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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9010/2023 & CM No.34170/2023**
MRS LAKSHMI DHANIA THROUGH POWER
OF ATTORNEY NISHANT RAIPetitioner

Through: Mr. Gautam Narayan, Sr. Adv. with
Mr. Joby P. Varghese, Mr. Aby P.
Varghese & Mr. Manan Oberoi, Adv.

Versus

SADBHAWANA CGHS LTD & ORS.Respondents

Through: Mr. Sameer Vashisht & Mr. M. Jha,
Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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13.02.2025

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“a. Pass appropriate orders/directions restraining Respondent nos. 1, 2 and 3 from compelling the Petitioner to make any financial contribution for the additional structure/extra FAR expansion project in sadbhawana CGHS Ltd plot no. 11 Sector 11 Dwarka New Delhi-110075; and/or”

2. The petitioner states that she is the joint-owner of a residential flat bearing Flat No. B-505, Sadbhawana CGHS Ltd., Plot No.11, Sector 11, Dwarka, New Delhi-110075 (hereafter *the subject flat*). She states that she had purchased the subject flat in the year 2019 and the petitioner has been residing in the subject flat along with her family comprising of her husband, son and daughter-in-law, since.



3. The petitioner alleges that she is being incessantly harassed for payment of money in respect of extra Floor Area Ratio (FAR) expansion project, the building plan of which was approved by the Delhi Development Authority (DDA) on 19.11.2018. The petitioner states that she does not wish to expand the subject flat or avail of the benefit of additional FAR and therefore cannot be compelled to make payment in this regard.

4. It is relevant to note that the controversy arises in the context of the circulars issued by the DDA permitting the existing residential group housing societies to avail of the benefit of additional FAR, that is available by virtue of the change in the building bye-laws. The petitioner and other members of the respondent no.1/Society had jointly constructed the residential complex on the basis of the building bye-laws as was existing at the material time. The Society is now desirous of expanding their residential flats by availing the additional FAR.

5. The petitioner relies on the Notification dated 28.02.2012 issued by the Government of NCT of Delhi whereby it was notified that ***“unwilling existing members of the housing societies should not / cannot be forced to avail extra FAR at an additional cost”***. The petitioner states that she is an unwilling member of the respondent no.2 Society and therefore cannot be compelled to pay any charges towards the additional FAR.

6. Mr. Gautam Narayan, learned senior counsel appearing for the petitioner also relies on the decision of this court in ***Shiv Lal & Ors. v. Surya CGHS Ltd. & Ors.: 2015:DHC:9092-DB*** and draws the attention of this Court to paragraph 38 of the said decision which reads as under:



“38. Needless to say, the society shall ensure that the proposed extension shall not jeopardise the structural stability of the building. Also, any unwilling member shall not be compelled to make the payment for additional structure. At the same time, the society shall ensure that persons who have not made payment for the additional structure shall not be permitted enjoyment of the same.”

7. The learned counsel appearing for respondent no.4 / Registrar of Co-operative Societies (RCS) submits that petitioner has an equally efficacious remedy of raising a dispute under Section 71 of the Delhi Co-operative Societies Act, 2003 (hereafter *DCS Act*).

8. Although, we had initially considered examining the petitioner's grievance in the present petition as there appeared to be no plausible contest to the petitioner's. However, we note that the petitioner had purchased the aforesaid flat after the plan for availing of the additional FAR had been approved by the Delhi Development Authority (DDA). This would also raise an issue whether the petitioner's predecessor-in-interest had consented to the increase of the FAR for availing the benefit of the same. And, if so, whether it is permissible for the petitioner to resile from the same.

9. In view of the above, we consider it apposite that the petitioner be relegated to avail of her statutory remedies as the petitioner can raise the subject dispute under Section 71 of the *DCS Act*.

10. The present petition is accordingly disposed of. We clarify that all rights and contentions of the parties are left open. In the event the petitioner raises a dispute under Section 71 of the *DCS Act* within a period of four weeks from date, the same would be considered on merits uninfluenced by the question of delay. We also consider it apposite to direct that no coercive



steps be taken against the petitioner for recovery of any amount towards additional FAR for a period of two months from date.

VIBHU BAKHRU, J

ANOOP KUMAR MENDIRATTA, J

FEBRUARY 13, 2025

‘gsr’

[Click here to check corrigendum, if any](#)