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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3295/2020 and CM APPL. 55860/2022

NARENDER HOODA & ORS.

..... Petitioners

Through: Mr. Sunil Gupta, Sr. Advocate with
Mr. Shaurya Lamha, Advocate along
with P-1 present in person (M-
7300767116)

versus

COMPETENT AUTHORITY & ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Vikrant and Mr. Srawan,
Advocates for UOI. (M:9910483635)
Mr. Shailen Bhatia, Ms. Neelam
Pathak and Ms. Nandini Agarwal,
Advocates. (M:9818558690)
Ms. Puja Kalra, Advocate for R-
2/NDMC. (M:9312839323)
Mr. Manish K. Bishnoi, Mr. Nirmal
Prasad and Ms. Pallavi Singh,
Advocates for R-5. (M:9765660259)
Mr. R. Krishnaa Morthi Advocate for
R-5. (M:9810085170)
Mr. Advitiye Tiwari, Advocate for R-
6. (M:9871045758)
Mr. Tuhin, Advocate for R-7.
(M:9711117112).
Mr. Annirudh Sharma, Administrator
(M-9999080715)
Mr. Karan Bhardwaj, ASC.
Ms. Sanjana Nangia, Advocate for
Mr. Sameer Vashisht, ASC, CIVIL,
GNCTD.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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05.01.2023

1. This hearing has been done through hybrid mode.



2. The present petition relates to the building called - Sagar Apartments located at 6, Tilak Marg, New Delhi. It is a matter of common knowledge that a large number of Senior advocates, advocates-on-record, advocates and others associated with the legal profession are residents of the said apartment building. Petitioner No.1 in this case himself is a Senior Advocate and various other lawyers are Petitioners in the matter.

3. There are two Residents Welfare Associations which are currently operating and there is a conflict which has arisen between the two associations being Respondent No.5- Sagar Apartments Residents Association (SARA) and Respondent No.7- Sagar Apartment Flat Owners Association (SAFOA). Initially some interim directions have been issued vide order dated 2nd June 2020, permitting access to the roof *etc.* However, the disputes in respect of the recognition and role of the two associations have not abated.

4. After hearing Id. Counsels who were appearing for the parties, this Court vide order dated 25th February, 2021, had spelt out various issues which needed to be resolved. The Court had appointed Justice Pradeep Nandrajog (Retd.) as the Chairperson to hold a meeting between the members of the two associations i.e., SARA and SAFOA. The mandate of the Ld. Chairperson was prescribed in the said order in the following terms:

“6. Considering the nature of the matter and the fact that Mr. Vali, Id. Counsel is the President of Respondent No.7, before going into the issues raised in the present case, this Court is of the opinion that an attempt must be made to streamline the activities relating to the Residents, which appear to be not receiving adequate attention owing to the conflict between the two associations. The issues that require



immediate attention as per counsels who have appeared today, include safety and security of the residents, upkeep of the building, maintenance of the building, structural safety, collection of membership fees, water and electricity charges, use of lift, access to terrace/roof, installation of internet connection and DTH connections, proper policy regarding those running office spaces in the ground floor and basement of the building etc.

7. *The said issues can be addressed by a proper Committee constituted of the residents. Such a committee could also resolve the disputes and try to arrive at a consensus so that one association can function for the welfare of the residents and other stakeholders in Sagar apartments. Accordingly, this Court appoints **Justice Pradeep Nandrajog (Retd.,)** **(9818000130)** as Chairperson to hold a meeting between the members of the SARA and SAFOA. The Chairperson shall interact with the members of the said associations, the residents and any other stakeholders.*

8. *The mandate of the Chairperson would be inter alia,*

- *to constitute an Executive Committee from amongst the residents/members of the two associations so that there is one common Committee to take care of the immediate requirements of the said apartment building.*
- *to make recommendations as to the manner in which a Residents Welfare Association ought to be constituted keeping in mind the interest of all concerned;*
- *to suggest a draft Memorandum of Association and Article of Association, etc., for the said Association after holding interactions;*
- *to suggest whether upon one association being formed, whether elections ought to be held*



and if so in what manner including as to the persons who ought to be given the right to vote. Apart from the above, the Id. Chairperson is free to give such other recommendations as may be deemed necessary and expedient for the general welfare of the residents of Sagar Apartments.”

5. The interim report of the Ld. Chairperson dated 5th April, 2021 has been received in the Court. In the meantime, vide order dated 26th October, 2021, an Administrator, being Mr. Yogesh Pawaskar was also appointed as there was an urgent need to collect the monthly maintenance charges for ensuring basic amenities for the occupants of the building. The mandate of the Id. Administrator is contained in the order dated 26th October, 2021. The said order also permitted the Id. Administrator to approach the NDMC to seek disconnection of the electricity connection in respect of the particular flat/ space of those occupants who do not pay the monthly maintenance charges with the prior approval of the Ld. Chairperson.

