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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 72/2023****AKARSHAN BHAWAN FLAT OWNERS WELFARE
ASSOCIATION AKARSHAN BHAVAN AND ANOTHER**

..... Appellants

Through: Mr. O.P. Gaggar with Mr. Sachindra
Karn, Advocates

versus

SUSHIL KUMAR JAIN AND OTHERS

..... Respondents

Through: Mr. S.D. Ansari with Mr. I. Ahmed,
Advocates for Respondent No. 4Reserved on: 18th January, 2024Date of Decision: 1st February, 2024

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CORAM:**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J**

1. The present appeal has been filed impugning the order dated 27th February 2023 passed in Interlocutory Application (IA) bearing no. 21032 of 2022 in CS (OS) No. 576/2022 ('Impugned Order') whereby learned Single Judge of this Court disposed of the said application with the observation that it is open to the DCP (Central), PS Daryaganj as well as Chief Fire Officer to duly attend to the grievances raised by Appellant no.1 with regard to the property i.e., Akarshan Bhawan, 23, Ansari Road, Daryaganj New Delhi



(‘subject building or building’) and further take such remedial measures as may be warranted for the same.

1.1. The Appellants are the original plaintiffs and Respondent Nos. 1 to 5 are original defendants in the civil suit filed before the learned Single Judge of this court. Respondent No. 4 is the only contesting Respondent in this appeal and in the suit proceedings as well.

1.2. The civil suit has been filed by the Appellants seeking a decree of declaration and permanent injunction restraining Respondent Nos. 1 to 4 from raising any construction or making structural changes in the subject building without obtaining sanction/written permission from all the applicable statutory authorities and declaring that members of the Appellant no.1 i.e. Akarshan Bhawan Flat Owners Welfare Association (‘Association’) have an easement right with regards to the roof of the subject building for housing lift room, guard room, water tanks for sanitation and firefighting as well.

1.3. The facts of the case to the extent relevant for the present appeal are that during the pendency of the said civil suit, in the intervening night of 24th and 25th October 2022, it is alleged that Respondent No. 4 along with other unknown persons broke open the locks leading up to the terrace of the subject building and unilaterally removed all the water tanks installed on the roof servicing fire safety equipment and supplying water to the toilets situated on the lower floors of the subject building.

1.4. Due to such conduct of Respondent No. 4, Appellants lodged a First Information Report (‘FIR’) before the Police Station (PS) Daryaganj registered as FIR No. 0352/2022 and approached various authorities including the Deputy Commissioner of Police (Central Delhi) for the purpose



of restoration of water supply to the toilets and the firefighting equipment by reconnecting the water tanks. However, due to inaction of the authorities to address or take any measures against Respondent No. 4, the Appellants filed the aforesaid I.A. No. 21032 of 2022 before the learned Single Judge seeking directions be issued to Respondent no. 4 to restore the water supply to the toilets and the firefighting system by reinstalling the overhead water tanks removed on the roof of the building and also allow the members of Appellant No. 1- Association access to the roof of the building for maintenance of the water tanks and the lift equipment installed in the lift room during all time of the day.

1.5. In view of the rival claims of the parties, the learned Single Judge after perusing the photographs produced by Respondent No.4 observed that the water tanks, pumps and the electricity panel appeared to have been lying in a state of disrepair and disuse; and therefore, refrained from granting the relief of restoration. However, after taking note of the communications issued by the Fire Department calling upon the Appellant no.1- Association to revamp the fire safety system and the communications recording the disconnection of the water supply, the Court reserved liberty to the Appellants to approach the statutory authorities as well as the appropriate Court for remedial measures.

1.6. The Appellants have filed the present appeal aggrieved by the impugned order and are seeking the relief of restoration of water supply to the toilets on the lower floors as well as the fire fighting system of the building.

Arguments on behalf of the parties

2. Learned counsel for the Appellants stated that it is evident from the record that overhead water tanks were installed on the roof of the building for



the purposes of supply of water to the toilets on the lower floors servicing the 50 offices located in the building and for the firefighting services of the building until 24th October, 2022. He stated that the learned Single Judge failed to take note of the contents of the compromise deed dated 7th June, 2022 executed by Respondent No. 4 wherein Respondent No. 4 had given an undertaking before the police (at PS Daryaganj) to allow the Appellant no. 1, Association and its members to approach the roof of the building at all times for cleaning and maintenance of the water tanks. He stated that, therefore, there was no dispute with regard to existence of water tanks on the terrace and the tanks were operational and functional.

2.1 He stated that the building which houses 50 independent offices was granted approval by the Fire Department and one of the conditions of the approval was installation of overhead water tanks with a total capacity of 50,000 litres each for storing water, so that it can flow through pipes and hoses.

