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

+ W.P.(C) 17747/2022

SH. S. S. CHOUHAN & ORS.

.....Petitioners

Through: Mr. Gaurav Bhardwaj, Ms. Garima
Bhardwaj, Mr. Naveen Kumar and
Ms. Kritika Singh, Advocates.

versus

MUNICIPAL CORPORATION
OF DELHI & ORS.

.....Respondents

Through: Mr. Akshay Verma, ASC for
MCD.
Mr. Arun Panwar, Advocate for R-
4.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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03.12.2024

1. The petitioners are residents of a block of flats in *Gharonda Apartment, Shrestha Vihar, Delhi-110092*. They applied to the Municipal Corporation of Delhi ["MCD"] for permission to install a lift at a location identified by them, in terms of a policy entitled "*Policy For Installation Of Lift And Connecting Bridge In CGHS (Co-Operative Group Housing Society), DDA Built Flats (Low Rise Flats) in NCT Of Delhi*" ("Lift Policy") which was issued by the Delhi Development Authority ["DDA"] in the year 2016.

2. MCD initially issued a No Objection Certificate ["NOC"] dated 22.04.2022. However, it subsequently kept the permission in abeyance,

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by a communication dated 09.05.2022, upon a complaint of respondent No.4, who is a resident of Flat No. B-41 in the same block of flats.

3. Subsequently, MCD has issued a second NOC dated 25.08.2022, in which it has permitted the petitioners to install the lift, but at a site different from the one originally proposed by them. By order dated 24.07.2023, MCD was directed to place on record the plan showing the location where the lift was permitted to be installed in terms of MCD's letter dated 25.08.2022. MCD has filed a status report dated 11.08.2023 annexing the said plan. It was recorded in the order dated 11.09.2023 that the said location was not acceptable to the petitioners.

4. The current status, in these circumstances, is that the petitioners have applied for permission to install the lift at a particular location but the NOC finally granted by MCD is in respect of a different location. Put differently, the permission sought by MCD was originally granted on 22.04.2022, but the effect of the orders dated 09.05.2022 and 25.08.2022 is that the said permission has been revoked. I am of the view that refusal/revocation of permission for installation of a lift ought to be challenged before the Appellate Tribunal for Municipal Corporation of Delhi ["ATMCD"] under Section 347B of the Act, instead of in writ proceedings. Section 347B of the Act provides for appeals against orders of MCD inter-alia sanctioning or refusing to sanction, erection of any building or revoking a sanction. Permission to install a lift is also akin to sanction of a building plan. Chapter XVI of the Act contains various statutory provisions with regard to permission for erection of a building, additional or repair of buildings and sanction for this purpose. These orders are appealable under various clauses of Section 347B of the Act. I



draw an analogy for this purpose from the legal position relating to permissions for installation of mobile towers. This Court has held in W.P.(C) 3267/2010 [Cellular Operators Association of India & Ors. vs. Municipal Corporation of Delhi] that permission to install a mobile tower is in the nature of a building permission under the Delhi Municipal Corporation Act, 1957. Consequently, by an order of a coordinate Bench dated 11.04.2023 in W.P.(C) 3113/2022 [Sh. Jai Prakash Gupta vs. North Delhi Municipal Corporation and Ors.], challenges to such permissions have been relegated to the remedy of appeal before the ATMCD. Drawing an analogy, I am of the view that the refusal or revocation of sanction for installation of a lift are also amenable to challenge under Section 347B of the Act. Such a procedure would enable factual and legal grounds to be examined by the ATMCD comprehensively, rather than restricting the challenge to parameters available in exercise of the writ jurisdiction.

5. Mr. Gaurav Bhardwaj, learned counsel for the petitioners, contends that the revocation is without jurisdiction as it was ordered on a representation of respondent No.4, who has no locus with regard to the installation of the lift, as her residence is on the ground floor. He draws my attention to Clauses 1.1(i), 1.1(ii) and 1.1(iv) of the Lift Policy, which are reproduced below:

“1.1 Pre-requisite for grant of NOC-cum-Sanction:

- (i) **Consent from owners using common stair case 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.

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- (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.”*

[Emphasis supplied.]

6. It is evident from Clauses 1.1(i) and 1.1(iv) that the owner of the ground floor is not entirely excluded from consideration while evaluating an application for the installation of a lift. While her consent is not mandatory in terms of Clause 1.1(i), it is deemed “advisable”. Similarly, the interest of the ground floor allottees in access to their flats, natural light, and ventilation has been expressly recognised in Clause 1.1(iv). In view of the aforesaid, the contention of the petitioners that respondent No.4 had no locus whatsoever, and the impugned orders of MCD are thus vitiated by a defect of jurisdiction so as to render them amenable to challenge under Article 226 of the Constitution, does not commend to me.

7. For the aforesaid reasons, the petition is disposed of with liberty to the petitioners to assail the refusal/revocation of their sanction plan before the ATMCD. All rights and contentions of the parties are expressly reserved.

PRATEEK JALAN, J

DECEMBER 3, 2024
“SS/JM”/