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

\+ W.P.(C) 13145/2019 & CM APPL. 53541/2019

MAHINDRA KUMAR ROHATGI AND ORS. ..... Petitioners

Through: Mr. Arun K. Varma, Senior Advocate with Mr. Ajay Bhargava, Mr. Aseem Chaturvedi and Ms. Raddhika Khanna, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS. ..... Respondents

Through: Mr. Kapil Dutta, Advocate for R-1/SDMC.
Mr. Tushar Mathur, Advocates for R-2 & R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 16.10.2020

The hearing was conducted through video conferencing.

CM APPL. 26224/2020 (fresh by petitioners for early hearing)

1. Issue notice.
2. The learned counsels named above accept notice on behalf of the non-applicants.
3. At joint request, the application is taken up for disposal.
4. The petitioners are aggrieved by the inaction on part of respondent no.2 apropos consideration of their application for grant of "No Objection" ('NOC') for completion of their building i.e. property bearing no. 21, Block B-1, Safdarjung Enclave, New Delhi – 110 029,

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which is at the following stage:






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5. The building is stated to be almost 90-95% complete, just the finishing remains. The construction was being carried out in terms of the building plan sanctioned by the South Delhi Municipal Corporation ('SDMC'). Respondent no. 2 remained inactive till such

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time the structure was brought up. To that extent, the petitioners cannot be held liable. Respondent nos. 2 and 3, can at this stage, at best, have an objection apropos the height of the structure. Admittedly, the petitioners' property is in the regulated zone i.e. wherein property can be constructed upto a certain height.

6. The petitioners seek parity with other property owners who have been granted due permission in the immediate neighbourhood apropos their respective properties. Photographs of such other buildings, which are stated to be possibly taller than that of the petitioners' have been annexed to the petition. They are reproduced as under:





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B-1/9
SAFDARJUNG
ENCLAVE





B-2/16
SAFDARJUNG ENCLAVE



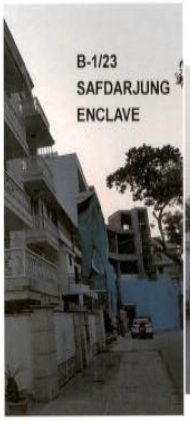
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B-1/23
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B-1/19
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B-2/31
SAFDARJUNG
ENCLAVE





B-1/43 SAFDARJUNG
ENCLAVE





B-1/15
SAFDARJUNG
ENCLAVE







B-1/70
SAFDARJUNG
ENCLAVE





B-2/20
SAFDARJUNG ENCLAVE





B-1/72
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7. The petitioners' application for grant of NOC was rejected by respondent no. 2 without hearing them, simply because the petitioners had started the construction of the building. Surely, this cannot be a reason for rejection of the application, if in substance the petitioners have a right to construct the property upto a certain height. It is also not the case that the petitioner did not have a sanctioned building plan. The Municipal Corporation is deemed to have considered all aspects when it sanctioned the building plan and also of the need to take permission from other authorities in such regulated areas. The petitioners cannot be found wanting in their action. However, for the issue of regulation of the height of the building R-2 would need to take a decision.
8. In the circumstances, the petitioners shall be heard by respondent no.2 on the merits of their application/case within 2 weeks, through

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counsel and through video conference, if so desired. The decision of the said respondent shall be communicated to the petitioners within a fortnight thereafter.

9. The application is allowed and disposed-off in terms of the above.

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10. Respondent nos. 2 and 3 have not filed their replies, despite a lapse of almost 10 months without any explanation and there is no application for condonation of delay either. However, since the petitioners will be effectively heard by R-2, no orders are being passed on the delay.

11. At request, list on 14.12.2020.

12. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J

OCTOBER 16, 2020
AB

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