2.2 He stated that the building has 8 toilets, which need water supply for sanitation. He stated that due to the illegal removal of the overhead tanks by Respondent No. 4 the water supply to the toilets has been abruptly disconnected; and as a temporary measure water tanks of 100-200 litres has been installed on each floor for the toilets; however, the same is not sufficient.

2.3 He stated that the Appellants are seeking to enforce the easement right of the Appellant no.1- Association and its members to access the roof for the purpose of installation of water tanks for firefighting, sanitation and conservancy as well as for the access of the lift room. He stated that there is a functional lift in the building and the lift room is on the roof. He stated that



this right to use the roof is also recognised under the Delhi Apartment Ownership Act, 1986 ('Act of 1986')

2.4 He stated that the Appellant no.1, Association and its members have no objection to the Respondent No. 4 carrying out construction on the roof after obtaining a prior building sanction from Respondent No. 5, Municipal Corporation of Delhi ('MCD or Municipal Corporation'). He stated that, however, until the building sanction is received, the Respondent No. 4 cannot be permitted to displace the water tanks connected to the toilets as well as to the firefighting equipment of the subject building. He stated that after construction of the new floor, the Respondent No. 4 would have to similarly permit the use of the roof (above the new floor) to all the occupants of the building for the purpose of installation of overhead water tanks for sanitation, conservancy and firefighting measures as well as the access to the lift room.

2.5 He stated that as on 24th October, 2022, the outdoor air-conditioning units were also installed on the roof; however, Appellants are not seeking a direction for re-installation of the outdoor air conditioning units for the present.

2.6 He relied upon the communication dated 13th December, 2022 issued by the Delhi Fire Service pointing out the deficiencies in the firefighting equipment and the consequential rejection of the renewal request for the Fire Safety Certificate in respect of the subject building.

2.7 He stated that during the pendency of the suit proceedings, Respondent No. 4 on 24th October, 2022 unilaterally disconnected and removed all the water tanks. He states that after removal, the water tanks have been placed on the roof of the lift room, which are liable to fall down if strong winds are



blowing. He states that the roof of the lift room (mumty) will be unable to support the weight of the water tanks and will collapse.

3. In reply, learned counsel for Respondent No. 4 stated that he relies upon the photographs, which had been reproduced in the reply dated 20.01.2023 to IA No. 21032/2022. He stated that the learned Single Judge has rightly observed that the photographs produced by the answering Respondent show that the water tanks and pumps installed on the terrace for complying with the firefighting measures were lying in the state of disrepair and disuse. He stated that the electricity panel for operating the firefighting equipment was also lying in a state of disuse.

3.1 He stated that no water tanks for supplying water to the toilets was installed on the roofs. He stated that water to the toilets on the lower floors is being supplied either directly from the pipelines connected with the municipal supply or from the water tanks installed on each floor.

3.2 He stated that the Respondent No. 4 is the exclusive owner of the roof of the subject building and is entitled to deny access to the remaining occupants of the building from accessing the same. He stated that Respondent Nos. 1 to 3 have sold the roof to Respondent No. 4. He stated that the grant of this relief sought in IA No. 21032/2022 will amount to granting the final reliefs sought in the plaint.

Analysis and findings

4. This Court has considered the submissions of the learned counsel for the parties and perused the record.

5. The subject building was initially constructed in 1990-91 comprising a basement, ground floor, mezzanine floor, first floor and second floor. Independent offices were carved out on each floor and sold by registered



conveyance deed. Subsequently, in the year 2004-05, the land owner built an additional floor without obtaining prior building sanction and similarly, sold office spaces on this additional floor to third parties. The construction of the said additional floor (i.e., the third floor) was booked for unauthorised construction and subsequently, regularised upon payment of fees and penalty to the statutory bodies. The subject building presently has existing independent 50 offices and eight (8) toilets for servicing the said offices.

6. The subject building due to its height was mandatorily required to obtain a Fire Safety Certificate from the Delhi Fire Service Department. The subject building did not have the said certificate and therefore, the electricity and water supply to the building was disconnected in pursuance to an order dated 4th August, 2009 passed by the Delhi Fire Service Department. The occupants of the subject building undertook measures and submitted a compliance report to the Delhi Fire Service Department with respect to the mandatory 12 fire safety bare requirements installed in the premises of the subject building and consequently, after recording its satisfaction, Delhi Fire Service Department vide order dated 10th February, 2010 directed restoration of the electricity and water supply to the subject building. It is a matter of record that installation of 10 overhead water storage tanks of 5000 litres each and pumping arrangements (both) installed on the existing roof was a part of the fire safety requirements compliance measures directed by the Delhi Fire Service Department. The aforesaid status of installation continued uninterrupted until 24th October, 2022.

