

Shamnath Apartments Residents Welfare Asso Regd Vs Barkha Moga And Others

Court: Delhi High Court

Date of Decision: May 26, 2023

Hon'ble Judges: Tushar Rao Gedela, J

Bench: Single Bench

Advocate: Raj Shekhar Rao, Harshit Jain, Vikas Tiwari

Final Decision: Disposed Of

Judgement

Tushar Rao Gedela, J

[The proceeding has been conducted through Hybrid mode] CM APPL. 28666/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

CM(M) 900/2023 & CM APPL. 28665/2023 (for stay)

3. On the difficulties that have been faced by the petitioners in the recent past as submitted by Mr. Raj Shekhar Rao, learned Senior Counsel. Mr.

Tiwari, learned counsel appearing for the respondents very fairly submits that the impugned order also records at page 23 that the respondents are

willing to co-operate with the petitioner in respect of accessibility to the roof in emergencies and maintenance activity, if required, shall be given

through the supervisor.

4. Mr. Tiwari, learned counsel, however, also submits that a responsible person i.e., respondent No.1, namely, Ms. Barkha Moga, who is residing in

the adjoining plot and would be accessible to the reasonable request of the petitioner in case of emergencies and maintenance activity.

5. Mr. Tiwari, learned counsel shall hand over the address as also the mobile number of respondent No.1. Mr. Tiwari also submits that apart from the

respondent No.1, the respondent Nos.2 and 3 also are residing in the adjoining premises and, therefore, are also accessible to the petitioners.

6. Mr. Rao, learned Senior Counsel submits that in case of emergencies, it would be prudent if there is a single point of contact so as to prevent any

confusion in regard to the action sought to be taken. In view of the submissions, it is directed that Ms. Barkha Moga would ordinarily be the first point

of Contact (1st responder) and only when she is not accessible by the respondent Nos. 2 and 3 would be 2nd and 3rd responders and in that order.

7. The supervisor shall only act as a medium for the purpose of ease of access to the terrace in case of any situation which requires the presence of

the petitioners.

8. On a perusal of the impugned order, this Court has also observed that the learned Trial Court has observed that the Delhi Apartment Ownership

Act, 1986 has not been notified and, therefore, the issue in respect of whether the terrace is accessible as a common portion or it is only purely

accessible to the owners of the said roof, would have to be decided afresh.

9. Mr. Rao, learned Senior Counsel has handed over to the Bench a Gazette notification of the Delhi Administration of 30.11.1987 bringing into force,

by notification, the Delhi Apartment Ownership Act, 1986 to submit that the assumption of learned Trial Court is not correct.

10. Mr. Tiwari, learned counsel disputes it and submits that there have been several changes and possibly de-notifications of certain portions of the

Delhi Apartment Ownership Act, 1986. However, since the same are not available Mr. Tiwari, he seeks liberty to place the same before the learned

Trial Court in support of his submissions.

11. So far as the impugned order is concerned, since the same has not yet decided the issue before it and has posted the matter for hearing on

04.07.2023, it would be appropriate to direct the learned Trial Court to take up the said application for hearing on 04.07.2023, subject to its

convenience.

12. The parties are permitted to place on record the notifications as submitted above.

13. In view of the aforesaid directions in respect of the contact person shall remain in operation till the learned Trial Court decides the issue.

14. List the matter before the learned Trial Court for the aforesaid purpose on the date already fixed for hearing, i.e., 04.07.2023.

15. In the meanwhile, the aforesaid arrangement shall continue and the respondents shall bound by the statement made through Mr. Tiwari.

16. The petitioner shall provide the accessibility to the lift through the access card as and when the reasonable requirement of the respondent or the

supervisor arises.

17. The learned Trial Court shall make all endeavours to hear and dispose of the application on 04.07.2023, if not possible, then within next 15 days.

18. In view of the above directions, the petition along with pending application is disposed of with no order as to costs.