

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

% Date of Decision: 20.04.2015

+ CS(OS) 2292/2008

M/S LNJ FINANCIAL SERVICES LIMITED & ORS.

..... Plaintiffs

Through: Mr. Ajay Verma with  
Mr. Shiv Kumar Dwivedi &  
Ms. Neha Singh, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. .... Defendants

Through: Ms. Mini Pushkarna with  
Ms. Yoothica Pallavi, Advs. for MCD.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Open Court)**

1. This is a suit seeking declaration that the plaintiffs are the lawful owners and in possession of a land admeasuring 80 ft. x 120 ft (1067 sq. yds.), known as regular Plot No. DD-13, Kalkaji Extension, New Delhi (for short '*suit property*'). As a consequence thereof, injunction is sought against the defendants from obstructing with the plaintiffs' possession apropos land admeasuring 22'6 ft. x 120 ft. which is shown as a driveway/parking in the building plan sanctioned by defendant No.1 (for short '*MCD*').

**Background facts**

2. The facts giving rise to the present suit are that that the suit property was leased out to one Mr. O. P. Bhasin vide lease deed dated

26.05.1971 (for short '*lease deed*') (Ex. P-1). Vide sale deed dated 23.04.1982 and a supplementary deed dated 06.12.1982, the suit property was transferred in favour of M/s. Ravi Industrial Promotions Ltd. (now known as M/s. LNJ Financial Services Ltd.) and M/s. Giltedged Industries Ltd (Ex. P-2). The suit property was also mutated in their favour vide letter dated 19.02.1983 issued by Land & Development Office (for short '*L&DO*'), Ministry of Works and Housing, Government of India. For construction of a building in the suit property, a building plan was sanctioned by the MCD (Ex. P-1/12). Thereafter, Form-D dated 24.03.1993 was issued by the MCD qua construction in the suit property (Ex. P-9).

3. In the year 1995, by way of various instruments of transfer, ground and first floors of the aforesaid building were transferred in favour of the plaintiffs. In the year 2005, complaining that the MCD started dumping materials for construction of a footpath on the driveway of the suit property, the plaintiffs filed writ petitions before this Court and status quo apropos the said construction was ordered on 23.03.2005. The plaintiffs were also given liberty to get the suit property demarcated and it was so done by the L&DO. Thereafter, the writ petitions were disposed off on 30.11.2005 with the following order:

*“Petition stands disposed of prohibiting the respondents or any person acting under their authority from interfering with the right of the petitioners to construct a boundary wall enclosing 80 x 120 ft. land constituting plot No. DD-13, Kalkaji Extension.”*

4. An appeal was preferred against the aforesaid order which was

allowed on 06.03.2006, whereby the writ petition was dismissed due to availability of an alternative remedy to file a suit for declaration and injunction.

5. It is noteworthy that vide order dated 11.11.2013, plaintiff Nos. 1 & 2 were deleted from the array of parties since they had transferred their rights in the suit property in favour of plaintiff Nos. 3 to 6 (inadvertently mentioned as plaintiff Nos. 2 to 6 in the said order). Vide order dated 17.01.2014, defendant No.3 was also deleted from the array of parties. Thereafter, vide order dated 11.02.2014, defendant No.2 was proceeded *ex parte*. In effect, this suit is only between plaintiff Nos. 3 to 6 (for short '*plaintiffs*') and the MCD
6. It would also be relevant to note that during the pendency of the suit, vide a letter dated 19.10.2012 issued by the L& DO, the suit property was converted from '*lease hold*' to '*free hold*' and a conveyance deed was also executed. Thereafter, vide a sale deed dated 06.12.2012, the entire suit property stood transferred in favour of the plaintiffs.
7. Vide order dated 15.10.2009, issues were framed. Issue Nos. 1 & 3 were treated as preliminary issues and were decided in favour of the plaintiffs vide order dated 06.01.2011. Accordingly, only the remaining issues are to be dealt with in this judgment.

**Issue wise contentions and findings**

8. Issue No. 2 was framed since it is defendant Nos.2 and 3's claim in their Written Statement that the right sought by the plaintiffs apropos area admeasuring 22.6 ft. x 120 ft. is a service road used for vehicular movement. However, since defendant No.2 has already been proceeded *ex parte* and defendant No.3 has been deleted from the

array of parties, no evidence has been led by them. Accordingly, nothing survives in this issue and is decided in favour of the plaintiffs.

