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

+ **W.P.(C) 8462/2024**

**MRS NISHA GUPTA REPRESENTED THROUGH HER
DAUGHTER MS NAMITA GUPTA Petitioner**

Through:

versus

UNION OF INDIA & ORS. Respondents

**Through: Mr. Manish Mohan, CGSC with Mr.
Arnav Mittal, GP for UoI and Mr.
Jatin Teotia, Advocate.**

**CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

ORDER

**% 31.05.2024
CM APPL. 34891/2024 (Exemption)**

Allowed, subject to all just exceptions.

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1. Petitioner has approached this Court with the following prayers:

“a) Direct the Respondents to frame special policies for the protection of senior citizens from real estate fraud and harassment.

b) Direct the Respondents to introduce a Special protection plan for senior citizens, including a dedicated cell for addressing grievances, legal aid and support, and mechanisms to safeguard investments.

c) Direct the Respondents to summon M/s vatika Limited and its Managing Director and direct them to immediately hand over the possession of the Flat purchased by the petitioner and also offer



penalty/compensation amounting.”

2. The facts, as stated in the Writ Petition, are that the Petitioner is a senior citizen aged about 75 years. It is stated that the Petitioner suffers from several health ailments and is almost bed ridden and immobilized. It is stated that in 2006-07 M/s Vatika Ltd. launched a commercial space called “Vatika Infotech Park” in Faridabad, Haryana. It is stated that a Builder-Buyer Agreement was executed between the developers and the original allottee, Mrs. Rina Singh, for the allotment of office unit no. 215A, measuring 1000 sq. Ft on the 2nd Floor of Tower No. C-II of the said commercial complex. It is stated that the tower was later on changed to Tower D. It is stated that the entire sale consideration of Rs.53,00,000/- has been paid by the Original allottee but the Builder has failed to adhere to the timeline of the project. It is stated that the Builder has assured monthly payments of Rs. 45,000/- until possession of the completed unit. It is also stated that commitment was also given by the Builder to lease the property or pay Rs. 45/- per sq. ft. per month if the lease was not finalized. However, nothing has been paid by the Builder till date. It is stated that in 2017, Mrs. Rina Singh assigned all rights to the Petitioner herein and her son – Mr. Himanshu Gupta. It is stated that the project remains incomplete and it is causing immense mental agony to the Petitioner and thousands of other senior citizens like the Petitioner who are victims of such fraudulent practices by the Builders and Developers.

3. It is stated that it is the duty of the Government to ensure that senior citizens are protected from such harassment. It is the case of the Petitioner that the Ministry of Housing and Urban Affairs, Government of India, is responsible for the development of housing and urban infrastructure in the



country and it must ensure the protection of homebuyers' interests, more particularly those of senior citizens. It is stated that the Union of India has not made any policy to prevent exploitation of the senior citizens in real estate transactions. It is further stated that a number of cases are pending before the Consumer Protection Court and the Real Estate Regulatory Authority and the senior citizens like the Petitioner are not able to reap the benefit of their investments. The Petitioner has, therefore, approached this Court with the prayers stated above.

4. Heard the Counsels for the Parties and perused the material on record.

5. The present Writ Petition is completely misconceived. Governments make policies and not the Courts. It is well settled that Courts do not run the country and it is up to the administration to take decisions for smooth functioning of the Government. The Apex Court in Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664 has held that Courts should not be called upon to or undertake governmental duties or functions. Paragraph Nos.232 and 233 of the said Judgment reads as under:

"233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in



matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

(emphasis supplied)

6. In view of the above, the prayers, as sought for by the Petitioner, cannot be granted by this Court while exercising its jurisdiction under Article 226 of the Constitution of India.
7. Though the Petitioner has sought relief against the Builder but apart



from the fact that the Builder herein is not a State amenable to writ jurisdiction, the Builder has also not been arrayed as a party to the present Writ Petition.

8. The present Writ Petition is completely misconceived and a waste of precious judicial time. However, considering the age of the Petitioner, this Court is refraining from imposing costs on the Petitioner.

9. The Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

MAY 31, 2024

Rahul