

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

+ **W.P.(C) 3464/2018 & CM APPL 13640/2018**

Date of Decision: 22.03.2023

IN THE MATTER OF:

GOPI KISHAN SARAF AND ORS.

..... Petitioners

Through: Mr.Gautam Das and Mr.Dhirendra
Kumar Jha, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS. Respondents

Through: Ms.Puja Kalra, Standing Counsel
with Mr.Virendra Singh, Advocate
for MCD.

Mr.Kamal Kapoor, Advocate for
respondent No.3 to 6.

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 in the nature of MANDAMUS directing the respondent Nos. 1 and 2 to remove/demolish the illegal and unauthorized construction over the terrace of third floor constructed by respondents no.3 to 6 in BW 65 to BW68 Block, Shalimar Bagh, Delhi;

B) issue appropriate writ/order/direction in the nature of CERTIORARI thereby quashing the NOC/approval, if any, issued by the respondent no. 1 and or 2 for illegal construction of the lift block with lift and overhead bridge encroaching upon the open courtyard of block NO. BW 65

to 68, Shalimar Bagh, New Delhi as being carried out by respondents No.3 to 6;”

2. Learned counsel for the petitioners submits that the impugned permission/NOC dated 27.03.2018 (hereinafter, referred to as ‘*the NOC*’), granted by respondent No. 2/MCD for installation of lift and connecting bridge in respect of *Co-operative Group Housing & Flats build by DDA having number from Flats Nos. 65D to 68D in BW Block, Shalimar Bagh Apartments (SFS)* 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 in *BW 65 to BW 68 Block, Shalimar Bagh, Delhi* against which respondent No. 2 has not taken any action.

3. Ms. Puja Kalra, learned Standing Counsel for respondent No. 2 has defended the NOC/permission and submitted that the same was issued to the owners/occupiers of *DDA Flats bearing Nos. 65D, 66D, 67D and 68D, 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 23.07.2018 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 *void*.

5. Learned counsel for respondent Nos. 3 to 6 submits that the petitioners have preferred the present petition with *mala fide* intentions by suppressing the fact that there are about sixteen lifts that have already been installed in 30 Blocks of the society after the Corporation had granted similar NOCs. It is also submitted that in absence of the lift the answering respondents 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: -

“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.

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13. That it is submitted that the NOC was granted to the Respondent No. 3-6 in accordance with the aforementioned modified policy. Further due precautions were also taken by the department while granting the NOC/Permission for installation of Lift and necessary action as required against the unauthorised construction was also taken by the department.

14. That as far as contention of the petitioner that there is encroachment on public land is concerned, it is submitted that lift structure is supposed to be a separate structure independent of the existing building structure with a connecting bridge so that it does not affect the structural stability of the existing structure. In fact this is one of the pre-requisite that applicants shall propose a separate lift structure. The lift constructed is in accordance with the policy and not encroaching on public land. Further, as regards not obtaining NOC from RWA, it is submitted that NOC was obtained from RWA as well. ”

9. As far as 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 hereunder :-

“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 unauthorized constructions, additions, and alterations as per the provisions of DMC Act.

9. *It is submitted that the unauthorized construction in property/flat bearing no. BW-65D, Shalimar Bagh, Delhi was booked vide U/C file No.66/UC/B/RZ-1/2017 dated 03.05.17 for "U/C in the shape of rooms with toilet on the roof top of 65-D, Shalimar Bagh, Delhi and the show cause notice was served upon the owner/occupier. After following the due process of law, demolition orders under Section 343 of DMC Act were passed on 19.05.17 with the direction to owner/occupier to demolish the unauthorized construction. Copy of the orders is annexed herewith as **ANNEXURE-'R2'**.*

10. *It is submitted that the unauthorized construction in property/flat bearing no. BW-66D, Shalimar Bagh, Delhi was booked vide U/C file No.87/UC/B/RZ-I/2017 dated 03.05.17 for "U/C in the shape of extra floor on the roof top of 66-D, Shalimar Bagh, Delhi and the show cause notice was served upon the owner/occupier. After following the due process of law, demolition orders under Section 343 of DMC Act were passed on 19.05.17 with the direction to owner/occupier to demolish the unauthorized construction. Copy of the orders is annexed herewith as **ANNEXURE-'R3'**.*

11. *It is submitted that the unauthorized construction in property/flat bearing no. BW-67D, Shalimar Bagh, Delhi was booked vide U/C file No.88/UC/B/RZ-I/2017 dated 03.05.17 for "U/C in the shape of extra floor on the roof top of 67-D, Shalimar Bagh, Delhi and the show cause notice was served upon the owner/occupier. After following the due process of law, demolition orders under Section 343 of DMC Act were passed on 19.05.17 with the direction to owner/occupier to demolish the unauthorized construction. Copy of the orders is annexed herewith as **ANNEXURE-'R4'**.*

12. *It is submitted that the unauthorized construction in property/flat bearing no. BW-68D, Shalimar Bagh, Delhi was booked vide U/C file No. 35/UC/B/RZ-I/2015 dated 20.03.15 for "U/C in the shape of extra room at back courtyard and the show cause notice was served upon the owner/occupier. After following*

the due process of law, demolition orders under Section 343 of DMC Act were passed on 21.04.2015 with the direction to owner/occupier to demolish the unauthorized construction. Further, the property/flat bearing no. BW-68D, Shalimar Bagh, Delhi was again booked vide U/C file No. 266/UC/B/RZ-I/2018 dated 05.09.18 in the shape of entire extra floor at the terrace of DDA Flat N0.BW-68D, Shalimar Bagh, Delhi and the show cause notice was served upon the owner/occupier and the matter is under consideration. Copy of the orders dated 21.04.2015 is annexed herewith as ANNEXURE- 'R5' and show cause notice dated 05.09.18 is annexed herewith as ANNEXURE- 'R6'. ”

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 6 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 6 that in the entire society, about 16 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 discussion, 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

MARCH 22, 2023/v