**Issue No.4: Whether the suit has not been legally and properly signed, verified, filed and instituted? OPD-1**

9. Although the suit initially had six (6) plaintiffs, but at present, there are only four plaintiffs who are natural persons. It appears that this issue was framed since the MCD had questioned the authority of one Mr. Vimal Banka who had instituted the suit on behalf of plaintiff Nos. 1 & 2. In view of the fact that the said plaintiffs have been deleted from the array of parties, this issue need not be answered. Even otherwise, apropos the other plaintiffs, it is evident that the suit has been legally and properly signed, verified and instituted.

**Issue No. 5: Whether the suit was filed is not maintainable and is barred by virtue of Section 478 DMC Act? OPD-1**

10. The learned counsel for the MCD submits that notice under Section 478 of the DMC Act was not issued which is a mandatory requirement. On the other hand, the learned counsel for the plaintiffs submits that there was no requirement to issue notice since MCD was a party to Writ Petition (Civil) Nos. 5230-33/2005 concerning the same dispute and had notice thereof.
11. It is evident that the plaintiffs did not issue notice to the MCD under Section 478 of the DMC Act. However, an exception is carved out under sub section (3) thereof where no notice is required if the only relief claimed is an injunction. The question apropos what would be the fate of a case filed after the plaintiff approaches the Writ Court but is granted liberty to file a suit as a civil action, although in the context

of Section 53B of the DDA Act, was answered by this Court in ***Nehru Place Hotels v. DDA*, (1991) RLR 389**. It is noteworthy that Section 53B of the DDA Act and Section 478 of the DMC Act are *pari materia*. Insofar as the said judgment is relevant, it reads as under:

*“It is to be emphasized that the reliefs sought in this suit were the same reliefs as were sought in the W.P. And the said reliefs were strongly opposed by the defendants in the W.P. And are being again strongly opposed in this suit and the application. So, the defendants were well aware about the cause of action and the facts on the basis of which the plaintiff had sought the reliefs in the W.P. And were also aware that permission has been granted to the plaintiff to take appropriate legal proceedings while the writ petition was dismissed as withdrawn and thus, it cannot be said in the present case that the defendants have been taken unaware and had not been given opportunity by the plaintiff to consider the case of the plaintiff in order to avert the legal proceedings. No useful purpose would have been served by the plaintiff serving a notice giving the same facts and the cause of action to the defendants because the defendants were not obviously going to concede the claim of the plaintiff which was strongly opposed in the W.P. By the defendants. So, in the present case, it must be held that service of the notice in the W.P. amounted to strict compliance with the provisions of Section [53\(B\)](#) of the Act. Hence, I need not give any opinion with regard to the alternate contention raised before me that the suit of the plaintiff is covered by the exception in Section [53\(B\)\(1\)](#).”*

12. The aforesaid principle was also followed once again in ***Karamvir Singh v. DDA*, (2008) 148 DLT 498**. Having considered the precedents hereinabove, the Court is of the view that it is not as if MCD was unaware about the plaintiffs' grievance. Indeed, they were parties to the writ petitions and the Letters Patent Appeal, whereby the plaintiffs were granted liberty to file a suit. Therefore, the suit is

maintainable and is not hit by non-compliance of Section 478 of the DMC Act. This issue is answered accordingly.

**Issue No.6: Whether the suit as filed is bad for non-joinder of necessary and proper parties?**

13.The well settled tests for determining necessary and proper parties to a suit are that (i) there has to be a right of relief against such party in respect of the matters involved in the suit and (ii) the Court must not be in a position to pass an effective decree in the absence of such a party.

14.It is evident from the pleadings that the reliefs claimed by the plaintiffs are primarily against the MCD. However, when the suit was listed for the first time on 03.11.2008, the Court felt that Mangla Apartments Residents Welfare Association and G-Block Residents Welfare Association, who were parties to the earlier writ proceedings, would be necessary or at least proper parties to the suit. Accordingly, they were impleaded as defendant Nos. 2 & 3. However, subsequently, defendant No.3 was deleted from the array of parties upon its request. Therefore, the Court is of the view that the suit is not bad for non-joinder of necessary or proper parties. This issue is answered accordingly.

**Issue No.7: Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD-1**

15.The onus to prove this issue is on the MCD. This has remained a bald averment supported by no cogent reasons or evidence. On the other hand, it evident from the record that *advalorem* Court fees has been paid by the plaintiffs. This issue is answered accordingly.