7. It appears that Respondent No. 4 purchased the roof rights on 31st May, 2022 and exercised exclusive rights of possession for the roof of the subject building, which led to an altercation between the parties. The said dispute



was initially resolved before the SHO, PS Daryaganj, on 7th June, 2022 wherein Respondent No. 4 acknowledged in writing the right of the members of the Appellant no.1- Association to access the roof at all times for cleaning and maintenance of the water tanks. The said written document lends credence to the submission of the Appellants that functional overhead water tanks providing supply to the toilets existed on the roof. The Respondent No.4 has not disputed the execution of the said written understanding.

8. Thereafter, the present suit bearing CS (OS) No. 576/2022 has been filed by the Appellant no. 1, Association on 3rd September, 2022 seeking a restraint against Respondent Nos. 1 to 4 from inter alia interfering with the easement right of the occupants of the subject building with respect to the lift room, guard room and the water tanks installed on the roof. In addition, a relief of declaration was also sought to the effect that no further construction can be carried out in the subject building without the prior building sanction from the Municipal Corporation as well as a no objection from the existing owners of the other parts of the building. The learned Single Judge while issuing summons in the suit vide order dated 16th September, 2022 directed that Respondent Nos. 1 to 4 shall not make any construction without a prior sanction from the Municipal Corporation.

9. During the pendency of the suit and prior to filing the written statement, Respondent No. 4 on 24th October, 2022 changed the status quo by unilaterally removing all the pipelines, pumping equipment and water tanks lying on the terrace and placing the same on the roof above the lift room. The Respondent No. 4 does not dispute that the 10 water tanks (for capacity of 5000 litres each) and the pumping equipment removed from the terrace on 24th October, 2022 was the fire service equipment as mandated by the Delhi



Fire Service Department in the year 2010. The only explanation given for removing the said water tanks and equipment is that the same was lying in a state of disuse and disrepair.

The Respondent No. 4 has disputed the existence of overhead water tanks, which were supplying water to the toilets on the lower floors of the subject building. However, the said denial is contradicted by the written compromise deed dated 7th June, 2022 signed by Respondent No. 4 before PS Daryaganj.

10. In the facts of this case, it is therefore evident that as on 24th October, 2022, 10 water tanks having capacity of 5000 litres each as well as pumping arrangements as per the requirements of the Delhi Fire Service Department were installed at the roof of the subject building. Similarly, the overhead water tanks supplying water to the toilets also existed and were removed by Respondent No. 4 on 24th October, 2022. The Appellants has filed photographs at Annexure A-10 of the terrace which clearly show the water tanks were lying on the terrace. It is, thus, evident from the record, that the said water tanks and fire service equipment were existing when Respondent No. 4 purchased the roof rights on 31st May, 2022.

11. This Court is of the considered opinion that the installation of the fire equipment and overhead water tanks are essential requirements for the use and enjoyment of the subject building and could not have been unilaterally removed by Respondent No. 4. The Respondent No. 4 by the said action has clearly endangered the safety of the occupants of the subject building as is evident from the letter dated 13th December, 2022 issued by the Delhi Fire Service Department observing that the Fire Safety Certificate cannot be renewed in the absence of the required fire safety equipment. In view of the



correspondence of the Delhi Fire Service Department, the said fire service equipment is essential for this building due to its height and necessary for the safety of the occupants. The reinstallation of the said equipment is necessary for renewal of the fire safety certificate.

Similarly, the dis-connection and removal of the overhead water tanks, which were supplying water to the toilets on the lower floors of the subject building is undue interference by Respondent No. 4 in the use and occupation of other occupants of the building. It needs no reiteration that use of toilet facilities in a building is a basic human right.

12. In the facts of this case, the root cause of the dispute between the parties appears to be with regard to the right of construction of Respondent No. 4 on the roof of the subject building, which was being opposed by the Appellant no.1- Association and its members by asserting that no new construction can be raised on the roof without the no objection of each of the other co-owners of the subject building.

However, learned counsel for the Appellants has fairly conceded during the arguments that they have no objection if Respondent No. 4 carries out construction on the roof after taking prior building sanction from the Municipal Corporation. He has contended that however, in that situation as well, the right of the occupants to place the overhead water tanks and fire safety equipment on the roof of the newly constructed floor would have to be acknowledged and permitted by the Respondent No. 4.

13. We are of the considered opinion that the stand taken by the Appellants is fair and correct.

14. The necessity of using a roof in multi-storeyed buildings for common facilities is statutorily recognised under Section 3 (j)(ii) of the Act of 1986.



