

**136 CM-7553-CII-2021
CM-9777-CII-2021
CM-9778-CII-2021 &
CM-6368-CII-2021 in
CR-5741-2018**

**RICHMOND PARK OWNERS AND RESIDENTS
ASSOCIATION VS REGENCY PARK-1 RESIDENTS WELFARE
ASSOCIATION REGISTERED AND ORS**

Present: Ms. Puja Chopra, Advocate
 for the applicant.

CM No.6368-CII of 2021 has been preferred by applicant -respondent No.2 in the main revision petition, who is defendant No.1 in the main suit.

Civil revision petition was decided by this Court vide order dated 12.09.2018. The dispute between the parties is in respect of usage of 18 meters wide road. Pleadings in the plaint suggest that defendants have locked/blocked the road. In the year 1995, DLF Limited being the Developer planned a Residential Group Housing Colony with multi-story apartments and independent flats which were a part of a single complex and a road measuring 18 meters wide was provided. The original lay out plan was also revised in the year 1999 and in order to create separate entry and exit for Regency Park-1 residents, provision for additional gates was made and revised plan was made by the developer. While deciding the controversy on prima facie note, this court found that the

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pleadings of the plaint in terms of usage of 18 meters wide road are evasive as the same are silent with regard to usage of 18 meters wide road. Pleadings are silent as to whether the plaintiff is in use of 18 meters wide road or not and what is the right attached with it. No declaration has been sought nor has any reference been made to any plan or bye-laws. Injunction was sought before the trial Court in the form of mandatory injunction. Trial Court dismissed the prayer for mandatory injunction, however, the same was reversed by the Lower Appellate Court.

This Court further commented upon that the interim mandatory injunction cannot be granted in routine. For granting a mandatory injunction, a strong case has to be made out and the standard for making of such a case rests on higher pedestal than the prima facie case which is normally required for a prohibitory injunction. Ad interim mandatory injunction is not to be granted in a routine manner, rather the same can be granted only on clear and unambiguous grounds which exist on record. While parting with the order, this Court set aside the order dated 31.05.2018 passed by the Additional District Judge, Gurugram and without meaning anything on the merits of the case, both

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the parties were directed to maintain *status quo* with regard to the existing position of 18 meters wide road during pendency of the suit. Applicant is defendant No.1 in the civil suit and respondent No.2 in the aforesaid revision petition. Due to change in scenario, now, learned counsel for the applicant/respondent No.2 appears on behalf of applicant/defendant No.1 and she is not appearing on behalf of the petitioner.

Learned counsel for the applicant submits that the issue involved in the aforesaid revision petition was only in respect of usage of 18 meters wide road and the order of *status quo* was confined only in this regard. Maintenance of 18 meters wide road was never in issue. The said order was unsuccessfully assailed in the Hon'ble Apex Court and the SLP was ordered to be dismissed as withdrawn vide order dated 01.02.2019 with a liberty to avail any other remedy in accordance with law. Thereafter, some contempt petitions have been filed by both the parties which are still pending. With the passage of time condition of 18 meters wide road has worsen. Sewerage pipe line has been damaged and that stands connected with storm water drainage thereby attracting the

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attention of Engineer-II Drainage Division GMDA Gurugram, who has issued letter memo dated 20.09.2021 to the applicant. Virtual threat has been given in respect of lodging of FIR if condition of sewerage connection is not improved. It is the duty of the applicant to repair the road in question. In the event of not repairing the road in time, the applicant may face the consequence of criminal prosecution. Even otherwise maintenance and repairs of the road are to be conducted for the welfare of the residents of the society. With this background, the applicant seeks necessary modification of the order to the extent of clarifying that the order of status quo is only in respect of usage of 18 meters wide road and not for carrying out necessary repairs and maintenance. The subject matter of contempt is not to be affected by such a clarification.

Notice of this application was issued on 11.08.2021 to non-applicant /petitioner as well as to non-applicant/respondent No.1. Copies have already been supplied to the petitioner as well as respondent no.1. Thereafter, CM No.9777-CII of 2021 was filed with a prayer to place on record Annexures R/2A & R/2-B in order to show the road condition as well as the threat perception received by the stake-holders, in

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the context of not carrying out the necessary repairs and maintenance work.

Learned counsel for the applicant submits that reply filed on behalf of the plaintiff/respondent No.1 has already been received by her office. None has appeared on behalf of plaintiff-respondent No.1, despite the order dated 08.10.2021 passed by this Court, taking note of urgency involved in the application. The case was adjourned for today and the same was ordered to be shown in the urgent list.

Let notice be issued to the office of Mr. Davinder Lubana, Advocate on behalf of respondent No.1, thereby giving last opportunity to respondent No.1 to attend this case.

List on 01.11.2021.

To be listed in urgent list.

28.10.2021
Amandeep

**(RAJ MOHAN SINGH)
JUDGE**