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

% **Date of decision: 24th March, 2025**

+ RFA 269/2019

AVTAR SINGH CHAUHAN AND ORS.Appellants

Through: Mr. Sanjeev Sagar, Sr. Adv. with
Mr. Deepak Prakash, Mr. Nazia, Mr.
Divyangana Malok, Mr. Rahul
Suresh and Ms. Shivangi Rajawat,
Advs. for A-3

Mr. Sriram P & Mr. Anandhu, Advs.
for A1.

Mr. Aaditya Vijay Kumar & Ms.
Akshita Katoch, Advs. for A2, 4 to
10

versus

ANOOP SHARMA AND ORS.Respondents

Through: Mr. Upamanyu Sharma, Adv. for R1
Mr. Somit Makar, Adv. for R-4
Mr. Arun Birbal and Mr. Sanjay
Singh, Adv. for DDA

Mr. Rajesh Gogna, CGSC with Ms.
Priya Singh and Mr. Nishant Sharma
and Mr. Mohd. Bilal, Advs. for R-7

Mr. Amar Nath, Nodal Officer and
Mr. Shyam Sunder, for R-8

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The present regular first appeal is being preferred by the appellants under Section 96 read with Order XLI of the Code of Civil



Procedure, 1908, thereby assailing the impugned judgment dated 23.03.2019 passed by the learned Additional District Judge, Karkardooma Courts in Suit Bearing No.28/2018.

2. It is pertinent to mention that the suit was initially filed by the respondent No.1/plaintiff against the office bearers of respondent No. 8/CWGVAOA¹, as well as respondent No. 6/Delhi Development Authority² and respondent No. 7/Ministry of Urban Development³, who are the main parties, who are representing the members/residents, who are serving in the said two respective departments. The appellants in the present appeal are private individuals who have purchased residential units in Common Wealth Games Village [hereinafter referred to as “CWGV”]. Respondents No. 4 and 9 to 21 are the office bearers of the General Body, elected pursuant to elections which were conducted on 22.07.2018, in compliance with the directions of the learned trial Court dated 09.07.2018, which were issued at the behest of defendants No.1 and 2 in the suit.

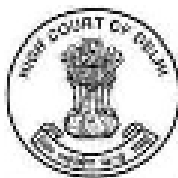
3. Suffice to state that upon the said order being challenged, this Court, in FAO No. 334/2018, *vide* order dated 20.07.2018, directed that the elections held on 22.07.2018 shall be subject to legal scrutiny by the learned trial Court.

4. Insofar as the instant appeal is concerned, respondents No. 2, 3 and 5 have already been proceeded against *ex parte*, while the remaining respondents are contesting the matter.

¹ Commonwealth Games Village Apartment Owners Association

² DDA

³ MoUD



ARGUMENTS

5. During the course of arguments advanced by the learned counsel for the parties, it is brought to the fore that there are a total of 1,078 residential flats in the CWGV, which have already been allotted to various individuals, including private owner, as well as other governmental bodies and the bifurcation thereof is as under:-

SERIAL NO.	NAME OF OWNER	NUMBER OF FLATS
1.	State Bank of India	33
2.	AIC of India Ltd.	6
3.	Punjab and Sindh Bank	4
4.	Exim Bank	30
5.	HPCL	12
6.	National Bank of Agriculture	10
7.	IRCTC	8
8.	Oil India	4
9.	Delhi State Co-operative Bank	4
10.	General Insurance Corporation	2
11.	PWD	23
12.	DDA	54
13.	MoUD	378
14.	Ministry of External Affairs	68
15.	Private Owners	442
	TOTAL	1078

***⁴ Note**

⁴ Total Flats are 1168 but 90 residential units are lying sealed for not having been given occupancy certificate.