The right of the occupants of the subject building to access the roof for the aforesaid purposes would also be protected under Section 22 of the Indian Easements Act, 1882. In the facts of this case, the roof was admittedly being used for common overhead water tanks and fire safety equipment as on 31st May, 2022 when Respondent No. 4 purchased the said roof. The owners and occupants of the 50 offices on the lower floors of the building have a right to use the roof for their beneficial enjoyment. Therefore, the unilateral removal on 24th October, 2022 by Respondent No.4 from the existing roof was improper and illegal; more so when the suit had been filed and is pending before the learned Single Judge of this Court. There was a clear attempt by Respondent No.4 to change the status quo prior to filing the written statement in his anxiety to oppose the reliefs sought in the plaint.

15. In view of the fact that the safety of the users and occupiers of the building has been endangered due to the removal of the fire safety equipment and they are being denied the use of essential sanitation facilities, the balance of convenience is in favour of the Appellants and against the Respondent No. 4, who purchased the roof on 31.05.2022 with due knowledge of the existence of the water tanks and fire safety equipment. We also find merit in the submission of the Appellants that the mumty cannot hold weight of water tanks with the capacity of 50,000+ litres; the unilateral makeshift arrangement made by Respondent No. 4.

16. The subject building due to its height mandatorily requires Fire Safety Certificate and therefore, all the occupants of the building including Respondent No. 4 have a joint responsibility for ensuring that the fire safety compliance measures enlisted in letter dated 13th December, 2022 are complied with expeditiously, so that, the certificate for fire safety with



respect to the subject building is issued. So also, the installation of overhead water tanks for supply of water to the toilets on the lower floors is an essential facility and cannot be interfered with by the Respondent No. 4. Similarly, since admittedly, a lift as well as a lift room exists in the building, the right of the Appellant no.1 and its members to access the lift room on the roof of the subject building for installation and maintenance of the equipment in the lift room cannot be interfered with by Respondent No. 4.

17. The Respondent No.4 is therefore, liable to permit the Appellants to restore the overhead water tanks for supply of water to the toilets and install the requisite fire safety equipment as per the directions of the Fire Service Department. It is clarified that as and when, Respondent No. 4 receives building sanction for constructing an additional floor from Municipal Corporation, the Respondent No. 4 will be entitled to construct the new floor and, in that scenario, the common overhead water tanks and fire safety equipment have to be shifted to the roof over the sanctioned newly constructed additional floor.

18. The statement of the learned counsel for the Appellants that the association and its members will not interfere with the construction of the additional floor by Respondent No. 4 after taking prior sanction of the Municipal Corporation is taken on record and they are held bound down by the same. It is clarified that the Respondent No.4 will not be obliged to take any 'no objection' from the Appellant no. 1 or its members for raising an additional floor if he receives prior building sanction from the Municipal Corporation.

19. However, until an additional new floor is constructed by Respondent No. 4 (after obtaining the prior building sanction from the Municipal



Corporation), access to the existing roof of the building has to be permitted uninterrupted by Respondent No. 4 to Appellant no.1 and its members for installing the overhead water tanks, fire service equipments and equipments in the lift room. The Respondent No. 4 is also obliged to permit the occupants of the building to access the roof for maintaining and cleaning the water tanks, fire service equipment as well as the lift room.

20. The Respondent No. 4 is accordingly directed to permit the Appellants herein to restore on the roof the overhead water tanks for supply of water to the toilets and pumping arrangements (and any other equipment) for the fire safety compliance within a period of two (2) weeks. In case of any interference by Respondent No. 4 in the aforesaid reinstallation, the SHO of PS Daryaganj is directed to provide requisite police assistance to the Appellant no. 1, Association acting through Appellant no. 2.

21. The Respondent No. 4 is directed to permit the Appellant no.1, Association and its members to access the water tanks, the lift room and the fire service equipment at all times for their services and maintenance. Respondent No. 4 is restrained from causing any hindrance in the access of the roof for the aforesaid purpose.

22. The Appellant no.1, Association is directed to ensure that all deficiencies pointed out by the Delhi Fire Service Department in its letter dated 13th December, 2022 are removed within four (4) weeks and the Fire Safety Certificate is obtained from the Delhi Fire Service Department. The Fire Safety Certificate is directed to be placed on record before the learned Single Judge.

23. It has been averred by Respondent No. 4 in its reply to I.A. No. 21032/2022 that though the lift has been installed in the subject building, no



valid licence for the lift has been obtained by Appellant no.1, Association. The Appellant no.1- Association is directed to place on record before the learned Single Judge a copy of the statutory licence issued for the existing lift within four (4) weeks.

24. With the aforesaid directions, the present appeal is allowed and the reliefs sought by the Appellants in IA No. 21032/2022 stands allowed in the aforesaid terms.

25. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

FEBRUARY 01, 2024/rhc/ms