

## **ORDER OF COURT APPOINTED ELECTION OBSERVER REGARDING ELECTORAL ROLL/VOTERS' LIST OF NEW DELHI HOUSE FLAT OWNERS ASSOCIATION(REGD.)**

The undersigned was appointed as Court Observer by the Hon'ble Delhi High Court vide order dated 25<sup>th</sup> Februaray, 2016 in Revision Petition No.27/2015 to conduct the election for the formation of new Managing Committee of "New Delhi House Flat Owners Association (Regd.)" ('NDHFOA' in short), a Society registered under the Societies Registration Act incorporated only for the owners of flats in New Delhi House, a multi-storeyed commercial building at 27, Barakhamba Road, New Delhi.

This order is being passed by me as Court Observer to decide as to who all constitute the electoral college/voters of NDHFOA.

After my appointment as the Observer for the election of NDHFOA the revision petitioner Mr. Vijay Mehta contacted me with some papers relating to the litigation which had led to the passing of the direction by the Hon'ble High Court for holding election of NDHFOA under my supervision. Ms. Sunita Bhardwaj, who was the advocate for the respondent and has also been claiming herself to be the General Secretary of NDHFOA from 2006 onwards, had also contacted me and she also handed over to me some litigation related papers.

From the documents so delivered to me it appears that NDHFOA was brought into existence and got registered as a Society in the year 2001 by some of the flat owners of New Delhi House. Over the years groupism started in the Society, which is not an unusual development in such like Associations and litigation started between two groups

within the Society from 2006 onwards and till date court cases are going on. Ms. Sunita Bhardwaj, who also owns flats in New Delhi House has been controlling the affairs of this building as the General Secretary of NDHFOA from 2006 onwards and was also claiming to be the leader of one of the two groups and besides that being an advocate she also been representing NDHFOA in various court cases. The other group was of the revision petitioner Mr. Vijay Mehta. This group of Mr. Mehta was in power having been elected in the election held in July,2005. Ms. Sunita Bhardwaj has been claiming that Mr. Vijay Mehta and some of his group members had been expelled by the successor executive committee of NDHFOA led by her for their anti Association activities and thereafter were never re-admitted as members of NDHFOA.

The disputes between the main members of the two groups kept on taking serious turns and a time came when both the groups held separate general body meetings of NDHFOA in January, 2013 to get rid of the opponent group. One group led by Mr. Vijay Mehta claimed to have disbanded the executive committee led by Ms. Sunita Bhardwaj on 07/01/2013 while the other group led by Ms. Sunita Bhardwaj claimed that on 18/01/2013 NDHFOA itself was dissolved and it was decided that till actual dissolution takes place the existing managing committee would continue to function as such. These claims of each other were being disputed by both the groups. Mr. Vijay Mehta was claiming that NDHFOA was never dissolved and in fact Ms. Sunita Bhardwaj, the then General Secretary, and other members of her group in the managing committee of NDHFOA were removed by the General Body of NDHFOA in a Special General Body meeting convened on 07/01/2013 and an

interim Managing Committee with him as the interim General Secretary was constituted for holding fresh election on or before 12<sup>th</sup> July,2013. Other members in the interim managing committee were S/Shri Chaman Mahajan(Flat No. 414), K.J.Sanger(Flat No. 203), S.C.Khaneja(Flat No.303), Ashok Mehta(Flat No.204), S.L.Gupta, Karan Bagga(Flat No. 501), Sandeep Chaudhary(Flat No.411),Ramesh Sharma(Flat No. 502) and M.L.Puri(Flat No.407).

Mr. Mehta also claimed that thereafter election schedule for the formation of new Managing Committee of NDHFOA was announced by the interim managing committee and election was to be held and result was also to be announced on 29<sup>th</sup> July,2013. However, before that date holding of that election was by the so called interim managing committee of NDHFOA by filing a civil suit (being suit no. 71/2013). It was also being claimed by Ms. Sunita Bhardwaj that when the Registrar of Societies had failed to remove the name of NDHFOA from its records after its dissolution a separate suit was filed against the Registrar of Societies (being suit no.53/2013) by AAONDH in which suit an order was passed by the Civil Judge on 10/07/2013 for the removal of the name of NDHFOA from the records of Registrar of Societies. In view of the said order dated 10/07/2013 an order was passed by the Court of Civil Judge in the suit no.71/2013 on 27<sup>th</sup> July,2013 against the interim managing committee members of NDHFOA for not declaring the result of the election of NDHFOA. That order dated 27<sup>th</sup> July,2013 was challenged in appeal (being MCA No.30/2013) and similarly final order passed in suit no. 53/2013 was also challenged in appeal (being RCA No.53/2013). These appeals were disposed of together by a common order dated 19<sup>th</sup> August, 2014 and it was held by the appellate Court that the

order of the trial Court directing the Registrar of Societies to remove the name of NDHFOA from its records was not sustainable and so was set aside but maintained the direction that results of the election conducted by the interim managing committee should not be declared. Mr. Vijay Mehta then filed the already referred revision petition no.27/2015 in Delhi High Court challenging the direction of the trial Court and the appellate Court that result of the election which was to be declared on 29<sup>th</sup> July,2013 should not be declared.