**Issue Nos. 9 & 10: Whether the defendant corporation has any cause to interfere with area of land described as part of plaintiff's plot no. DD-13, Kalkaji Extension, New Delhi demarcated by L&DO and recognized by defendant corporation, in sanctioning construction of building on plot and whether the plaintiff is entitled to relief of declaration and injunction prayed for, in the facts and circumstances of the case?**

16. These issues are being dealt with together.

17. Mr. Ajay Verma, the learned counsel for the plaintiffs submits that the plaintiffs have proved the lease deed dated 26.05.1971, the supplementary deed dated 06.12.1982, the instruments of purchase, demarcation report dated 06.05.2005 and the sanctioned building plan dated 14.08.1992 which have been marked as Exhibits P-1, P-2, P-3, P-5 and PW-1/12 respectively. He further submits that DW-1, in his cross examination, has admitted the demarcation report and the area of the suit property as 80ft. x 120 ft. He draws the attention of the Court to question Nos. 22 and 23 put to the said witness wherein he has deposed that the land owning agency is competent to demarcate the suit property and its report is acceptable to the MCD.

18. Mr. Verma also refers to the deposition of DW-2 whose deposition is similar to that of DW-1. He also submits that DW-3 too has deposed that only the land owning agency is competent to demarcate the suit property and it would be acceptable to the MCD. He further draws the attention of the Court to the deposition of DW-4 who has admitted that Ex.PW-1/12 is a certified copy of the sanctioned building plan of the suit property and that it was sanctioned by the Building

Headquarters, MCD. He further deposes that as per the sanctioned plan, the suit property admeasures 80ft. x 120ft. and that as per the plan, the drive-way is shown as 22'6 ft. in width on the eastern side. He lastly deposes that before sanctioning of a plan, the JE/AE concerned visits the site and measures the size of the plot and that in the present case too, he might have done so.

19.The learned counsel for the plaintiffs further submits that DW-5, in his cross-examination, has corroborated the aforesaid facts; he has further deposed that the department never sanctions a building plan without inspecting/measuring the plot. It is submitted that nothing has been brought on record by the MCD to controvert the demarcation report, building plan, hence, the plaintiffs have been successful in discharging their onus qua these issues.

20.It is further submitted on behalf of the plaintiffs that evidently, the sanctioned building plan has been denied by the MCD; however, neither has it produced any other sanctioned plan nor has it taken any action against the said building if it was against the sanctioned plan; on the contrary, it has issued Form-D which means that the building has been constructed according to the sanctioned plan; the sanctioned plan itself shows a measurement of 80 ft. on the front side along with a 50 ft. wide road on the front side and a service lane of 20 ft. on the rear side. It is further submitted that as per the sanctioned plan, on the front side, i.e., 50 ft. road, there are two gates on either side; both are shown as drive-ways and are within the 80 ft. front side dimension of the suit property; as the sanctioned plan itself recognizes that the suit property measures 80 ft. x 120 ft. adjacent to DD-12, along with a 50

ft. road, the plaintiffs would have a right to possess and use the entire land measuring 80 ft. from the adjacent property DD-12 along the said road and 120 ft. along the length of DD-12.

21. In reply, Ms. Mini Pushkarna, the learned counsel for the MCD submits that the plaintiffs are seeking the relief of declaration with respect to public land. She relies upon Ex.DW-1/1 which is purportedly a map, titled as Completion Plan of Drain (for short '**Completion Plan**'), for handing over of services by the DDA to the MCD for maintenance thereof.

22. She further submits that the Completion Plan was handed over to the MCD when services were handed over to it; the road in question is shown as 9.90 metres; during cross-examination of DW-1, he categorically deposed that the said plan highlights not only the drains but also roads, lanes, etc. of the area concerned. She further submits that if the plaintiffs' contention that the area 22.6 ft. x 120ft. is their drive-way is accepted, then the width of the road would remain only 5 metres. She therefore, submits that the plaintiffs are not entitled to any declaration or injunction in their favour with respect to public road. She further states that no user can be allowed beyond the Completion Plan of the area in question.

23. The learned counsel for the MCD further submits that the plaintiffs have themselves admitted that they have been using the disputed area for parking their cars without enclosing the same with a wall or any fencing. Thus, she submits that the plaintiffs have admitted to the existence of a road and parking by them on the same. She also submits that no one leaves a part of their property outside the

boundary wall; that the suit property is bounded with a boundary wall and is fully constructed; and that the space outside the boundary wall, used by the plaintiffs for parking their vehicles would not confer upon them any right or title.