6. Having heard the learned counsels for the parties in some detail and upon perusal of the record, it would be appropriate to first refer to the operative portion of the impugned order, which reads as under:-

“35. Relief: This is an issue with respect to the relief and in view of my findings on the issue No.1, just returned above, no relief, except declaring the Elections, held on 22.07.2018 of the defendant No.8, Society, as null and void and non-est, can be granted, even the issue No.1 stands decided, in favour of the plaintiff, under the peculiar facts and circumstances and also state of affairs, prevailing, in the Society, and as such, I, hereby, declare, the Elections, held on 22.07.2018, as null and void. This brings me to address the question of vaccum, being created, hereby for the reasons that in any case, the term of the erstwhile Governing Body came to an end, on by 22.07.2018 and now, the present Governing Body, is not in existence, therefore, its Officials, not competent to act, on behalf of the defendant No.8/Society, and as such, there is question, arising of Administration of day to day affairs, also payment of essential maintenance services etc. for the Society, which in itself, is, undoubtedly, a prestigious institution, however, the new Governing Body of the Society, i.e., defendant No.8 through, defendants No.9 to 21, was never allowed to act, except to make payments of essential/(s) and therefore, there is already a make- shift arrangement, going on, which may even continue, however, the present Association/its Office Bearers, i.e., defendants No.9 to 21 are no more competent to act on behalf of the defendant No.8 and in this eventuality, some arrangements is being made, for making payments, in terms of the orders of the Hon'ble High Court and as such, I hereby, direct the defendant No.7, i.e., MoUD, through its Secretary to further request Dr. Tarsem Chand, then Joint Secretary, Ministry of Agriculture & present Area Welfare Officer for CPWD/MOUD at CWGV(Resident of T-30-202) to act as Nodal Officer, (and if need be, he can also get assistance from one each responsible Officials from the defendant No.6, i.e., DDA and MoHUD), and to make payment for essential service charges, in terms of the Orders of the Hon'ble High Court, dated 20.07.2018, 07.08.2018, 20.08.2018, 02.11.2018, 04.12.2018 and 15.02.2019, which is not received by this Court till date, (But all available with the office of the Association), and he will take over the complete charge of the office of the Association within three days and the defendants No.9 to 21 are bounded to hand over him the complete charge of the office and its effects against necessary written acknowledgement from Dr. Tarsem Chand, who is further directed to convene an



urgent meeting of the General Body of the Society, within 15 days, from the date of the service of this order to the Counsel for the Union of India, appearing in this Court, and the General Body of the Society will take all and every appropriate decision, for conducting the Elections to the Governing Body of CWGVAOA for 2018-20, within two months, from the date of so convened GBM, in accordance with the bye-laws of the Society and further in accordance with law and in keeping with this order of the Court. There is no order as to costs. A copy of this order be given dasti to the Ld. Counsels for the Union of India, as well as, to the DDA, against acknowledgement, for its immediate compliance. Decree sheet be prepared accordingly. File be consigned to record room.”

LEGAL SUBMISSIONS

7. Mr. Aaditya Vijay Kumar, learned counsel appearing for the appellants No. 2, 4 to 10, submitted that the core issue in the present matter is the prolonged non-payment of Common Area Maintenance charges by the members and residents of CWGV. As a result, the upkeep, repairs, and maintenance of common facilities have been severely affected, causing detriment to all.

8. Alluding to the rules and regulations of the CWGV, particularly Clause 9⁵, which provides for the functions of the Governing Body and the manner in which the ad hoc committee was initially constituted when the residential units were developed by Emaar, a private builder, it is pointed out that the eligibility criterion for voting

⁵ FUNCTIONS OF GOVERNING BODY

Governing body shall be responsible for the management and admission of the affairs of the society, and is also authorized to appoint office bearers/executive members to look after any particular activity further.

