

IN THE COURT OF SH. ABHILASH MALHOTRA:
ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING OFFICER,
APPELLATE TRIBUNAL, M.C.D., DELHI.

APPEAL NO. 985/ATMCD/2024

Smt. Naresh Verma
W/o Late Sh. R.K.Verma,
Flat No.59, Bank Vihar,
Pitampura, New Delhi-110034

.....**Appellants**

Vs

Municipal Corporation of Delhi
(Through its Commissioner)
Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi.

..... **Respondent**

Date of Filing of Appeal	:	07.11.2024
Date of Order	:	05.05.2025

JUDGEMENT

1. The present appeal has been filed by appellant impugning the permission / NOC dated 06.05.2024 issued by the MCD for installation of lifts in respect of flat bearing nos. 58, 59, 60 & 61, SBI Employees Cooperative Group Housing Society Ltd. (Bank Vihar), Pitampura, New Delhi-110034.

2. It is the case of appellant that she is resident of duplex flat bearing no. 59, in the aforesaid society. It is stated that the block where the lift is proposed to be installed comprises of four duplex flats i.e. 58, 59, 60 & 61. It is submitted that owners of flat no.59 and 60 had not given their consent for installation of lift and owners of flat no.58 and 61 are proceeding ahead with the installation of lift without their consent. It is argued that the lift is being installed in front of appellant's balcony which will hinder the natural air and light. It is submitted that the lift is installed on the blind wall of appellant's flat which may also adversely affect the

structural safety of the building. It is submitted that no NOC from the Society had been obtained and by installing lift respondents have encroached public space.

3. It is also argued that minutes of Society mandates that all the occupants in the block need to apply together for installation of lift and current installation of lift is in violation of minutes of the Society. It is submitted that declaration given by architect before the MCD is on behalf of four flat owners, whereas the appellant had never given her consent.

4. Ld. Counsel for respondent / MCD submits that the NOC / permission for installation of lift had been given after following due process of law. He submits that as per lift installation Policy / Office order dated 07.07.2022, the NOC from Society is not required in case shifting of services is not involved. He submits that applicant furnished an undertaking in this regard before the MCD and therefore, NOC from Society was not emphasized by MCD.

5. It is argued by respondent / MCD that as per the aforesaid policy only the consent of 50% of flat owners in the block where the lift is proposed to be installed is required to be obtained. He submits that block comprises of four flats and two flats owners (i.e. 50% of owners) have already provided their consent. In respect of undertaking given by architect, he submits that there are typographical mistake in the same but the office noting (at page 1/N & 2/N) of MCD record clearly states and records that the NOC / permission was granted on application of proposing numbers i.e. flat no.58 & 61 and there is no misrepresentation on record. He submits that along with application the respondent /applicant have given lift installation plan and structural safety certificate. It is submitted that lift is going in to be independent structure which will be connected to the building through bridge and will not cause any

excess load on existing building. Ld. counsel for respondents have also adopted the submissions made by MCD in the present matter.

6. Arguments heard and record perused. The NOC / permission had been given by MCD as per the Office Order dated 07.07.2022 wherein policy for obtaining permission for installation of lift in the Society as approved by the DDA was implemented by MCD. As per the said office order NOC from 50% of owners living the block where lift is to be installed is required. In the present case, MCD record shows that the block / premises comprises of four duplex flats and out of which two flat owners have applied for installation of lift. The criteria of 50% proposing owners stand satisfied and there is no ambiguity in that regard. The typographical mistake made in the undertaking given by architect is also clarified from the file noting of MCD (at page 1/N & 2/N) which clearly records that the permission / NOC is granted on the basis of consent of 50% owners.

7. So far as the other issue regarding NOC / permission from the Society is concerned, the aforesaid office order dated 07.07.2022 clearly mandates that in case there is no requirement of shifting of services, the NOC from Society is not required. The applicant / respondent have already given their undertaking in the MCD that installation of lift does not require shifting of services. The said fact is also recorded (at page 1/ N) in MCD record. Apart from that the minutes of the Society also shows that the society in principle had agreed for installation of lift. Therefore, under these circumstances when there is no requirement of shifting of services, the NOC from the society is not necessary. It is argued that society in its minutes resolved that consent of all owners living in the block shall be obtained. I found merits in arguments of Ld.

counsel for MCD that resolution of society cannot override the policy of DDA (as adopted by MCD) which clearly mandates that 50% of owners in block can apply for installation of lift and consent of all owners in block is not required.

8. It is argued by Ld. Counsel for appellant that proposed lift is in front of balcony of appellant's flat bearing no 59 and will hinder the natural air and light. This argument is opposed by MCD as well as respondents. It is submitted that appellant is wrongly terming entry / passage of his flat as balcony. Appellant has placed on record the photographs. The photograph at page 42 shows the passage / entry from the stair to the appellant's flat. Appellant is keeping some plants pot in that area. From the photographs it becomes amply clear that the area earmarked as point 'B' cannot be termed as balcony. It is admitted during the course of arguments that the balcony exists on the other side of appellant's flat. As the area shown at point 'B' in the photograph (at page 42) is not balcony therefore, the question of hindrance to air and light does not arise. It is clear from record that the lift is being installed on blind wall and is not affecting any window or balcony of appellant's flat. It is clear that that appellant has misrepresented the facts by terming the entry / passage of her house as balcony and therefore, the plea in this regard is rejected.

9. From the aforesaid facts and circumstances, it is clear that the NOC for installation of lift is obtained after following due process of law. The lift is being installed on a blind wall and 50% of the owners in the block have granted their consent. Necessary undertaking and certificates have been furnished by engineer / architect and no movement of services is involved.

10. Accordingly, the permission for installation of lift has been granted in compliance of office order dated 07.07.2022 by the MCD and the present appeal is without merits and dismissed.

11. The record of the respondent be send back along with copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
today i.e. on 05.05.2025 (R)**

**(ABHILASH MALHOTRA)
AD&SJ-cum-P.O.
Appellate Tribunal : MCD
Delhi.**