That revision petition was disposed of on 25<sup>th</sup> February,2016 with a direction for holding of fresh election of NDHFOA and I was appointed as the Court Observer. That order of High Court was challenged by AAONNDH, represented by Ms. Sunita Bhardwaj, by filing a Special Leave Petition but the same was withdrawn with the liberty to file a review petition before the High Court. AAONNDH then filed a review petition but the same was also rejected by the High Court on 12<sup>th</sup> May,2016. On the same date High Court had also disposed of my request which I had in the meanwhile made for clarifying the scope of my authority as Observer.

The facts which necessitated making such a request by me to the High Court also need to be noticed.

As a first step in the process of election I had called upon Mr. Vijay Mehta and Ms. Sunita Bhardwaj, who had been contacting me after my appointment as Observer, to make available to me the list of members of NDHFOA. Mr. Vijay Mehta gave to me a list given to him by the builder of New Delhi House "M/s MGM International(P) Ltd." and that list was of 198 flat owners. Since that list was of owners of flats in New Delhi House maintained by the builder and

not of the members of NDHFOA, I informed Mr. Mehta accordingly and asked him to provide me a list of members of the Society as contemplated under Section 15 of the Societies Registration Act. Thereafter, Mr. Mehta sent me an email on 11/03/2016 to the effect that as there was a stalemate in the Association for quite sometime membership of members could not be renewed and now exercise had been initiated and fresh records of the members shall be provided to me after completion of that exercise.

Thereafter vide letter dated 17<sup>th</sup> March,2016 Mr. Mehta sent to me another list purporting to be the list of 198 members of NDHFOA which he claimed to have been sent to the Registrar of Societies also on 17<sup>th</sup> March,2016.

Ms. Sunita Bhardwaj had also provided to me a list but that was also a list purporting to be a list of 98 flat owners in New Delhi House as on 18<sup>th</sup> January,2013, on which date the New Delhi House Flat Owners Association was dissolved according to her and she claimed that that was the only list which she had.

A comparison of the two lists showed that very few names were figuring in both the lists while majority of the names appearing in List 'A' supplied by Mr. Mehta were not there in List 'B' supplied by Ms. Sunita Bhardwaj.

As there were serious disputes raised by the one group leader Ms. Sunita Bhardwaj in respect of the entitlement of persons included in the list of 198 persons supplied to me by Mr. Mehta to cast votes it was considered by me to be necessary to draw a voters' list after hearing all concerned. However, as I was also of the view that the Hon'ble High Court had not given me in the order dated 25<sup>th</sup> February,2016 authority to resolve the disputes concerning the electoral college of NDHFOA as an election observer I

made a request to the Hon'ble High Court by sending a letter addressed to the Registrar General to clarify the scope of my authority. Hon'ble High Court then passed an order in the already disposed of revision petition no. 27/2015 on 12<sup>th</sup> May,2016(on which date AAONDH's review petition seeking review of the order dated 25<sup>th</sup> February,2016 for holding election of NDHFOA which Ms. Sunita Bhardwaj was still claiming to be non-existent was rejected) clarifying that the Election Observer had unfettered powers including for deciding the disputes relating to the electoral college of NDHFOA.

After receipt of the order dated 12<sup>th</sup> May,2016 from the High Court I circulated a letter dated 30<sup>th</sup> May,2016 amongst all those whose names were there in the list of 198 members given by Mr. Vijay Mehta which was annexed with the letter as List 'A' as also the list given by Ms. Sunita Bhardwaj as List 'B'.

Objections/suggestions were invited from all concerned mentioning that anybody could lodge a claim for being included in the voters' list of NDHFOA irrespective of whether his/her name was included in one list and not in the other or in none of them as also for exclusion of anybody's name from the voters' list to be drawn by me. It was, however, clarified in that letter that inclusion of anybody's name in any of the two lists being circulated will not be construed as my acceptance of his/her status as a member entitled to cast vote and similarly absence of somebody's name in any list or in both the lists would not be considered as his/her being disqualified for being included in the final voters' list/electoral college since aspect I shall be deciding after examining the responses which I shall be receiving and that persons submitting their

responses and claiming a right to vote must give date of their enrolment as members of NDHFOA and the date of payment of membership subscription with documentary proof. NDHFOA was asked to upload that letter as also the two lists on its website so that wide publicity was given for the information of all concerned who otherwise for some reason or the other might not even come to know that election was going to be held under the supervision of Court Observer. That was done by NDHFOA. Ms. Sunita Bhardwaj had been objecting that the so called interim managing committee had no authority to make a website of NDHFOA but I had made it clear to her that I was not entering into all such controversies as my duty was to ensure that all concerned must come to know about the election process which had been initiated and both the groups could inform their members by whatever means they considered appropriate and also that I was not recognizing any group as that was not within the scope of my appointment as the Observer and both the groups should cooperate in the process of holding of fair and transparent election.

Thereafter, in response to my letter dated 30<sup>th</sup> May,2016 Mr. Vijay Mehta and Mr. K.J.Sanger in their capacity as the interim Secretary and President respectively of NDHFOA sent me an email on 2nd June, 2016 forwarding a list of 125 persons as an attachment informing me that those owners of flats had after 25<sup>th</sup> February,2016 been admitted as members of NDHFOA and had paid all dues also and that list was also in conformity with Section 15 of the Societies Registration Act.

