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

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Judgment reserved on: 05 December 2024
Judgment pronounced on: 27 January 2025

+ **FAO 363/2024, CM APPL. 68025/2024 (stay of order dated 14.11.2024)**

RITU PAHWA

.....Appellant

Through: **Mr. Shekhar Gupta, Mr. Arav Kapoor & Mr. Shashank Upadhyay, Advs.**

versus

PAYAL KASHYAP & ANR.

.....Respondents

Through: **Mr. Vikas Singh, Sr. Advocate with Mr. Vikar Arora, Mr. Abhay, Mr. Deepak Kalia, Ms. Vasudha Singh and Mr. Sandeep Chandra, Advocates for R-1. Mr. Tushar Sannu, SC for R-2/MCD.**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This appeal has been preferred under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 [“CPC”], against the order dated 14.11.2024, passed by the learned District Judge-03, Patiala House

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Court, New Delhi in CS No. 227/2024 titled as “Ritu Pahwa Vs. Payal Kashyap & Anr.”, whereby, interim application filed by the appellant under Order 39 Rule 1 & 2 CPC, seeking interim injunction against defendant No. 1 from carrying out the construction of lift in the vicinity of the premises of the appellant i.e. Flat No. 70, Munirka Enclave, Delhi was dismissed and ex-parte ad-interim injunction operating earlier was vacated.

2. Delhi Development Authority [“DDA”] approved a Policy for obtaining permission/NOC for installation of lifts in Co-operative Group Housing Societies and Flats built by DDA. In terms of the said policy, Municipal Corporation of Delhi [“MCD”] issued an Office Order dated 07.07.2022, devising a procedure for according such permission. As per said procedure, NOC/permission for flats in respect of de-notified areas shall be granted by the MCD, whereas, for the development areas falling under the jurisdiction of DDA, the requisite permission shall be granted by DDA.

3. Office Order dated 07.07.2022 provides that permission/NOC shall be governed by seven basic principles, which are as under:-

- i) There is no encroachment on public land.
- ii) Structural stability of the building, lift and connecting bridge wherever applicable must be ensured.
- iii) Light and ventilation of the habitable rooms of residents should not be affected. Connecting-bridge wherever required (of minimal size) may be constructed to ensure proper ventilation.
- iv) The operation and maintenance, safety checks and costs thereof in respect of the lift have to be borne by the Proposing Member(s).
- v) As far as possible shifting of services/infringement of other's rights should be avoided. Where absolutely necessary a provision of connecting bridge/walk way may be made from the lift well to the landing point.



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- vi) the lift shall not travel up to terrace otherwise the permission/NOC so issued shall be void
- vii) The Ground Coverage and the FAR of the Lift-Well and connecting bridge (if provided) shall be exempted as the FAR consumed is much less than the present / permissible FAR and this is a facility aimed to facilitate Senior Citizens and making the buildings disabled friendly.

4. The residential building where the appellant resides, is comprising of ground floor (Flat No. 70), first floor (Flat No. 71), second and third floor (Flat No. 72), which is a duplex flat. Appellant is residing on the ground floor of Flat No. 70 while respondent No. 1 is the resident of Flat No. 72 at the second and third floor.

5. Respondent No. 1 obtained No Objection Certificate [“NOC”] dated 18.07.2024 for installation of common lift and connecting bridge in DDA Flat No. 70 to 72 from MCD.

6. Learned counsel for the appellant contends that construction of lift by respondent No. 1 is in violation of the sanctioned plan and the NOC issued by respondent No. 2/MCD. It is argued that construction encroaches upon the appellant’s right to privacy, obstructs access to common areas, disrupts essential services, affects structural stability, thereby causing irreparable harm to the appellant.