6. Vide order dated 18th August, 2022, the Court had directed the NDMC to undertake a comprehensive inspection of the building taking note of all the structural deficiencies, illegal construction etc. and place a report on record. The previously appointed Administrator was subsequently replaced with Mr. Annirudh Sharma, the current Administrator vide order dated 2nd September, 2022.

7. The current position is that the NDMC has conducted the inspection of the entire premises. The status report dated 19th September, 2022 has been placed on record by the NDMC. A perusal of the same shows that there are stated to be large scale violations contrary to the sanctioned plans and unauthorized construction as well in the basement, the stilt area, the front



block and the tower block. It has emerged from the submissions made today that the swimming pool which was originally built as part of the common area is also not operational. The changing rooms and the other common areas attached to the swimming pool including the filtration plant room are stated to have also been occupied by certain persons. It is not clear to this Court as to how such persons came into occupation of these areas as well.

8. Considering the fact that the NDMC has already issued show cause notices to all the occupants under Section 249 of the NDMC Act, 1994 it is deemed appropriate to direct that the Competent Authority under the said Act would hear the concerned occupants and place a report before this Court in respect of unauthorized occupations, constructions, creation of partitions, enclosures, *etc.* contrary to the sanction plans so that appropriate action can be taken. The Competent Authority under the NDMC Act shall also look into the issue of alleged unauthorized occupation in the common spaces attached to the swimming pool as also the filtration plant and give notice to those occupants and hear them. The report to be filed by the NDMC, Chairperson shall also deal with the said areas as well.

9. The said hearings shall be concluded by 31st January, 2023. Order / report shall be placed before this Court at least three days before the next date of hearing.

10. Insofar as the Id. Administrator is concerned, the Id. Administrator has appeared in person and has raised the following issues which are also highlighted in his report dated 14th December, 2022:

- i. Non-payment of maintenance fee and other charges by the occupants. It is the submission of the Ld. Administrator that the Court vide order dated 26th October, 2021 has permitted the



Administrator to approach the Chairperson to seek disconnection of electricity connection if the one-time monthly maintenance charges are not paid. However, the Chairperson has asked the Administrator to approach the Court for directions.

- ii. Show cause notice issued by the Delhi Fire Service wherein various concerns have been raised as to the safety and security of the occupants of the building
- iii. A lease deed entered into by Bharti Airtel Ltd. dated 6th April, 2022 with one Mr. Ujval Sagar Suri.
- iv. Urgent need for repair being carried out in the common areas and in the building which is leading to structural safety issues due to non-maintenance. This submission is sought to be buttressed by the photographs which have been placed on record which show that some part of the roof in the lobby area has in fact broken and fallen down.

11. In respect of the submissions made by the Id. Administrator, the following directions are, accordingly, passed:

*i) **Non-payment of maintenance and other charges***

12. In terms of the various orders passed by this Court, all occupants and residents of the various spaces and flats in the building are obliged to pay the maintenance and other charges. If there is any default by the said occupants, this order shall be the last and final notice to them in respect of the said dues. The maintenance and other charges due shall be deposited by 10th January, 2023 with the Id. Administrator by the concerned occupants, failing which, the Id. Administrator shall, without any further orders of this



Court be entitled to write to the electricity department to disconnect the electricity to the respective apartment/occupant spaces within 24 hours, and in any case by 15th January, 2023.

ii) Show cause notice issued by the Delhi Fire Service

13. The show cause notice dated 8th December, 2022 issued by the Delhi Fire Service, Government of Delhi has raised various concerns as to the safety and security of the occupants of the building. Clearly, the basement and the stilt areas, etc. have all been occupied and safety measures have not been installed in the building itself. Since the NDMC Chairperson is *in seisin* of the matter, let no precipitative action be taken by the Delhi Fire Service.

14. Let the Delhi Fire Service place a status report before this Court in the connected ***W.P.(C) 6724/2022*** titled ***Sagar Apartments Residents Association & Anr. v. Lt. Governor of Delhi & Ors.*** at least one week before the next date of hearing for the same to be considered. The issue raised by the Delhi Fire Service shall be considered by the Court on the next date of hearing.

iii) Maintenance of the common areas and in general the safety of the structure

15. The Court has perused the photographs filed by the Administrator along with the report. All the Counsels appearing before the Court have also raised several concerns in respect of the safety of the building itself. Considering the fact that no maintenance is being carried out in the building for the last several years, there could be a serious threat to the residents and occupants of the various flats and spaces in the building. Accordingly, the Director, Central Building Research Institute (CBRI) to depute two



engineers / architect whose mandate shall be to inspect the building in question being *Sagar Apartments, Tilak Marg, New Delhi 110 001* and place a report on record as to the structural safety of the building and repairs/maintenance work that would be required to be carried out to ensure the safety of the occupants of the building one week before the next date of hearing. The cost estimates for carrying out the repair and maintenance work shall also be submitted along with the report. For coordinating the said inspection, the team deputed by the Director may contact the Id. Administrator – **Mr. Annirudh Sharma (M: 9999080715)**. At the time of inspection, the representatives of various factions may remain present. However, none of the persons present shall cause any impediment or obstruction in the inspection by the team deputed by Director, CBRI.

