondent No. 2's policy and is not encroaching on any land meant for public use. It is pertinent to note that this Court in like facts with respect to *BW Block, Shalimar Bagh, Delhi* upheld a similar NOC vide judgment dated 30.08.2022 passed in Anupama Wadhwa & Ors. v. DDA & Ors. reported as **2022 SCC OnLine Del 2670**.

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. 2, 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. An apprehension has been shown by learned counsel for the petitioners that respondent Nos. 3 to 8 are likely to use the lift(s) for accessing the unauthorized construction existing at the terrace, but the same is misplaced as learned counsel for respondent No. 2 has submitted that the NOC/permission granted in the present case is subject to the condition that the lift would not travel to the terrace. Insofar as unauthorized construction at the terrace is concerned, it has additionally been submitted on behalf of respondent No. 2 that requisite action in accordance with law is being undertaken forthwith.

Even otherwise, the issue of unauthorized construction is to be delinked from permission for installation of lift in view of the aforementioned submission and also in line with decision of a Co-ordinate Bench of this Court in K.M. Gupta (Supra). At this stage, it is also worthwhile to take note of the submission made on behalf of respondent Nos. 3 to 8 that in the entire society, total 12 lifts have already been installed pursuant to similar NOCs/permissions granted by respondent No. 2 and the same are presently operational.

13. In view of the foregoing discussions, this Court does not find any merit in the present petition and the same is dismissed. However, it is directed that respondent No. 2 shall ensure that all safety measures are scrupulously followed during installation of the lift and connecting bridge in question. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 14, 2022

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By: SANGEETA ANAND
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