



Via video conferencing

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 3295/2020 & C.M. Nos.11559-60/2020

NARENDER HOODA & ORS.

..... Petitioners

Through: Mr. Sunil Gupta, Adv.

Versus

COMPETENT AUTHORITY & ORS.

..... Respondents

Through: Mr. Anil Grover, Standing Counsel
with Ms.Mishal Vij & Ms.Noopur
Singhal, Advs. for New DMC.

Mr. Sameer Vashisht, ASC with Ms.
Urvi Kapoor, Adv. for R-3 & R-4.

Mr. A.K. Singla, Sr. Adv. with Mr.
Rahul Shukla and Mr. R.
Krishnamurti, Adv. for R-5.

Mr. Tuhin, Adv. for R-7 with Mr.
Ajay Kumar Vali, President of R-7.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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01.06.2020

1. The present petition under Article 226 of the Constitution of India has been preferred by 9 apartment owners of residential apartments in a multi-storeyed building called Sagar Apartment, 6 Tilak Marg, New Delhi seeking the following reliefs:-

“(i) Writ, direction or order directing Respondent No.1 Competent Authority to formally notify by means of an order that in respect of Sagar Apartments, 6 Tilak Marg, New Delhi



there is only a single 'Association of Apartment Owners', namely Respondent No.5 SARA, constituted and recognised in accordance with S. 15 (1) of the Delhi Apartment Ownership Act, 1986 as per the directions of this Hon'ble High Court dated 28.05.2010 in WP (C) No.1959/2007 OS Bajpai v. The Administrator;

(ii) Writ, direction or order directing Respondent no.1 Competent Authority to restrain and make Respondent No.7 SAFOA cease and desist forthwith from acting as a parallel association to Respondent No.5 SARA and collecting maintenance charges from any person;

(iii) Writ, direction or order direction Respondent No.1 Competent Authority to recognize in respect of Sagar Apartments, only a person who owns a residential 'apartment' as per S. 3 (c) as an 'apartment owner' under S. 3 (c) and to permit only such a person to be accepted as a 'member' of the 'Association of Apartment Owners' constituted in accordance with S. 15 (1) of the Delhi Apartment Ownership Act, 1986.

(iv) Writ, direction or order declaring that in respect of Sagar Apartments, as per the Delhi Apartment Ownership Act, 1986 (Sections 3 (c), (e), (f) and (k), 4(3) and (7), 13 (1) (vi) and (xi), 15, 19, 21 etc. read with Rule 6/Form B and exhibit B-Model Bye Laws 4,5,9, 12 etc.

(a) Only 'apartment owner(s)', that is to say, person owning an 'apartment' have the right to be members of an 'Association of Apartment Owners' under the Act with a percentage of voting rights computed on the basis of the 'proportionate value of each apartment to the total value of all apartments' (as per Model Byelaw 9);

(b) other than the said 'apartment owners', no other person having occupation of merely a space in the basement/stilt/parking/temporary shed or wooden structure (khokha) or in any other space in the common



areas and facilities has any right to be member of such an Association of Apartment owners;

(c) every apartment owner, being automatically a member of the duly recognised Association of Apartment Owners, is legally duty-bound to pay the 'common expenses' or maintenance charges to the said Association only and is not free to exempt himself or to refuse or omit to pay the same or to pay the same to any other person;

(d) only the 'Association of Apartment Owners' namely, Respondent No.5 SARA is entitled to carry out the administration of the affairs in relation to the apartments and management, maintenance, repairs and replacement of the 'common areas and facilities':

(e) the administration of the affairs in relation to the apartments and management, maintenance, repairs and replacement of the 'common areas and facilities' is required to be carried out by Respondent No.5 SARA 'only in accordance with the provisions of the Act and the bye-laws' ; and, hence, 'common expenses' or charges therefor are permitted to be collected only by SARA and that too only from apartment owners;

f) Other than Respondent No.5 SARA, no person, association or entity, including Respondent No.6 Sequoia or Respondent No.7 SAFOA, is entitled or permitted to act or operate or collect from any person any amount for the administration, management, maintenance, repair, replacement etc. of the apartments or the common areas and facilities.

v) Writ, direction or order directing Respondent No.2 NDMC to produce the records of electricity connections (Consumer No.1024494 and No.1024495) and water supply connections (Consumer No.1024492 and No.1024493) in Sagar



Apartments and to transfer such connections forthwith from the name of Respondent No.6 Sequoia in the name of Respondent No.5 SARA.