Thereafter, more than 100 persons sent their responses. Most of them gave their date of enrolment as members of NDHFOA and receipts of subscriptions paid by

them by way of attachments through emails, while some persons had sent me letters by speed post and names and they claimed to have been enrolled as members by way of passing of resolutions by the executive committee of NDHFOA and names of some of those persons were figuring in the lists of Mr. Mehta as well as of Ms. Sunita Bhardwaj. Those who had sent me emails were mainly those persons whose names were shown in the list of 125 persons sent to me by email on 2<sup>nd</sup> June,2016 by Mr. Mehta and Mr. Sanger. Almost everybody who sent me emails had claimed that they had been enrolled as members of NDHFOA from 14<sup>th</sup> March,2016 onwards though annual subscription taken from them was for the past four years.

Ms. Sunita Bhardwaj also got sent many letters to me after 30<sup>th</sup> May,2016 through one Mr. Vikram Mittal, in his capacity as Joint Secretary of NDHFOA(who was earlier also till January,2013 Joint Secretary) claiming that none of the persons who had allegedly been enrolled as members of NDHFOA by Mr. Mehta's group after 25<sup>th</sup> February,2016 when the High Court ordered holding of fresh election be included in the voters' list to be prepared by me. Ms. Sunita Bhardwaj herself also as the General Secretary of NDHFOA sent me letters opposing specifically the inclusion of the names of Mr. Vijay Mehta, Mr. K.J.Sanger, Mr. Chaman Mahajan, Mr. Ashok Mehta, Mr. S.C.Khaneja, Mr. S.L.Gupta, all of whom were claiming to be the members/office bearers of the interim managing committee of NDHFOA, on the ground that they had been expelled as members of NDHFOA many years ago and had never been readmitted as members by the managing committee of NDHFOA of which she was the general secretary after 2006 onwards.



One of the persons who had sent me letters was Ms. Parwati Mamtani, owner of flat no.710, wrote in her letter dated 21/06/2016 that she was not a member of NDHFOA nor she wished to be its member but despite that her name had been included in the list of members of NDHFOA (Her name appeared at sl. No. 134 in the list of 198 submitted by Mr. Vijay Mehta and she was being asked to make payment of enrolment fee by sending her enrolment form and so I should question those who had entered her name in the list of members. She also wrote that in the past also NDHFOA had extracted nearly four lacs from her by sending illegal attachment orders to her tenants and she had sent legal notice to NDHFOA.

In one of the emails received by me from Era Tours & Travels, as owner of flat no. 210, whose name figured at sl. No.65 in the list 198 members submitted by Mr. Vijay Mehta it was stated that from their records it had not been possible to ascertain whether this Company was a member of NDHFOA or not and it may be possible for the 'claimant association' to produce the relevant records for verification of its claim.

An email dated 11/06/2016 was sent by owners of flats no. 117 and 606 (Greenway Advisors Pvt. Ltd. & Green Infra Profiles Pvt. Ltd. whose names figured at sl. nos 69 & 70 of the list of 198 members submitted by Mr. Vijay Mehta wherein it was stated that these Companies had been approached for becoming members of NDHFOA few weeks back only and that they were being offered membership with an earlier date which they did not accept and so that issue of their membership was pending. It was further stated that the owners of flats who had not been enrolled as

members of NDHFOA be enrolled as members with immediate effect. Further it was stated that :

**“It is doubtful if the election being held in the current form are for the benefit of flat owners of New Delhi House as there has existed no opportunity with the flat owners to be members of NDHFOA and also, there exists no information about NDHFOA with the flat owners to be able to take an informed decision in the matter of electing their representatives.”**

One Mr. J.S.Brar, claiming to be the owner of flat no. 204 and member of NDHFOA for more than 10 years, also wrote to me that his name had been rightly included in the list ‘A’ submitted by Mr. Mehta while in list ‘B’ his name had been omitted ‘for reasons best known to Smt. Sunita Bhardwaj.’(He however did not produce any documentary proof of his old membership and instead mentioned in his email his date of enrolment as 15/03/2016).

Ms. Hanit Mangat wrote on behalf of her parents S.Avtar Singh Chugh and Mrs. Surinder Chugh, owners of flat no. GF-5, that she has been handling the matters on behalf of her parents and that in the past the Society was not functioning in a transparent and honest manner.

Mr. Ashok Mehta of flat no.201, who has been claiming himself to be a part of the alleged interim managing committee wrote to me in his email dated 3<sup>rd</sup> June,2016 that List ‘B’ had been submitted by Ms. Sunita Bhardwaj who was ‘self styled General Secretary on the basis of fake elections since actual elections were never held in the past seven years’ and the present election process under my supervision was welcomed as the elections were overdue since long.(This shows that Mr. Ashok Mehta himself was claiming that even the election announced, after the alleged removal of executive committee led by Ms. Sunita Bhardwaj, of which results were to be declared on 29<sup>th</sup> July,2013 but

could not be declared because of court stay, was also not genuine one.).

