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

% *Date of decision: 27th January, 2017*

+ C.R.P. 27/2015 & CM No.31088/2016

VIJAY MEHTA Petitioner
Through Mr.Peeyoosh Kalra, Mr.Sudhindra
Tripathi & Ms.Sona Babbar,
Advocates

versus

ASSOCIATION OF APARTMENT OWNERS
OF NEW DELHI HOUSE (REGD) Respondent
Through Ms.Sunita Bhardwaj, Advocate

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (ORAL)

C.R.P. 27/2015

1. Present petition was filed seeking to impugn the judgment dated 19.8.2014 passed by the appellate court dismissing the appeal of the petitioners to the extent of maintenance of status quo regarding non-declaration of results of the governing body elections of New Delhi House Flat Owners Association (Regd.) (hereinafter referred to as 'NDHFOA').
2. This court on 25.2.2016 disposed of the petition partly modifying the impugned order. The court noted that the impugned order has set aside the observations that NDHFOA is non-existent. It also noted the submission of the learned counsel for the petitioner that members of the Society are

aggrieved and their grievance on several scores cannot be addressed in the absence of an elected body. Hence, the court directed a transparent election for the flat owners association, namely, NDFHOA and appointed Justice P.K.Bhasin (Retd.) as an Observer with appropriate directions.

3. Against the said directions of this court dated 25.2.2016 the Association of Apartment Owners of New Delhi HHouse filed an SLP before the Supreme Court. On 1.4.2016 the SLP was withdrawn with liberty to file a Review Petition before this court. The review petition was dismissed with costs of Rs.25,000/- on 12.5.2016.

4. On 12.05.2016 the court noted that a letter/communication dated 22.3.2016 has been received from the Court Observer Justice P.K.Bhasin (Retd.) seeking certain directions. The court clarified that the powers of the learned observer in terms of the directions contained in the order dated 25.2.2016 are unfettered. He has been appointed to conduct the elections freely and transparently without involvement of either of the two associations, namely, NDHFOA and the Association of Apartment Owners of New Delhi House. It was clarified that it will be the discretion of the learned observer to appoint whomsoever he may think fit to assist him to conduct the election process. It was also clarified that all disputes regarding elections raised during the aforesaid process would be within the ambit of learned observer to decide.

5. Now, the court has received a fresh communication from the learned observer dated 20.7.2016. The learned observer has pointed out in the said communication that pursuant to the orders of this court the learned observer has undertaken the exercise of finalizing the electoral college/voters' list of NDHFOA. It noted that the learned observer has again found only 29

persons eligible for inclusion in the final list and most of whom are persons who over the years have been fighting for control over the affairs of NDHFOA. The Court Observer, however, felt that though vast number of persons may be waiting for an opportunity for casting their votes, only 29 members will be entitled to participate which may be a travesty of justice. It is pointed out that there are large number of flat owners who might be eligible to be enrolled as members but were are not enrolled because of disputes between the groups. Hence, the learned observer was of the view that the elections should be held after enrolment of genuine aspirants by an independent authority to be decided by the court. However, in case the court holds that the learned observer should go ahead with the elections, the learned observer noted he will do the same.

6. I have heard learned counsel for the parties on different occasions. Learned counsel for the respondent has made vehement submissions and has filed a detailed written submission which deals essentially on the merits of the matter. She has emphasized that this court is exercising revisionary powers which are extremely limited and the court cannot travel beyond the said powers.

7. The issue is very limited. The petition already stands disposed of with directions to the Court Observer to hold elections of NDHFOA. The learned observer has only sought some clarifications from the court, namely, as to whether he should go ahead and hold elections despite the fact that there are only 29 eligible voters in the list.

8. The alternative suggestion made by the learned observer, namely, to hold elections after enrolment of genuine aspirants by an independent authority, in my opinion, cannot be ordered in the present petition. Such a

direction cannot be passed in the present revision petition which already stands disposed of. The directions to hold elections were passed on the facts and contentions relating to the impugned order which had passed directions to continue to maintain status quo of non-declaration of results.

9. In view of the earlier orders passed by this court on 25.2.2016 in the revision petition. The order passed by the Supreme Court in the SLP filed by the respondent dated 1.4.2016 and, the order passed on 12.5.2016 in the review petition filed by the respondent, it is not possible for this court to give further directions as suggested by the learned Court Observer. The learned Court Observer is requested to proceed and conduct the elections as per the previous directions. It would be left open to the prospective members of the NDHFOA to take steps as per law to get themselves enrolled as members of the association so as to enable them to participate in the affairs of the association.

10. Accordingly, the learned Court Observer is requested to spare his valuable time and complete the exercise expeditiously, as per earlier directions. The parties shall co-operate with the learned Court Observer in completing the exercise.

11. The communication of the learned Court Observer dated 20.7.2016 may be filed by the Registry. A copy of this order be sent to the learned Court Observer.

CM No.31088/2016

This application is filed under section 151 CPC for appropriate directions to the Court Observer to hold elections of the NDHFOA and to submit its report to the court. The application is signed by one Mr. Vikram Mittal who states himself to be the Joint Secretary of the said Association.

The application seeks elections based on the final voter list finalized by the learned Court Observer in his order dated 14.7.2016.

This application is also disposed of in terms of the above order.

(JAYANT NATH)
JUDGE

JANUARY 27, 2017

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Corrected and signed on 31.5.2017