24. She further submits that as a result of the width of the common road being diminished, the right of way and passage available to various residents of the colony is adversely affected; the road in question is for access of the residents of G Block, Mangla Apartments, three schools in the locality, a post office, BSES Office and a cremation ground. Thus, she submits that the road being reduced to about 5 metres has made the passage so narrow, leading to serious traffic related issues.

25. She also submits that the plaintiffs cannot take any advantage of the temporary fencing as the same was done under orders dated 12.7.2005 passed by this Court in writ petitions preferred by the plaintiffs; the said order is not in force any more since the Division Bench in appeal had set aside the same. She also submits that the plaintiffs cannot rely upon the demarcation report since the Division Bench expressed doubts about its validity since it bore the signatures of only Mr. Vijay Wadhwa, one of the plaintiffs and Mr. Kuldip Singh Rana, Overseer, L&DO. She therefore, submits that the said demarcation report has no value. The order of the Division Bench, insofar as it is relevant, reads as under:

*19. A perusal of the demarcation report shows that it only bears signature of the draftsman of the L&DO. Hence it is doubtful whether it is a valid demarcation report. However, we are not expressing a final opinion on this point as that can be*

*decided in a civil suit.*

26. It is further submitted on behalf of the MCD that no grievance apropos demarcation has ever been raised since the year 1971 when the suit property was originally allotted; that the public road (as alleged by the MCD) has been in existence for the last more than 40 years; and that it has never been in the plaintiffs' possession. It is also submitted that neither any completion certificate was issued nor a plan apropos construction on the suit property was ever approved by the MCD.

27. Attention of the Court is drawn to the following deposition of PW-1 during his cross examination:

*“Q.55 Have you brought the building plan sanctioned in the year 1990?*

*A. I have not found it at my residence.*

*Q. 56 Did you have any occasion to see the building plan of 1990 earlier?*

*A. No.*

*Q. 57 Is it correct to say that you have filed your affidavit of evidence dated 13.02.2012 without looking into the sanction plan of 1990?*

*A. It is correct.*

.....

*Q.75 I put it to you that you have not placed the Completion Certificate and form D dated 24<sup>th</sup> March 1991 as mentioned in para 5 of your plaint in the Court record?*

*Ans. After seeing the Court record the witness stated that the aforesaid documents are not on the Court record (Vol. However, the Form D for taking the water connection dated 24.03.1994 in on the Court record which is Ex. P-9).*

.....

*Q.78 Is it correct that on the East side of the suit property*

*there is a public road and after public road there is Mangla Apartment:*

*Ans. Yes, it is correct.*

*Q.79 Kindly look into the photograph at page 9 of the documents filed alongwith the list of documents dated 13.07.2009. Whether the said photograph is of the suit property or not?*

*(Objected to by the Ld. Counsel for the plaintiffs on the ground that the said photograph has already been denied by the counsel for the plaintiffs)*

*Observation of the Local Commissioner – to be decided by the Hon'ble Court. However, the witness is directed to answer the question.*

*Ans. The photograph is of the suit property.*

*Q.80 Whether the four photographs (2 photographs on page 10 and 2 photographs on page 11 of the documents filed alongwith the list of documents dated 13.07.2009 also related to the suit property relating to raising fencing pursuant to interim orders in W.P.(C) No.2530-33 of 2005 filed by plaintiff No. 3 to 6.*

*(Objected to by the Ld. Counsel for the plaintiffs on the ground that the said photograph has already been denied by the counsel for the plaintiffs)*

*Observation of the Local Commissioner – to be decided by the Hon'ble Court. However, the witness is directed to answer the question.*

*Ans. The photographs Ex.PW-1/DAB, Ex. PW-1/DAC and photograph Ex. PW-1/DAD relates to the suit property while the photograph marked as DX1 does not relate to this suit property.”*

28.The learned counsel for the MCD also draws the attention of the Court to the reply filed by L&DO to the plaintiffs' writ petition. The relevant paragraph reads as under:

*“..... However, it is submitted that neither any plan for*

*construction was approved by the lessor under the terms of lease nor any permission to sell etc. was ever granted by the answering respondent to the recorded lessee. The agreement to sell or purchase if any alongwith transfer of possession is illegal and in violation of terms of lease.”*