7. Appellant has raised following objections to the construction of the lift:-

- i) lift has an opening on the ground floor near window of the room of the appellant. Thus, the entry/exit of the lift will be exactly outside the window of the bedroom of the appellant and that at the time of ingress/egress, any person can see inside the bedroom through the window, which will affect the right of privacy of the petitioner;



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- ii) the light in the bathroom of the appellant shall be completely restricted and it cannot be used without electrical light, even during the day time and shall also affect the ventilation in bathroom;
- iii) lift was to be constructed by steel material, but admittedly, the material being used for installation is RCC and brick work, which may affect the structural stability of the existing structure;
- iv) there should be adequate distance between the lift and the existing structure of the building, but the lift is being constructed in such a manner that there is no gap between the structure of the lift and the existing building, which is 45 years old and thus, the same may affect the structural stability of the building;
- v) the lift travels upto the terrace, and therefore, the NOC stands revoked and no permission can be granted to continue the construction of the lift, which is in utter disregard of the Office Order dated 07.07.2022 and NOC dated 18.03.2024.
- vi) essential services have been shifted by respondent No. 1 while constructing the lift without taking No Objection from the concerned Residents Welfare Association.

8. NOC dated 18.07.2024 for installation of the common lift and connecting bridge has been issued by MCD on the basis of the proposal received from respondent No. 1. Such NOC is subject to certain conditions. Clause-4 of the NOC clearly stipulates that NOC may be revoked by the MCD, if there has been any false statement or any misrepresentation of material facts in the application, on the basis of which, NOC was granted. Clause-5 provides that after completing



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the construction of lift, the Architect shall certify that construction has been carried out as per proposal submitted/sanctioned earlier and was in conformity with the building by-laws and guidelines for installation of the lift in group housing flats built by DDA. Clause-10 of the NOC provides that structural stability of the building, lift and connecting bridge must be ensured. As per Clause-11, light and ventilation of habitable rooms of the residence should not be affected. Similarly, Clause-14 provides that lift shall not travel upto the terrace, otherwise, permission/NOC so issued, shall be void. As per Clause-15, in case any shifting of services is required during excavation of work, applicant needs to obtain NOC from RWA.

9. The learned counsel for the appellant submits that the trial court failed to take note of non-compliance of aforesaid conditions, and therefore, the impugned order is liable to be set aside.

10. The Court has carefully examined the trial court record, pleadings and material placed on record including MCD's Inspection Report, photographs of the site and affidavits filed by the parties. The plan sanctioned while granting NOC, clearly shows that the proposed lift does not in any way block the window of the bedroom of the ground floor occupant. There is also sufficient space in between the lift and the window of the washroom adjoining the bedroom at the ground floor. The photographs filed by the appellant along with his application under Order 7 Rule 14 CPC also show that the window of the appellant is not getting obstructed and similarly there is space between the lift and the window of the washroom. Thus, the light and



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air to the habitable room and the washroom of the appellant is not getting affected in any manner by the construction of the lift.

11. As per the sanctioned plan, the lift and the window of the room at the ground floor open in the common area facing the road. Open area outside the window is already accessible to the public persons/residents. Therefore, mere installation of lift shall not in any manner further affect the privacy of the occupants of the ground floor.

12. The appellant's concern regarding the invasion of privacy was duly considered by the trial court. It noted that the window of the room is equipped with a mesh and the installation of additional privacy measures, such as curtains or blinds is a reasonable remedy. The Court is in agreement with the trial court's finding that the privacy concern in such cases must be balanced against the practical need for modern amenities such as lifts, especially, in multi-storeyed residential buildings.

13. During the pendency of the case, at the request of the appellant, trial court directed the MCD to file status report. Accordingly, MCD filed its report dated 04.10.2024, stating that on physical inspection, it has been found that the work done so far was in consonance with the permission/NOC and in fact, the constructed area was found less than the area granted in permission/NOC. However, the report takes note that structure of the lift is made of RCC and brick work in place of steel structure and for this reason, respondent was directed to submit a Structural Stability Certificate.

14. During arguments, learned counsel of respondent placed a copy



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of the statement of Assistant Engineer of MCD recorded before the trial court on 24.10.2024. The said statement reads as under:-

“It is inconsequential that the structure of the lift is made of RCC and not of steel, as was proposed to be used in the sanctioned plan. All that the MCD requires is that the structure should be stable and for this purpose, after completion of entire work, the defendant No. 1 is required to submit a Structure Stability Certificate issued by the certified and empanelled Structural Engineer/Architect. Even RCC material and bricks are approved BIS material. The lift has not been made upto the terrace of the building. Terrace is what is above the top slab of the building.”