- (i) All the decisions shall be taken by the majority vote
- (ii) The governing body shall have the powers as are the powers of these rules and regulation.
- (iii) To prepare plans, project and programmes.
- (iv) To appoint Election Officer and his/her power.
- (v) To consider any business brought forward by the Governing body.
- (vi) General body meeting shall be held once in every year regularly.



in the general election of the Governing Body has always been uniform and contingent upon the payment of CAM charges. It is submitted that this criterion was consistently applied in the elections first held on 07.03.2014 and subsequently in the year 2016. Notably, the same criterion was followed in the elections for the 2018-20 term, in which the respondent no.1/Mr. Anoop Sharma, was elected. However, after losing the election, respondent no.1/Mr. Anoop Sharma challenged the decision in the suit, which ultimately led to the passing of the impugned judgment dated 23.03.2019.

9. Alluding to the operative portion of the impugned judgment dated 23.03.2019, the learned counsel for the appellants submitted that since the payment of CAM charges has always been the criterion for members to be eligible to vote, there is no provision for appropriating the CAM charges in case of defaulters out of the Interest Fee Security Deposit⁶. It was vehemently contended that the DDA and the MoUD are in arrears to the tune of ₹24.67/- crores and ₹19/- crores respectively. Furthermore, they are not inclined to pay interest @ 18 % per annum on such mounting arrears, which has led to the present stalemate.

10. It is urged that unless and until the DDA and the MoUD pay the pending arrears along with interest, members/residents defaulting in the payment of CAM charges cannot be granted the right to participate in the GBM⁷ or vote in the elections of the Governing Body. It was further contended that the suggestion to hold a GBM, as proposed by

⁶ IFSD

⁷ General Body Meeting



the learned standing counsel for the DDA and the MoUD, would be problematic. The appellants, along with other members who have diligently paid CAM charges throughout the relevant period, apprehend that officials from the DDA and the MoUD, despite availing various common services/facilities in the CWGV, may form a caucus. There is a concern that such officials could, in future, influence decisions to waive the pending CAM charges as well as interest, which would result in a colossal loss, undermining the very essence of community living.

11. In other words, it is argued that such an approach would be counterproductive, as it would further deplete the already precarious financial condition of the association, rendering it incapable of undertaking necessary repairs and maintenance of common facilities in CWGV.

12. Aligning with the same line of argument, Mr. Sanjeev Sagar, learned senior counsel for the appellant No.3, urged that there should be no relaxation with regard to payment of CAM charges for any member/resident to become eligible for exercising voting rights in the elections to be held for the GB⁸.

13. The appellant no.1/Mr. Avtar Singh Chauhan, appearing in person, argued that the members/residents of CWGV are affiliated with various governmental bodies, while many, like himself, are private purchasers. He contended that the reluctance of the DDA and MoUD to clear the arrears of CAM charges, coupled with their failure to pay interest on the outstanding amounts, has created an abnormal

⁸ Governing Body



situation. As a result, a significant number of government officials have been deprived of the opportunity to participate in the electoral process and elect a democratically constituted GB.

14. The learned counsel for the appellant No.1 proposed the following suggestions:

- (i) that a direction may be passed that the members/residents who are interested in exercising voting rights, should pay their entire arrears with interest in accordance with the rules in a particular time frame;
- (ii) that the liability of the DDA and the MoUD to pay interest on the arrears of the CAM charges should not be waived;
- (iii) that although Nodal Officer has verified the voter list in the year 2022, a fresh exercise may be conducted and the Nodal Officer be directed to prepare a fresh voter list and the election should be held in a time bound manner.

15. It was pointed out that the CAM charges comprise of a nominal amount of ₹3.50 paisa per sq. ft. per month, out of which ₹1.25 paisa is to be recovered by the DDA and MoUD from their members who are residents of CWGV.

16. Ms. Aakanksha Kaul, learned counsel for one of the intervenors, however, has raised an objection to the effect that whether such amounts are claimed by these bodies, or whether they have been duly paid or recovered over the years, is a dispute between the government officials on the one hand and the DDA and MoUD on the other and that the same is outside the scope of the present appeal.