Thereafter, in order to give opportunity to all concerned in the formation of Managing Committee of NDHFOA I fixed a hearing on 2<sup>nd</sup> July,2016 at 11 a.m. at Chelmsford Club and everybody including those who had submitted responses to my letter dated 30<sup>th</sup> May,2016 was informed of the date, time and place of meeting in the same way as was done when letter dated 30<sup>th</sup> May,2016 was circulated. It was also mentioned in that letter, which had been sent to NDHFOA also through the email accounts being maintained separately by Mehta group and Sunita Bhardwaj group, that since some persons were claiming that they had become members many years back by way of resolutions of executive committees of NDHFOA admitting them as members the relevant records in that regard should be produced at the time of hearing. Mr. Mehta sent me an email that the interim managing committee was not having any records to that effect. However, Ms. Sunita Bhardwaj at the time of hearing had informed me that she had brought the relevant records and shall be produced in future also if directed by me.

The meeting of 2<sup>nd</sup> July,2016 was attended by many person who had submitted their responses to my letter dated 30<sup>th</sup> May,2016. 15 persons, including Ms. Sunita Bhardwaj, who had earlier claimed that they had been enrolled as members of NDHFOA on their moving applications and they had been duly admitted as members by the managing committees of NDHFOA by passing necessary resolutions to that effect, had attended the meeting. They produced the attested copies of their membership applications and of resolutions passed by the

erstwhile managing committees of NDHFOA enrolling them as members of NDHFOA. Others who attended the meeting were all those whose names had figured in the list of 198 persons submitted by Mr. Mehta and also in the subsequent list of 125 persons also submitted by Mr. Mehta and who were enrolled from 14<sup>th</sup> March,2016 onwards, including Mr. Vijay Mehta, Mr. Chaman Mahajan, Mr. K.J.Sanger, Mr. Ashok Mehta, Mr. S.C.Khaneja etc., members of the alleged interim managing committee of NDHFOA and all of whom according to Ms. Bhardwaj were the expelled members of NDHFOA. Those persons produced before me the receipts issued to them by the alleged interim managing committee of NDHFOA in token of their having paid enrolment/admission fee and annual subscription for the last four years.

It was informed by me to all attending the meeting that the purpose of that meeting was not to enroll members of NDHFOA by me which appeared to be in the minds of some of them as they had brought title documents of their flats in New Delhi House and that all that I was to examine was as to who all were claiming to be a part of the electoral college of NDHFOA were actually members of NDHFOA entitled to cast votes in the election. I had been circulating the responses received from different persons on receipt of my letter dated 30<sup>th</sup> May,2016 amongst everyone concerned through emails so that they could come to know as to who all were claiming to be members and also as to who all should be excluded from the electoral college.

At the time of meeting on 2<sup>nd</sup> July,2016 everyone was asked by me as to what they had to submit regarding their claims for being included in the electoral college of NDHFOA but none spoke anything and all simply handed over the supporting documents, referred to already. The proceedings

were wrapped up around 2.30 p.m. after Mr. Vijay Mehta and Ms. Sunita Bhardwaj, leaders of the two groups, informed me that they were not expecting any more people to come from their respective groups.

However, after I had left the venue of meeting I received couple of emails from persons who also were claiming voting rights informing me that they had received the circular of meeting wherein it was mentioned that the meeting time was till 3 p.m. Ms. Sunita Bhardwaj also called me up to inform me that some members had called her up saying that hearing time was till 3 p.m. and that though they had come to the meeting venue after 2.30 p.m. but before 3 p.m. there was nobody present and so their visit had gone waste. Since I had not fixed time till 3 p.m. I enquired from Mr. Vijay Mehta and he informed me that from their side a circular time had been circulated that meeting would be from 11 a.m. to 3 p.m., a fact which was not told to me, I then told both of them that they could tell the persons who had come after 2.30 p.m. that they could send to me by post their documents in support of the membership claims. I then received documents from some persons by post all of whom claimed to have been enrolled by the executive committee of NDHFOA years back by passing necessary resolutions accepting their membership applications like some other persons had already claimed (reference to whom has already also been made).

Having narrated the background facts culled out from the documents submitted to me concerning the litigation between two groups in NDHFOA I now proceed to examine and decide as to who all are to form the electoral college/voters' list of NDHFOA for the ensuing election.

I may notice here itself that there are some persons belonging to both the groups, about which there was a reference made even by the Hon'ble High Court also in its order dated 25<sup>th</sup> February,2016 in Civil Revision Petition no.27/2015, who were undisputedly members of NDHFOA and, in fact, those very people only had been fighting in Courts to get control over the affairs of NDHFOA and particularly the maintenance of New Delhi House for which owners of flats, as per the claim of Mehta group, have been contributing and the other group had been siphoning off major chunk of the funds. None of the vast number of persons now claiming right of voting has been involved in that litigation and none appear to have even bothered to find out for years as to how the NDHFOA was being run. It was once observed even by the Calcutta High Court in a judgment reported in **AIR 2006 Calcutta 55 “ Tapash Majumdar vs Dr. Pranab Das Gupta & Ors.”** that “It is common knowledge that the affairs of the club are hardly taken seriously by the majority of the members.”

