

* **HIGH COURT OF DELHI: NEW DELHI**

+ **C.S.(OS) No.374/2010**

% Judgment Pronounced on: 14.10.2011

ADARSH PUBLIC SCHOOL Plaintiff

Through Mr. Vikash Aggarwal, Adv. with
Mr. Pramod Gupta, Adv.

Versus

SUNIL JINDAL & ORS Defendants

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J.(Oral)

1. The plaintiff-School has filed the present suit for seeking the
following reliefs:

“(i) Pass a decree for permanent injunction in favour of the plaintiff and against defendants No.1 to 9 restraining the defendants, their associates, assigns, employees, agents from interfering in any manner whatsoever with ingress and egress of the plaintiff, his agents, assigns, representatives, students, staff, buses and other vehicles etc. on ‘Shaheed Sukhdev Singh Marg’ of the ‘C’ Block, Vikaspuri, New Delhi-110018.

(ii) Pass a decree for permanent injunction in favour of the plaintiff and against the defendants No.1 to 9, their associates, assigns, employees, agents restraining the said defendants from fixing/erecting any iron gate on 'Shaheed Sukhdev Singh Marg' at the place where iron pillars have been installed as shown in the photos and in the site plan shown in red or at any other place on the Shaheed Sukhdev Singh Marg whereby free ingress and egress of the plaintiff and/or its students/staff, agents, assigns and representatives, buses etc. is hampered in any manner whatsoever."

2. The case of the plaintiff-school is that it is a Senior Secondary School run under aegis of Dr. B.R. Memorial Society (society registered under the Societies Registration Act). The Society in 1985 was allotted 1.48 acres of land by DDA in 'C' Block, Vikas Puri for running the School. The total strength of the students studying in the School is around 2800 and the teaching faculty comprises of approx. 114 teachers.

3. The plaintiff-school is situated on a 40 ft. wide road which has been named as 'Shaheed Sukhdev Singh Marg' and is one of the main arterial roads of the locality and has been enjoying the right to passage since its inception without any hindrance and the movement of the students, teachers, staff, parents and school buses was quite smooth.

4. The said road is a strategically significant passage for the people and connects Outer Ring Road from one side and Najafgarh Road from the other side.

5. It is the case of the plaintiff against the defendants that for some time in the recent past, few of the residents of the locality headed by defendant No.1, Sunil Jindal who is the husband of the Area Municipal Councilor Smt. Sarita Jindal and is an influential person, is creating obstruction in the smooth flow of school buses and the vehicles of the staff, and creates nuisance and disturbs peace and tranquility of the society. It has been reported by the staff of the school to the Manager of the School several times that Mr. Sunil Jindal along with musclemen stops the ingress and egress of the School buses staffs, parents which causes immense inconvenience.

6. Defendants No.2 to 9 are residents of the same area who under the leadership of defendant No.1 are causing obstruction in the free ingress and egress of the plaintiff, its staff and students. The defendants have been illegally encroaching on the main road by illegal construction and small gardens and further have been haphazardly parking their cars.

They have also illegally erected iron pillars on both the sides of the road in order to weld an iron gate to block the main road which is being used for public transport for decades.

7. The plaintiff has also made complaints in this regard to defendants No.10 & 11, i.e. Municipal Corporation of Delhi and the

S.H.O. of the concerned Police Station, but to no effect. Hence, the present suit was filed by plaintiff.

8. Along with the present suit, the plaintiff filed an application under Order XXXIX, Rules 1 & 2 read with Section 151 CPC being I.A. No.2664/2010. After hearing upon the same, the Court passed an *ex parte* injunction order restraining defendants No.1 to 9 from impeding ingress and egress to the plaintiff's premises by erecting barricades of any kind whatsoever on the 40 feet road shown in Annexure-A to the plaint and further defendant No.10 was directed to ensure due compliance with the said directions of the Court.

9. The said injunction order was made absolute vide order dated 12.09.2011.

10. The defendants were duly served.

11. Defendant No.8 Mr. Navin Malhotra appeared in person and made a statement on 17.05.2010 to the effect that he has no objection if the suit of the plaintiff is decreed as prayed for. In view of his statement, the learned counsel for the plaintiff got deleted his name from the array of the parties.

12. Defendant No.11 who is the Station House Officer of the Police Station Vikas Puri was also deleted from the array of the parties vide order

dated 17.05.2010 as per the statement of the learned counsel for the plaintiff.