17. Mr. Arun Birbal, learned counsel for the DDA, referred to the reliefs granted by the learned Trial Court in the impugned judgment dated 23.03.2019 and it was urged that in so far as Reliefs No.1 and 2 are concerned, they have become infructuous. He further contended,



that the primary issue appears to be the direction regarding the holding of the GBM, as it would allow the participation of members/residents who are in arrears of CAM charges plus interest, yet would still be in a position to make decisions on policy matters.

18. In this regard, he referred to the order dated 08.08.2019 and subsequent order dated 19.08.2019, passed during the pendency of the instant appeal by this Court and it was urged that that the DDA has been spending huge amount on the upkeep and maintenance of water supply including running of sewage treatment plant and there are arrears recoverable from the CWGVAOA to the tune of ₹9.5 crores.

19. It was further pointed out that in terms of the aforesaid order dated 08.08.2019, a sum of ₹16.75 crores has already been paid to the association. He contended that the apprehension in the mind of the appellants that, if members serving in the DDA are allowed to participate in the GBM or vote in the Governing Body elections, they and other similarly placed members would fall into a minority, is misplaced. He emphasized that the DDA, on its part, cannot issue any directive or whip to its members regarding their voting decisions. It was, therefore, suggested that the GBM may be called forthwith and an appropriate call be taken since there are several issues with regard to the pending bills with respect to the charges payable towards the consumption of water charges and maintenance, repairs and upkeep of the sewerage treatment plant etc. which are recoverable from the association.

20. The applicant/intervenor, whose application bearing No. CM APPL.2205/2025 is separately dismissed and allowed to address



arguments, and learned counsel submitted that there has been repeated failures on the part of the DDA to reconcile the bills and it cannot be overlooked that that DDA is still in huge arrears of CAM charges plus interest to the extent of ₹30/- crores.

21. Mr. Rajesh Gogna, learned standing counsel for the MoUD, referred to the written submissions placed in pleading VIII of the digitized record and it was urged that the appellants cannot restrain the officials/members, who are government servants serving in the organization, from participating in the GBM, as they had paid ₹10/- at a time of becoming member to the CWGVAOA in 2013.

22. It was pointed out that the GBM has not been held in accordance with the rules and bylaws of the association since 2013, despite it being required to be conducted annually. It was further submitted that while CAM charges have been paid up to 31.03.2025, only the interest component remains outstanding. The learned counsel stated at the bar that he has received instructions from the concerned officials in the MoUD, confirming that they have no objection to convening the GBM at the earliest and the appropriate policy decisions are taken with regard to all the pending issues amongst the members *inter se* as well as between the association as well as the MoUD or for that matter the DDA.

23. During the course of arguments, learned counsels for the appellants contended that calling a GBM may not be an appropriate remedy, as it would be difficult to ensure the attendance of three-fourths of the total members/residents, which is required for decision-making. In response, it was suggested that this Court may direct that



the GBM be convened, and in the event that three-fourths of the members are not present, the GBM may nonetheless proceed, with decisions being taken by a simple majority.

24. Mr. Upamanyu Sharma, learned counsel appearing for respondent No.1 appearing through VC, submitted that he is in agreement with the submissions made by the learned standing counsel for the DDA and the MoUD to the effect that the GBM should be called at the earliest and appropriate decision may be taken by all the members who have stakes in the present matter.

25. Respondent No.4, who stated that he served as the Joint Secretary of the Association for the first and second terms, appeared in person and submitted that the requirement for payment of CAM dues as a prerequisite for participation in the GBM and for exercising voting rights in the elections to the GB cannot be bypassed. In support of this contention, reference was made to a direction passed by the then learned District and Sessions Judge, East, Karkardooma Courts, Delhi, *vide* order dated 04.09.2015 in Suit No. 248/05, which reads as under:-

“Defendants No.1 and No.2 have sought four weeks time to file reply and written statement and also for moving an appropriate application to challenge the maintainability of the suit. Time granted.