The names of those who were undisputedly members of NDHFOA are Ms. Sunita Bhardwaj(flat no. 112), Mr. H.M.Prabhakar(flat no. 806), Mr. Balvinder Singh Bedi(flat no.GF-2) and Mr. Vikram Mittal(flat nos. LB-10 & GF-6), all of whom were part of the group/executive committee led by Ms. Sunita Bhardwaj. Other members of NDHFOA have been Mr.K.J. Sanger(flat no. 203), Mr. Vijay Mehta(flat no. 1202),Mr. Chaman Mahajan(flat no. 414), Mr. M.L.Puri(flat no.407), Mr. Ashok Mehta(flat no.201), Mr. S.C.Khaneja(flat nos. 304), Mr. S.L.Gupta(flat no.510), Ms. Geeta Mehta(flat no.305) and Mr. Karan Bagga(flat no.411), all of whom, except Ms. Geeta Mehta, have been claiming themselves to be the members of interim managing committee of NDHFOA

ever since 7<sup>th</sup> January,2013. All these persons from both the groups, besides many others, are also now claiming to be included in the voters' list to be finalized now by me. Mr. Pradeep Gandhi(flat no. 306), who is one of the founder members, is also claiming voting right.

In my view after January,2013, when one group led by Mr. Vijay Mehta claimed to have disbanded the then executive committee led by Ms. Sunita Bhardwaj and the group of Ms. Sunita Bhardwaj claimed to have dissolved the Society itself and litigation had also started , there could be no enrolment of new members by any group and only the duly elected members of the new executive committee could enroll new members. However, vast majority of the persons who came forward before me to get themselves included in the electoral college/voters' list of NDHFOA claimed to have been enrolled as members from 14<sup>th</sup> March,2016 onwards and it was not disputed before me by anyone that all those were enrolled by the alleged interim managing committee of NDHFOA after collecting not only admission fee payable at the time of seeking admission as member but annual subscription for the past four years. That enrolment of new persons as members of NDHFOA was not proper and those persons cannot claim voting right in the present election. In any event, after the High Court had directed holding of fresh election and I had demanded list of existing members of NDHFOA from the Society no new members could be enrolled either by the alleged interim managing committee or even by the managing committee which is now claiming to have got revived automatically with the Courts not accepting that this Society stood dissolved w.e.f. 18/01/2013. Election has to be conducted by giving voting rights to those who were already existing on the rolls of

NDHFOA at the time of announcement of election. As per the papers submitted to me the tenure of the then managing committee led by Ms. Sunita Bhardwaj was to come to an end in July,2013 and fresh election became due then and even the alleged interim managing committee had announced fresh election in July,2013 itself. So, there was no occasion for enrolment of new members by anyone after that. Though some of the persons, like one Mr. Akhil Jundal(flat no.1205) and the builder itself namely MGM International Pvt. Ltd. (Flat nos. LB16-18 & 120), Ajay Singhal(flat no. 208) had claimed that they were members of NDHFOA since last many years but they have produced any proof to that effect and instead like others they have also produced receipts issued by the alleged interim managing committee of NDHFOA showing their enrolment in March,2016 only. None of the persons claiming inclusion in the voters' list now has claimed that the executive committee of NDHFOA in place before January,2013 had been approached for enrolling them as its members. Then what was the good reason for the alleged interim managing committee to wake up all of a sudden after my demanding list of members to open the window for the enrolment of new members. If it is accepted that after the declaration of fresh elections new members could be enrolled to give them voting rights in the present election then both the groups in the Society claiming to be the lawful body in power could continue to enroll new members to reduce opponent's chances of victory. That is not acceptable in law. In the email dated 11<sup>th</sup> March ,2016 (referred to earlier also) sent to me by Mr. Vijay Mehta he had sought to project that it was a case of renewal of membership of persons who were already members by virtue of their being owners of flats and not a



case of new enrolments and so only renewal exercise had been initiated. However, there is no concept of renewal of membership of any Society known in law nor is it so provided in the Constitution of NDHFOA. So, clearly new members were enrolled by the alleged managing committee and there is no case of renewal of membership made out. However, I am not going into the question whether the alleged committee had power even to do that, as had been agitated before me by Ms. Sunita Bhardwaj, as that matter can be agitated before the Courts where cases between the two groups are still going on.

Even in respect of the authenticity of the list of 198 persons dated 17<sup>th</sup> March,2016 submitted to me by Mr. Vijay Mehta I cannot avoid making some observations. As observed already that list purporting to be a list of 198 members of NDHFOA was forwarded to the Registrar of Societies also on 17<sup>th</sup> March,2016 and in the forwarding letter it was written that that was the list of 198 members of NDHFOA which means that already 198 members stood enrolled after 25<sup>th</sup> February,2016, as was claimed by Mr. Vijay Mehta and Mr. K.J.Sanger themselves, by the alleged interim managing committee. However, a minute perusal of the said list shows that it was nothing but a reproduction of the list of owners which the builder had earlier submitted to the alleged interim managing committee of NDHFOA with the only difference that in the builder's list owners were shown flatwise while in the list dated 17<sup>th</sup> March,2016 forwarded as a list of 198 members to the Registrar of Societies same very persons were included and their names were mentioned alphabetically. What was the need of doing that has remained a mystery for me. Another disturbing aspect of the list of 198 members is that it includes the

names of many persons as members of NDHFOA who themselves have claimed before me that they had applied to the alleged interim managing committee for membership and were admitted/enrolled as members much after 17<sup>th</sup> March,2016. Some of the names of persons who claimed to have been enrolled after 17<sup>th</sup> March,2016, but their names were already included in the list of 198 members which Mr. Vijay Mehta and his team constituting the alleged interim managing committee had forwarded to the Registrar of Societies as well as to me, are :