13. Written statement was filed on behalf of defendant No.10, i.e. MCD who supported the case of the plaintiff.

14. As far as the remaining defendants No.1 to 7 & 9 are concerned, vide order dated 26.10.2010 their right to file the written statement was closed on their failure to file the same despite various opportunities. However, on 04.05.2011, Mr. Rajesh Tyagi, Advocate appeared on behalf of defendants No.2 to 6 before the Joint Registrar and stated that he was willing to give an undertaking regarding the relief sought by the plaintiff. The Court also granted time to defendants No.2 to 6 to file their affidavits in this regard, but they failed to file the same despite various opportunities and later on, no one appeared before the Court when the matter was listed.

15. The plaintiff was granted time to file a short affidavit in terms of its evidence whereupon it filed an affidavit of Mr. P.K.Sehgal who is the Chairman of the Managing Committee of the plaintiff-school. In his affidavit, the said Mr. P.K.Sehgal has corroborated the averments as mentioned in the plaint and stated that the defendants No.1 to 7 & 9 are causing obstruction in the smooth flow of the traffic by parking their

vehicles on both the sides of the road. The statement made by Mr. S.K. Sangal has gone un rebutted as no cross-examination was conducted by any of the defendant, therefore, in the absence thereof, it is taken as correct.

16. The learned counsel for the plaintiff has argued that under Section 28 of the Delhi Police Act, 1978, the obligation to regulate traffic is with the police authorities, whereas Section 298 of the Delhi Municipal Act, 1957 prescribes that public streets are vested in Corporation (MCD). The legislative intention is, therefore clear that both the police and the MCD are duty bound to maintain the essential characteristics of public roads and streets.

17. He has further argued that this obligation is not merely confined to removing obstructions or structures on such roads, but to ensure free and smooth flow of traffic. Unlawful parking or vehicular obstructions would hinder free flow of traffic, and also decrease road space. In support of his submissions, the learned counsel has referred the judgments delivered in the cases of **Sundari H. Navani vs. M.C.D. & Ors.**, reported in **135(2006) DLT 124** and **Okhla Industrial Estate Association vs. M.C.D. & Ors.**, reported in **132(2006) DLT 9**.

18. The learned counsel for the plaintiff has also drawn my

attention towards the document titled “Policy Guidelines for Installation of Gates for Security Purpose in Colonies” which has been filed by defendant No.10, i.e. the Municipal Corporation of Delhi along with its written statement.

19. A perusal of this document shows that the Deputy Commission of MCD Zone concerned has been authorized to give permission for erection of gates, subject to Resident Welfare Association adhere to certain points. The points relevant for the purpose of adjudicating the issue involved in the present suit are as under:-

“3(b). Gate should be installed in colonies where the right of way of road is upto 18.3 meter. The gates would be provided only if it is internal road of the colony and does not have buses plying on it.

(e) The Iron Gates should be properly located and designed to avoid blockage of arterial or sub-arterial roads by putting Gates.

(h) The Gates should not cause unreasonable restrictions on right of way/thoroughfare passing through the Colony for access to other areas.”

20. I have heard the learned counsel for the plaintiff and have gone through the contents of the plaint along with the short affidavit and the documents placed on record. It is the case of the plaintiff in the plaint that the road where the defendants No.1 to 7 & 9 want to erect/install the iron

gate, is a strategically significant passage for the people and connects Outer Ring Road from one side and Najafgarh Road from the other side and many buses as well as private vehicles including the buses of the plaintiff-School carrying students use this road. The contents of the short affidavit filed by the plaintiff supporting its case also go unrebutted. Besides this, the aforementioned Policy is not denied by any of the parties to the suit and the same is an independent policy document of the Government which binds the plaintiff as well as the defendants.

21. I am of the considered view that the plaintiff has been able to prove its case on record. As stated earlier, at one point of time, defendants No.2 to 6 through their counsel were willing to give an undertaking regarding the relief sought by the plaintiff, although the affidavit were not filed on record. In these circumstances, the plaintiff is entitled to the relief claimed in the suit.

22. The suit of the plaintiff is accordingly decreed in terms of paragraphs-(i) & (ii) of the prayer clause of the plaint.

23. However, there is no order as to cost.

24. A decree be drawn accordingly.

MANMOHAN SINGH, J.

OCTOBER 14, 2011
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