16. The fee for the inspection to be carried out by the CBRI is fixed at Rs.2 lakhs which shall be paid out of the maintenance and other charges paid by the occupants of the building deposited with the Id. Administrator.

iv) Lease deed entered into with M/s Bharti Airtel Ltd.

17. The Id. Administrator has brought to the notice of the court that M/s Bharti Airtel and one Mr. Ujval Sagar Suri have executed a lease deed for installation of a mobile network tower on the terrace of Sagar Appartment. The lease deed dated 6th April, 2022 has been annexed with the report of the Id. Administrator. A perusal of the same shows that the lease deed has been entered into by Mr. Ujval Sagar Suri and M/s Bharti Airtel Ltd. by which lease has been granted on the rooftop space for erection of a mobile network tower. The lessor therein has claimed to be the absolute owner and in possession and in enjoyment of the premises. The clause reads as under:

“WHEREAS the Lessor is the lawful and absolute



owner and in possession and enjoyment of the premises being Ground Floor space behind residential block for DLC with roof top space at Second Floor for outdoor 3 no's of poles up to 6 meter height/length from roof top terrace along with all antenna's/equipments/cables etc. situated at Sagar Apartments, 6, Tilak Marg, Delhi-110001, admeasuring approximately complete area sued in all set up 400 to 500 Sq. ft. (hereinafter referred to as the "Demised Premises" and more particularly described in Annexure A attached hereto)"

18. Mr. Tiwari, Id. Counsel appearing for a company by the name Sequoia Construction Pvt. Ltd. which is Respondent No.6 in the present matter submits that Mr. Ujval Sagar Suri is a Director of Sequoia Construction Pvt. Ltd. Id. Counsel submits that there is a judicial decision in favour of Sequoia Construction Pvt. Ltd. recognizing its ownership rights in the space described above. This is disputed by other counsel today on the ground that the said judgement recognises easementary rights of the occupants to the said floor and an appeal is also pending before this Court.

19. The present writ petition was filed way back in May, 2020 and no counter affidavit has been filed by Sequoia Construction Pvt. Ltd. till date. It is unclear to the Court as to how a Director of a company, who allegedly claims rights in the space described above can in his individual capacity enter into a lease in this manner. Moreover, the said Director is obviously well aware of the pendency of the present writ petition and the fact that a Chairperson and an Administrator has been appointed by this Court. Under such circumstances, the minimum action that ought to have been done by the company or by the said Director, was to seek permission of this Court before entering into a lease deed, which has obviously not been done.



20. Let an affidavit be also filed by Sequoia Construction Pvt. Ltd. stating the nature of its rights and the rights of Mr. Ujval Sagar Suri, if any. It is also emphasised by Id. Senior Counsel appearing for the Petitioners that statutory rights under the Delhi Apartment Ownership Act, 1986 has also not been considered in the judgment which is sought to be relied upon by Respondent No.6. Be that as it may, in the circumstances of this case where the building requires maintenance as also there is large scale occupation by unauthorized occupants and unauthorized construction and the fact that the lease was entered into after the Ld. Chairperson and an Administrator have been appointed by this Court, the lease amount in terms of the said lease deed shall be deposited with the Registrar General of this Court by M/s Bharti Airtel Ltd. until further orders of this Court.

21. M/s Bharti Airtel Ltd. is impleaded as Respondent No.8 in the present petition. Let the amended memo of parties be filed within a period of one week.

22. Notice be issued by the Registry to M/s Bharti Airtel Pvt. Ltd. through Mr. Amit Bhatia who is the authorized signatory of M/s Bharti Airtel Pvt. Ltd having its registered office at Plot No.16, Udyog Vihar, Phase IV, Gurgaon, 122015.

23. In view of the orders passed today, none of the occupants or noticees shall seek any adjournments before the Competent Authority, NDMC.

24. At this stage, Id. counsel appearing for Respondent No.7- SAFOA submits that the maintainability of this petition has been challenged by him. The same shall be considered by the Court on the next date of hearing.

25. Let the present order be communicated to the Director, Central Building Research Institute [*Email- director@cbri.res.in; M.- 9491531199*]



for compliance.

26. List on 14th February, 2023 along with ***W.P.(C) 6724/2022*** titled ***Sagar Apartments Residents Association & Anr. v. Lt. Governor of Delhi & Ors.***

27. The dates of 18th January, 2023 and 5th February, 2023 stand cancelled.

PRATHIBA M. SINGH, J.

JANUARY 5, 2023

Rahul/SK

[Corrected and released on 10th January, 2023]