<b>Sl. No.</b>	<b>Name</b>	<b>Flat No.</b>	<b>Date of Enrollment</b>
1	Mr. R.P. Malhotra	1211	19.03.2016
2	Renu Verma	807	26.03.2016
3	Ms. Manveen Bal	311	05.05.2016
4	Mr. Sunil Kumar	108	29.06.2016
5	Mr. R.P. Malhotra	1211	19.03.2016
6	Ms. Suman Bindal	805	19.03.2016
7	Mr. ArunBakshi	804	23.03.2016
8	Ms. Shanti Rani Goel	803	19.03.2016
9	Ms. Urmila Gupta	1011	04.04.2016
X	X	X	X
10	Mr. VikramSahni	406	23.03.2016
11	Mr. Sampat Mal Mahata	708	19.03.2016
12	Ms. Suman Bindal	805	19.03.2016
13	Mr. Sudhir Mangla	405	19.03.2016
14	Alpcord Network Travel	614	28.03.2016
15	M/S Bhardwaj Polyplast	408	29.03.2016
16	C. Hawk Project	713	09.04.2016
17	Mr. K.K. Pasi	903	27.04.2016
18	Mr. Akhil Jindal	1205	29.03.2016
19	Mr. Anand Kumar	1208	28.03.2016
20	Mr. MukulBahri	LB3	23.03.2016
21	Mr. RakeshBahri	1209	23.03.2016
22	Mr. MukulVerma	901	23.03.2016
23	Appollo Heart Institute	1213 & 1214	23.03.2016
24	Mr. Mahesh Bihari	1014	26.03.2016

Thus no credence can be given to the list of so called 198 members of NDHFOA provided by Mehta group.

Therefore, all those persons who claim to have become members after January, 2013 when one group started claiming that the Society itself stood dissolved while the other group started claiming that in a special general body meeting the then managing committee led by Ms. Sunita Bhardwaj had been removed and interim managing committee to hold fresh elections was constituted, cannot get any voting right in the present election.

One of the documents submitted to me by Mr. Vijay Mehta during initial preliminary meetings was a letter dated 16<sup>th</sup> July,2013 addressed to 'All Flat Owners/Occupiers' of New Delhi House by the alleged interim managing committee of NDHFOA informing them that election was going to be held on 29/07/2013( same election of which results were stayed by Civil Court mentioned already) and one Mr. Harbans Singh had been appointed as the Returning Officer. Another document submitted to me was the Guidelines issued by Mr. Harbans Singh for the election which he was going to conduct. As per those guidelines 'all bona fide owners of the building as per the list provided by the builder' (and not all the members of the registered Association NDHFOA) were eligible to contest and vote. I have already noticed that one of the persons who had written to me after receiving my letter dated 30<sup>th</sup> May,2016 had claimed that there has been no opportunity for the people for becoming members of NDHFOA and another one had claimed that only recently he had been contacted for becoming member of NDHFOA. In its email dated 2<sup>nd</sup> June,2016 the alleged interim managing committee itself

had admitted that 125 members had been admitted as members after 25/02/2016 and Ms. Sunita Bhardwaj had also submitted the list of flat owners only and not of 'members' of NDHFOA. All these facts show that earlier the concept of election by 'members' only of NDHFOA was not present in the minds of anyone and all owners of flats were being considered to be entitled to participate in the elections of NDHFOA irrespective of the fact whether they were actually members or not. It was 'free for all' system of election. The reason behind allowing all the owners of flats in New Delhi House to participate in the election process in the minds of the two group leaders appears to be that under the Constitution of NDHFOA every owner of flat in New Delhi House is a member of the Society automatically. That however is wrong view.

Even under the Constitution of NDHFOA all that is provided is that the persons owning flats in New Delhi House are eligible to become members of NDHFOA and they are supposed to apply for membership and the managing committee in place has to accept or reject any membership request. Any flat owner seeking membership has to pay prescribed admission fee. There is no concept of automatic membership. May be earlier the flat owners who have now after 14th March,2016 approached NDHFOA for becoming members were not aware of this legal position and even the persons claiming to be the active members of the two groups were not aware or were not interested in adopting the procedure prescribed for enrolling flat owners as members of NDHFOA. For the view that there is no concept of automatic membership of a Society I find full support from one decision dated 27<sup>th</sup> September,2011 of Hon'ble Delhi High Court in **W.P.(C) No. 7815/2010, "Wazirpur**

**Industrial Pollution Control(CEPT), Society vs Lt. Governor, NCT of Delhi**”, wherein also similar point was involved and it was held that there is no automatic membership of any factory occupier/owner in the area concerned merely on the basis of occupation/ownership of some factory. Membership of the Association, which in that case was also a registered Society, has to be applied for and accepted by its executive body and only then voting right can be claimed. None of the two group members had advised their respective ‘voters’ to become members of NDHFOA by applying to the executive committee and paying requisite fees, which Mehta group now on the eve of election appears to have done. So, the persons who are being denied of right of voting in the present election have to blame their leaders only for not keeping them informed of the true legal position. And have been entertaining them merely because of their owning some flats.

Even otherwise also those who were enrolled after 25<sup>th</sup> February,2016 when the High Court had directed holding of fresh no new members could be enrolled as member of the Society.