(vi) Writ, direction or order directing Respondent No.2 NDMC not to take any adverse action such as recovery, disconnection etc. of electricity or water supply against the apartment owners of Sagar Apartments or against Respondent No.5 SARA, on account of the demands, arrears and dues of electricity and water supply charges sent to and not paid by Respondent No.6 Sequoia and / or Respondent No.7 SAFOA;

(vii) Writ, direction or order directing Respondent No.3, including the Labor Commissioner, Inspector etc. to transfer the licenses of the lifts installed at Sagar Apartments from the name of respondent No.6 Sequoia in the name of Respondent no.5 SARA and duly discharge their functions under the Bombay Lifts Act, 1939, i.e. to periodically inspect, ensure and certify the safety of the lifts;

(viii) writ, direction or order direction Respondent No.6 Sequoia and its Managing Director/Directors/agents/employee/SAFOA not to put any lock on the entry to the roof, lift machine-room, swimming pool, etc. or any other 'common area and facility' under the Delhi Apartments Ownership Act, 1986 in Sagar Apartments and, if there is any entrance-door or lock put on them, to open the same forthwith and further not to obstruct the access of any apartment owner or their Association / SARA to the said 'common areas and facilities';

ix) Writ, direction or order directing Respondent No.4, Assistant Commissioner of Police and through him the SHO, Tilak Marg Police Station, New Delhi to provide all necessary assistance and protection to the residents of Sagar Apartments in the matter of use of and access to the roof, machine-rooms, swimming pool, etc. or any other 'common area and facilities' by applying force, if necessary, for opening any lock or



entrance-door for reaching the roof, machine-rooms, swimming pool etc. and preventing any person from obstructing use of or access to the same or to any other such common area or facility.”

2. Learned Senior counsel for the petitioners submits that the petitioners are primarily aggrieved by the fact that respondent no.7 which is an association formed by the builder himself is still proceeding to collect maintenance charges from some of the residents which action is in the teeth of the order dated 28.05.2010 passed by this Court in WP(C) No.1959/2007. He submits that it is in fact respondent no.5, which is the association recognised by the competent authority and therefore collection of maintenance charges by respondent no.7 is wholly illegal and is leading to an utter neglect of the building causing grave hardship to the petitioners. He, therefore, prays that a Manager be appointed during the pendency of the present petition to take care of the maintenance and repair of the building.

3. On the other hand, Mr.A.K. Vali, who appears on behalf of respondent no.7, on advance notice, vehemently opposes the petition and submits that the petition is a proxy petition filed at the behest of respondent no.5. He further submits that even though neither the petitioners nor the respondent no.5 have been making any contributions towards water and electricity charges being used by them, the respondent no.7 would have no objection in case the petitioners were given temporary access to the roof for maintenance/repair of their internet and tata sky connections as also for the maintenance of the common water tank and the lift machine.



He, however, submits that it is the respondent no.6 who is in exclusive possession of the roof and, therefore, prays that interim directions be not passed without hearing the respondent no.6.

4. At this stage, it is noted that though an advance copy has been served to the erstwhile counsel for the respondent no.6, none appears on its behalf. Mr.Vali assures the Court that he will inform respondent no.6 of the necessity of its being represented before this Court tomorrow and, therefore, prays that the matter be listed for further consideration tomorrow.

5. At request, list for further consideration on 02.06.2020.

6. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

REKHA PALLI, J

JUNE 1, 2020

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