In the meantime, defendant No.1 can go ahead with holding Annual General Meeting (AGM) of the Association and they may consider entire agenda in the meeting except the item No.5. Members present in the AGM may be informed that this item will be taken only after directions from this Court.

A copy of this order be given dasti to the parties.

List the matter on 09.10.2015 for filing reply and written statement and moving other applications, if so desired by the defendants.



Defendant No.2 is directed to ensure the order passed today is complied with in its letter and spirit.”

26. It was pointed out that although the DDA and MoUD had notice of these proceedings, they never objected to the participation of those members in the GBM who had cleared their CAM charges as well as interest part thereof. It was also pointed out that the plea by Mr. Rajesh Gogna, learned counsel for the MoUD, that the provision for 18% interest on arrears has not been lawfully resolved, is misplaced. It was emphasized that DDA officials were present at the first meeting held in 2014, where the decision was taken in the best interest of all the parties.

27. Learned counsel for the appellants on this point urged that the stipulation of payment of interest at the rate of 18% per annum on the arrears of CAM charges is equally applicable to every member of the society and it is not that there is any specific provision for claiming the interest against the governmental bodies.

28. It is borne out from the record that a report was filed by the Nodal Officer on 25.03.2022 in compliance with this Court's earlier order dated 09.03.2022. The report indicated that CAM charges had been received from as many as 440 members/residents as of 24.03.2022. However, it was also noted that around 12 individuals were in arrears for nominal amounts, approximately ₹1,000/- each. Additionally, Annexure-‘B’ of the report revealed that 638 defaulters had outstanding dues amounting to ₹35,56,45,564/-. It was further brought on record that the MoUD had deposited ₹95,53,708/- on 17.03.2022 against its total outstanding amount of ₹15.18 crores. An



objection to the compliance report was filed by respondent No.1/plaintiff, who contended that the figures cited by the Nodal Officer were arrived at without a proper audit report.

29. In summary, the learned counsels for the parties, as well as the parties present in Court, are unanimous in their view that the impugned judgment dated 23.03.2019 has been rendered infructuous, except for Issue No. 3 regarding the holding of the General Body Meeting in the manner provided vide the impugned order. It is undisputed that one of the primary objectives of the CGWAOA is to promote mutual harmony, cooperation, love, and affection amongst the residents. Community living offers numerous benefits, and it is undeniable that residents of the CWGV who utilize various common services must be held liable and accountable for payment of necessary charges. This ensures that services within the complex are properly maintained. Each member/resident of the complex has a moral and legally binding duty to contribute diligently towards its maintenance, repair, and upkeep. Therefore, the plea raised on behalf of respondent No. 1 and the learned counsel for the MOUD, suggesting that defaulters should be allowed to participate in discussions regarding CWGV affairs in the GBM, cannot be countenanced in law. It cannot be overlooked that CWGV is located in Zone 'O' of the Yamuna flood banks, and failure to maintain it may eventually endanger the complex's very existence, causing irreparable prejudice to its members/residents.

30. Having heard the learned counsels for the parties and noting the near-unanimity amongst the parties, except for the objections raised



on behalf of respondent No. 1, this Court allows the instant appeal, sets aside the impugned judgment dated 23.03.2019. At the same time, the following directions are issued:

- (i) **A PUBLIC NOTICE** shall be issued by a Nodal Officer to each and every entitled members/registered resident individually, as well as by affixing a sufficient number of notices at conspicuous locations within the Common Wealth Games Village, including the office of the Association. This notice shall call upon them to pay and clear their CAM charges along with interest @ 18% p.a., in terms of the parameters already in effect from 01.01.2022 to 31.03.2025, within a period of two months from the date of issuance of the Public Notice, which shall be issued by 1st April, 2025;
- (ii) **VERIFICATION OF VOTERS' LIST:** The Nodal Officer may commence the process of verification of the voters' list afresh, including all such members/residents who make the payment of arrears in the aforesaid manner within the time stipulated and such verification shall be done within a period of 15 days commencing the date of expiry of initial period of two months provided vide above clause (i);
- (iii) **DISPLAY OF VOTERS' LIST:** The verified voters' list, comprising those who have cleared their CAM charges, shall be displayed at all conspicuous



locations within CWGV. Additionally, information regarding the list shall be disseminated via WhatsApp groups and emails to ensure all concerned members are informed about their eligibility to participate and vote in the election;

(iv) **ARREARS OF CAM CHARGES:** Considering that, as per the unaudited report of the Nodal Officer, ₹19/- crores is due from MoUD and ₹33/- crores from DDA, it is directed that, to facilitate their officials/employees in participating and voting in the elections to the Governing Body, both DDA and MoUD shall deposit at least 50% of the aforesaid amounts with the Association within the two months period stipulated in clause (i), without prejudice to their rights;

(v) **ISSUE OF OUTSTANDING CAM CHARGES:** An appropriate call or decision on the issue of payment of arrears of CAM charges with or without interest, and the amount due from the DDA and MoUD, if any, shall eventually be taken up by an elected Governing Body, which shall be put for approval before the GBM, as and when convened in accordance with the applicable bye law;

(vi) The aforesaid disposition shall be without prejudice to the rights and contention of all the parties concerned;



(vii) **DATE OF ELECTIONS TO THE GB:** It is further provided that election to the Governing Body shall be held on 20.07.2025 or such other convenient date as may be decided by the Returning Officer;

(viii) **RETURNING OFFICER:** As per the general consensus, Justice Rajiv Sahai Endlaw, a former Judge of the High Court of Delhi, is hereby nominated as the Returning Officer to conduct the elections of the Governing Body and perform all matters connected thereto, including engagement of any support staff besides being assisted by the Nodal Officer, and if need be, by any member/resident of the CWGV in his discretion so as to enable participation and exercising voting rights in the elections to the Governing Body;

(ix) **HONORARIUM:** Justice Rajiv Sahai Endlaw shall determine his own fees/honorarium, commensurating with his status and the tasks to be performed as also that of the support staff, if any, appointed for the purposes of performing necessary measures to conduct a free and fair elections to the Governing Body.

31. As necessary corollary, it is further provided that in the event DDA and MoUD fail to deposit 50% of the CAM charges within the stipulated time, their employees/officials shall be debarred from the voting in the coming elections to the Governing Body.

32. Furthermore, it is directed that this disposition shall not be cited or treated as a precedent for future elections to the Governing Body. It



is clarified that these directions have been issued solely to resolve the existing stalemate and ensure the availability of funds for the Association. This will facilitate essential services, repairs, maintenance, and upkeep of the complex and its facilities for the collective benefit of its members/residents.

33. It is also provided that any outstanding amounts, charges, or bills payable to the DDA for water consumption and maintenance, repair, and upkeep of the sewage treatment plant shall be treated as a separate category. Needless to say, issues relating thereto shall be addressed by the duly elected Governing Body.

34. In other words, this disposition shall be without prejudice to the DDA's rights and contentions to seek a set-off against outstanding CAM charges, if any, by appropriating the same towards charges or bills related to water consumption and maintenance, repair, and upkeep of the sewage treatment plant. These issues shall be addressed by the duly elected Governing Body in any event.

35. The appeal is disposed of accordingly. All pending applications also stand disposed of.

36. At this stage, learned counsel for the respondent No.1 has informed the Court that there is a cross-appeal bearing No. RFA 486/2019 also pending moved on behalf of respondent No.1. Let the same be also placed for hearing tomorrow, i.e., 25.03.2025.

DHARMESH SHARMA, J.

MARCH 24, 2025

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