I am also of the view that there is another aspect about which the two groups appear to be unaware of the legal position which appears to have led some of the persons who undisputedly members of NDHFOA at one time have also now claimed right of voting on the basis of receipts for admission fee/subscription issued by the alleged interim managing committee after 14<sup>th</sup> March,2016 to different persons whose names are mentioned in the list of 125 persons which had been emailed to me on 2<sup>nd</sup> June,2016 by Mr. Vijay Mehta and Mr. K.J.Sanger. Those members appear to have applied again because Ms. Sunita Bhardwaj had all

along been claiming that they had been expelled many years back and had never been readmitted as members by her managing committee. Ms. Sunita Bhardwaj had herself addressed letters to me for not including the names of these persons in the voters' list since they were expelled members. She had also handed over to me copy of the resolution allegedly passed by the General Body of NDHFOA on 18<sup>th</sup> January,2013 whereby the decision taken by Mr. Vijay Mehta led group had disbanded her executive committee on 07/01/13 was challenged as being illegal and in that resolution also it was mentioned that members of Mehta group who constituted the so called interim managing committee were expelled members of NDHFOA. That stand pre-supposes that they were members at sometime. Those members are :

1. Vijay Mehta	Flat no. 1202
2. Ashok Kumar Mehta	Flat no. 201
3. Chaman Mahajan	Flat no. 414
4. M.L. Puri	Flat no. 407
5. S.L. Gupta	Flat no.510
6. K.J. Sangar	Flat no.203
7. Ms.Geeta Mehta/Ms. Praveen Mehta	Flat no.305
8. S.C. Khaneja	Flat no.304
9. Karan Bagga	Flat no. 411

The legal position is that once someone gets enrolled as a member of any Society he/she continues to be a member till he continues paying prescribed subscription to the Society or he/she resigns. No member can be expelled, as is being claimed by Ms. Sunita Bhardwaj and that is despite the fact that Rules of the Society permit expulsion of members. This legal position was laid down by Hon'ble Delhi High Court vide its order dated 24<sup>th</sup> May,1989 reported in **ILR 1989 Delhi 585, "Sarabjit Singh & Ors. Vs All India Fine Arts & Crafts"**. In fact from some of the papers submitted by Ms.

Sunita Bhardwaj I find that she herself had claimed that Chaman Mahajan and M.L.Puri and had been expelled as members in 2006 but thereafter in one court case(116/2012) she claimed that these persons had contested election of NDHFOA on 23/07/2012 but had lost and her group had won. If these persons had been expelled then how could they contest election is unexplained. So, the objection of expulsion of some members cannot come in their way of getting their names included in the voters' list to be drawn by me. Therefore, the aforesaid nine persons always remained members of NDHFOA despite the claim of Ms. Sunita Bhardwaj in her capacity of General Secretary of NDHFOA. In ignorance of this legal position if these persons have sought fresh membership that would not benefit the other group led by Ms. Sunita Bhardwaj. So, these nine persons are to be included in the electoral college/voters' list of NDHFOA.

Another person whose voting right is being opposed by Ms. Sunita Bhardwaj is Mr. Pradeep Gandhi who as per the Memorandum of Association of NDHFOA was one of the founding members of this Society in 2001. So the request of this member to be included in the voters' list has to be accepted. Objection against his request appears to have been taken by the group of Ms. Bhardwaj blindly without noticing that his name appears as a founder member in the Memorandum of Association. As in respect of other persons who admittedly were members at some time but were allegedly expelled I have held that their applying for membership now does not disentitle them to be included in the voters' list similarly the fact that Mr. Pradeep Gandhi also applied for membership in April, 2016 does not disentitle him to be included in the voters' list of NDHFOA.

Now I come to the claims of those few persons who are claiming entry into the electoral college of NDHFOA on the

basis of documentary proof that they had got membership of NDHFOA by applying for membership and their applications had been accepted by the managing committee of at the relevant time and resolutions to that effect were also passed. Most of these persons had been shown as members in the lists submitted by the alleged interim managing committee also. It appears that after I had demanded list of duly enrolled members of NDHFOA from the alleged interim managing committee some of the persons who had already been included in the lists submitted on behalf of alleged interim managing committee after collecting arrears of subscription from them but soon they must have realized or must have been made to realize by the other group that chances of their getting entry into the electoral college without production of resolutions for their membership acceptance were bleak they paid subscription all over again to the Sunita Bhardwaj led Group to obtain copies of resolutions from that group showing acceptance of their applications for membership made long ago and then they were provided relevant documents which in turn were produced before me on 2<sup>nd</sup> July, 2016.

First one of those persons claiming entry into the electoral college on the basis of her membership accepted by way of a resolution of the executive committee of NDHFOA is Ms. Sunita Bhardwaj whose name in fact appears in the lists provided to me by Mehta group also. Her claim was not contested also by anyone. In fact during initial meetings Mr. Vijay Mehta had with me he had categorically stated that his group was simply wanting that fair election should be held in which Ms. Sunita Bhardwaj could also contest and in case she musters support to win for any post they would welcome the mandate of the majority of the members. In fact



as far as Mehta group is concerned it did not oppose the entry of anyone from the opposite camp into the electoral college. His stand was that the more the merrier but election must be held fairly and everyone wanting to contest and win should be given fair chance to establish his/her following amongst the members of NDHFOA. Ms. Sunita Bhardwaj in any case had produced before me copy of resolution dated 26/12/2006 passed by the then executive committee of NDHFOA admitting herself as a member of NDHFOA alongwith Mr. Umesh Sharma in their capacity of owners of flat no.112. So, she gets entry into the electoral college of NDHFOA. They had also claimed voting rights on the basis of ownership of flat no.111, which entiled them to cast two votes at the time of election, on the basis of resolution dated 29<sup>th</sup> June,2012 but that resolution was not submitted and instead one resolution dated 26<sup>th</sup> December, 2006 in respect of this flat was submitted showing induction of one Ms. Suman D. Patwardhan as member. So, their claim in respect of flat no. 111 is not accepted. Other persons who produced attested copies of resolutions accepting them as members of NDHFOA are as under:-