- 29.It is submitted that even otherwise, the plaintiffs cannot seek to deviate from the layout plan on the basis of any building plan sanctioned by the MCD.
- 30.In rebuttal, the learned counsel for the plaintiffs submits that no claim to a public road has been made and that the plaintiffs are only seeking enforcement of their legitimate rights as conferred by the perpetual lease deed dated 26.05 1971 and for the erection of a boundary wall as per the building plan sanctioned by the MCD; and this being the case, the MCD ought to assist in the measurement of the suit property as per the said lease deed.
- 31.In effect, it has to be determined by this Court whether the suit property, as leased out according to the lease deed would measure 1067 sq. yds. having dimensions of 80 ft. x 120 ft.
- 32.From the evidence adduced on behalf of the plaintiffs, in particular the lease deed dated 26.05.1971, it is evident that the suit property, as leased out to them admeasures 80ft. x 120 ft. On the other hand, the MCD's contention is that area admeasuring 22.6ft. x 120ft., shown as a drive way in their sanctioned building plan is a public road. However, this Court would notice that the said plea has not been supported by any cogent evidence.
- 33.It is noteworthy that the flats built by the DDA, popularly known as

Mangla Apartments came up later in time, i.e., after the lease deed dated 26.05.1971. Therefore, it is possible that while preparing layout for the flats, the DDA did not match the site *vis-a-vis* the layout and wrongly recorded the dimensions. Accordingly, this Court is of the view that the Completion Plan would itself be questionable because the rights of the plaintiffs got crystallised way back in the year 1971 by the lease deed. Evidently, the rights conferred by virtue of the said lease deed have not been circumscribed or restricted by any subsequent action of the State in accordance with law; surely, not by a Completion Plan issued by the DDA in favour of the MCD.

34. Reliance on the reply filed by the L&DO to the writ petitions filed by the plaintiffs would not help the case of the MCD. It is settled that under the extant law, it is MCD which is competent to sanction building plans and not the L&DO.

35. The contention that no building plan was ever sanctioned by the MCD is also without any merit. Perusal of the MCD's written statement reveals that it has admitted to sanctioning a building plan and issuance of Form 'D'. Additionally, DW-4 has admitted the sanctioned building plan (Ex. PW-1/12) and deposed that it was sanctioned by the Building Headquarters, MCD. Insofar as the contention that no Completion Certificate for the construction was issued, this Court is of the view that the same cannot form a part of the present proceedings.

36. So far as the other contentions such as (i) no one leaves a part of their property outside the boundary wall, (ii) road being reduced to about 5 metres has made the passage so narrow, leading to serious traffic related issues, (iii) no grievance apropos demarcation has ever been

raised since the year 1971, are concerned, this Court is of the view that they ought to be rejected. Merely because a part of the property is outside the boundary wall would not mean that the MCD would be at liberty to use it. It cannot be disputed that the dimensions of the suit property has to be as per the lease deed. Evidently, the lease deed records the dimensions as 80ft. x 120 ft. If that be so, the plaintiffs would surely be entitled to possess the plot/suit property as per the lease deed.

37. So far as the validity of the demarcation report is concerned, it is noticed that the Division Bench had left the same to be decided by this Court/Civil Court although expressing its doubts on its validity. The demarcation report shows that three plots bearing Nos. DD-11, DD-12, and DD-13, with a frontage of 80ft., 77 ft. 6 inches and 80 ft. are contiguous to each other. They have a 50 ft. wide road to the north and a service lane of 20 ft. 6 inches to the south. Plot No. DD-12 is the centre of the three plots with Plot Nos. DD-11 and DD-13 on its western and eastern sides respectively. A comparative reading of the demarcation report with the lease deed would make it amply clear that the area admeasuring 22 ft. 6 inches x 120 ft. falls within the area leased out to the plaintiffs. As a consequence, the MCD's contention in this regard needs to be rejected. In view of the preceding discussion, these issues are accordingly, answered in favour of the plaintiffs.

38. In view of all the issues being returned in favour of the plaintiffs, the suit is decreed in their favour. It is hereby declared that the plaintiffs are the lawful owners and in possession of a land admeasuring 80ft. x

120 ft. (1067 sq. yds.), known as Plot No. DD-13, Kalkaji Extension, New Delhi. Consequently, the MCD/defendant No.1 is restrained from interfering/obstructing with the plaintiffs' possession apropos land area admeasuring 22 ft. 6 inches x 120 ft. shown as drive way/parking in the building plan sanctioned by the MCD.

39.Let the decree sheet be drawn up accordingly.

40.The suit stands disposed off in the above terms.

**NAJMI WAZIRI, J.**

**APRIL 20, 2015/vmk/ak**