15. Even though, the respondent may have initially proposed that the structure of the lift would be of steel, but later, constructed the lift with RCC and brick work, but as is evident from the statement of the Assistant Engineer of MCD, even RCC material and brick work are approved BIS material, and therefore, there is not a significant deviation. Even otherwise, upon completion of the lift, as per the NOC, respondent is bound to submit Structural Stability Certificate for obtaining Completion Certificate and before the lift is put into use.

16. Clause 4(a)(ii) of the MCD Office Order dated 07.07.2022 provides that there should be 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. Trial Court has taken note of the conflicting reports of the Structural Engineers/Architects filed by both sides. From the photographs filed by the appellant, it appears that there is no gap between the existing structure of the building and the lift structure, but the trial court observes that as per the photographs filed by the respondent which are at Pages No. 16, 32 & 34 annexed to the application under Order 39



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Rule 4 CPC, there is a small gap visible between the existing structure and the lift structure and the same is also evident in the photograph incorporated in the report of Structural Engineer/Architect of respondent No. 1.

17. Learned counsel for the respondent has tried to explain the reason for the aforesaid by stating that during plastering of the wall, the extra plaster had got struck between the wall of the lift and the existing structure, because of which, gap was not visible in the photographs taken earlier, but now since the extra plaster has been removed, such gap is visible in the photographs taken later and submitted by the appellant. The explanation furnished by the learned counsel for the appellant seems plausible. Even the Joint Inspection Report, prepared by MCD and bearing the signatures of both parties show a gap of 0.2 meters between the lift and the existing structure. Clause 4(a)(ii) does not prescribe as to what should be the appropriate gap. The extra load of RCC/brick work of the lift is not falling on the existing structure and therefore there is no violation of Clause 4(a) of the MCD Order dated 07.07.2022.

18. Clause-14 of the NOC provides that the lift shall not travel upto the terrace, otherwise, permission/NOC so issued shall be void. The sanctioned site plan annexed with the NOC dated 18.03.2024 shows construction existing at the ground floor, first, second and third floor of the building. As per the said plan, lift lands at the third floor of the building. Therefore, construction of lift upto third floor is not in violation of NOC. This is also confirmed by the Assistant Engineer of



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MCD in his statement that lift has not been made upto terrace of the building as the terrace is what is above the top slab of the building.

19. Admittedly, no permission has been obtained from the Residents Welfare Association for shifting essential services as has also been directed in Clause-15 of the NOC dated 18.03.2024. MCD Report dated 04.10.2024 is distinctively silent about shifting of any essential services nor there seems to be any complaint by RWA in this regard. Whether or not any essential services has been shifted from its original location due to the construction of the lift, is a question to be decided only after evidence.

20. The Trial Court has rightly kept in consideration the stage of construction. With over 75% of the lift installation work already complete, halting the project or dismantling the structure at this stage would definitely create greater harm not only to the respondent but also to the other residents of the building, who stands benefitted from the lift. Halting the construction may result in dilapidation of the existing structure of the lift and may even become unsafe for the residents and passers by. The balance of convenience, therefore, lies in permitting completion of construction, subject to compliance with statutory norms.

21. The principles governing the grant of an interim injunction i.e. prima facie case, balance of convenience and irreparable harm have been appropriately applied by the trial court. Reliance on precedents such as **Deepak Sharma Vs. DDA 2015 SCC Online Del. 4561 and**



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Meera Jain Vs. Sundari Devi Garg (1995) 6 SCC 229, further strengthens its reasoning that public interest and compliance with statutory approvals outweigh individual grievances, provided adequate safeguards are in place.

22. In view of the above, no illegality or infirmity is found in the trial court's order. Appeal is therefore dismissed. Appellant is however granted opportunity to raise her objections at the trial stage and lead evidence in support thereof.

23. Trial Court shall decide the matter on merits, un-influenced by any observation made in this order or in the order impugned.

24. No order as to cost.

RAVINDER DUDEJA, J.

January 27, 2025

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