<b>Name</b>	<b>Flat No.</b>	<b>Yr of Enrolment</b>
1. Smt. Seema Mittal/ Vikram Mittal	LB10	2006
2. Smt. Seema Mittal/ Vikram Mittal	GF6	2006
3. Ms. KantaLuthra	602	2006
4. Mr. Ashok Vadhera	509	2008
5. Mr. Rajesh Tondon/Sabina Tondon	1111	2011
6. Mr. Rajesh Tondon / Sabina Tondo	1010	2010
7. Manju Bhardwaj/ Sanjay Bhardwaj	506	01/01/2013
8. Inder Mohan Sahni	LB1	2012
9. Pardaman Kaur Kohli	LB14	2006
10. Manjeet Kaur Kohli	LB15	2006
11. Mahender Singh Chaudhary	116	2006
12. NanditaTuli	604	2006
13. VirenderLal Tuli	603	2006

14. Subhash Sarin	GF3	2006
15. Shikhar Chand Jain	109	2006
16. Anju Chabra	1008	2006
17. Mr. H.M.Prabhakar	806	2006
18. Mr. B.S.Bedi	GF-2	2006

Inclusion of these persons in the voters' list was not disputed also by anyone. Names of these 18 persons are also accordingly included in the electoral college/voters' list of NDHFOA.

One Ms. Beena Aggarwal owner of flat no. 706 was also wanting entry into the voters' list but she cannot get entry since she was inducted as member by the executive committee on 25/02/2015. I have already held that persons claiming to have been enrolled after January,2013 cannot be included in the voters' list. So, this lady also cannot be included in the voters' list in the present election.

The final position which has thus emerged out is quite pathetic inasmuch as the voters' list will be of only 29 persons though there may be more than a hundred who wanted to get entry but cannot get because of necessary action for enrolment of owners as members in accordance with Section 15 of the Societies Registration Act having not been taken in time by any of the groups.

The final voters' list would now be as under:-

<b>1. Vijay Mehta</b>	<b>Flat no. 1202</b>
<b>2. Sunita Bhardwaj/Umesh Sharma</b>	<b>Flat no. 112</b>
<b>3. Ashok Kumar Mehta</b>	<b>Flat no. 201</b>
<b>4. Chaman Mahajan</b>	<b>Flat no. 414</b>
<b>5. M.L. Puri</b>	<b>Flat no. 407</b>
<b>6. S.L. Gupta</b>	<b>Flat no.510</b>
<b>7. K.J. Sangar</b>	<b>Flat no.203</b>
<b>8. Ms.Geeta Mehta/Ms. Praveen Mehta</b>	<b>Flat no.305</b>
<b>9. S.C. Khaneja</b>	<b>Flat no.304</b>
<b>10. Karan Bagga</b>	<b>Flat no. 411</b>
<b>11. Smt. Seema Mittal/ Vikram Mittal</b>	<b>Flat no. LB10</b>
<b>12. Smt. Seema Mittal/ Vikram Mittal</b>	<b>Flat no.GF6</b>
<b>13 . Ms. Kanta Luthra</b>	<b>Flat no.602</b>

<b>14. Mr. Ashok Vadhera</b>	<b>Flat no. 509</b>
<b>15. Mr. Rajesh Tondon/Sabina Tondon</b>	<b>Flat no.1111</b>
<b>16. Mr. Rajesh Tondon / Sabina Tondon</b>	<b>Flat no.1010</b>
<b>17. Manju Bhardwaj/ Sanjay Bhardwaj</b>	<b>Flat no. 506</b>
<b>18. Inder Mohan Sahni</b>	<b>Flat no.LB13</b>
<b>19. Pardaman Kaur Kohli</b>	<b>Flat no.LB14</b>
<b>20. Manjeet Kaur Kohli</b>	<b>Flat no.LB15</b>
<b>21. Mahender Singh Chaudhary</b>	<b>Flat no.116</b>
<b>22. NanditaTuli</b>	<b>Flat no.604</b>
<b>23. Virender Lal Tuli</b>	<b>Flat no.603</b>
<b>24. Subhash Sarin</b>	<b>Flat no.GF-3</b>
<b>25. Shikhar Chand Jain</b>	<b>Flat no.109</b>
<b>26. Anju Chabra</b>	<b>Flat no.1008</b>
<b>27. Pradeep Gandhi</b>	<b>Flat no.306</b>
<b>28. Mr. H.M.Prabhakar</b>	<b>Flat no. 806</b>
<b>29. Mr. B.S.Bedi</b>	<b>Flat no. GF-2</b>

The voters' list of New Delhi House Flat Owners Association(Regd.) stands finalised accordingly.

14<sup>th</sup>, July, 2016

Justice(Retd.) P.K.Bhasin  
Court Observer