

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

% **Date of decision: 26th February, 2020.**

+ **CS(OS) 47/2016 & IAs No.1544/2016 (u/O XXXIX R-1&2 CPC),
16602/2019 (for condonation of 38 days delay in filing OA) &
16603/2019 (for stay) & OA No.145/2019**

LOVELEEN GUPTA & ANR Plaintiffs
Through: Mr. Pranay Trivedi, Adv.

Versus

RAM PRATAP SINGHAL & ORS. Defendants
Through: Mr. Prasoon Kumar, Adv.
Mr. Anuj Bhargava, Adv. for Mr.
Ajay Arora and Mr. Kapil Dutta,
Advs. for NrDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs namely Loveleen Gupta and Sangeeta Goyal have instituted this suit for (i) permanent injunction to restrain the defendants No.1 & 2 Ram Pratap Singhal and Vinod Singhal from making unauthorised construction over Property No.F-107, Ashok Vihar, Phase-I, Delhi and from causing any damage to the property; and, (ii) mandatory injunction directing the defendant No.3 Municipal Corporation of North Delhi (NrDMC) to demolish the illegal and unauthorised construction already raised by the defendants No.1&2 on the ground floor (back portion) and first floor there above of the said property.

2. The suit has been languishing in this Court since 2nd February, 2016, vide *ex-parte* order of which date, the defendants No.1&2 were restrained from carrying out construction work causing nuisance or noise, only

between 8 PM and 8 AM and which order continues to be in force. Issues even have not been framed in the suit as yet.

3. The Chamber Appeal being OA No.145/2019 preferred by the defendants No.1&2 against the order dated 26th September, 2019 of the Joint Registrar dismissing IA No.109/2019 of the defendants No.1&2 for condonation of delay in filing written statement to the amended plaint came up before this Court on 27th November, 2019, when though the counsel for the plaintiffs did not appear but on going through the file it was felt that no trial is necessary in the present suit and the same can be disposed of immediately. The matter was accordingly ordered to be posted on 19th December, 2019 on which date the matter was adjourned for today.

4. The counsel for the plaintiffs, the counsel for the defendants No.1&2 and Mr. Anuj Bhargava, proxy counsel for Mr. Ajay Arora, Advocate for defendant No.3 NrDMC appear.

5. The counsel for the plaintiffs has argued, (i) that while the plaintiffs are the owners of second floor of property No.F-107, Ashok Vihar, Phase-I, Delhi, the defendants No.1&2 are the owners of the rear portion of the ground floor and the entire first floor of the subject property; the front portion of the ground floor is owned by a cousin of the plaintiffs but who is not a party to the present suit; (ii) that the plaintiffs had instituted the present suit to restrain the defendants from carrying out unauthorised construction of coverage of the rear open courtyard on the ground floor of the property but which construction has been completed by the defendants No.1&2 owing to no interim relief having been granted by this Court; (iii) that the defendants No.1&2 have not only constructed rooms in the entire rear open courtyard but also raised construction at the level of the first floor above the

rooms so constructed in the rear open courtyard on the ground floor, extending their first floor to above the erstwhile rear open courtyard; and, (iv) the plaintiffs thus sought amendment of the plaint to also seek the relief of mandatory injunction for demolition of the unauthorised construction so carried out by the defendants No.1&2 in the property.

6. The counsel for the defendants No.1&2 states that the rear open courtyard was covered from before and the defendants No.1&2 at the time of institution of the suit were only carrying out repairs therein.

7. On enquiry, whether in the sanction plan of the rear open courtyard is as having rooms therein, the counsel for the defendants No.1&2, though states that the construction in the rear open courtyard is sanctioned but is unable to show the sanction plan.

8. Such pleas taken, without producing the document, do not inspire confidence.

9. The counsel for the defendant No.3 NrDMC on enquiry, whether the property has been inspected, states that the property was inspected and unauthorised construction on the ground, first and second floors of the property has been booked but on further enquiry, whether any demolition action has been taken, conveniently states that he will have to take instructions. Such appearance in the Court without instructions is meaningless and does not behove a municipal body.

10. Be that as it may, now that the construction stands concluded, all that can be done is to direct the defendant No.3 NrDMC to, in a time bound manner take action with respect to any unauthorised construction in the property, at whichever floor/level and to give liberty to the parties to, if aggrieved from the action of the defendant No.3 NrDMC, take the remedies

available before the Appellate Tribunal Municipal Corporation of Delhi (Appellate Tribunal MCD). It is however expected that in the event of the Appellate Tribunal MCD being approached and entertaining the challenge, the said challenge shall be disposed of expeditiously.

11. The suit is accordingly disposed of by directing the defendant No.3 NrDMC to, on or before 27th March, 2020, in accordance with law, take action with respect to the unauthorised construction if any in property No.F-107, Ashok Vihar, Phase-I, Delhi, including by demolition/sealing thereof. It is made clear that in the event of any demolition action being taken, the same shall be by demolition of the entire unauthorised construction and not by merely puncturing the ceiling or wall thereof and the cost of demolition action in portion of whichever of the party shall be recovered from such party.

12. It will be open to the plaintiffs as well as the defendants No.1&2 as also the owners of the front portion of the ground floor of the property, if aggrieved from any action of the defendant No.3 NrDMC, to take their remedies before the Appellate Tribunal MCD. The Appellate Tribunal MCD is requested to dispose of the said challenge at the earliest.

13. The plaintiffs as well as the defendants no.1 and 2 are restrained from hereafter carrying out any works whatsoever, of constructions, additions or alterations in their respective portions of property No.F-107, Ashok Vihar, Phase-I, Delhi and even if desirous of carrying out repairs within the meaning of Clause 6.4.1 of erstwhile Unified Building Bye-Laws or UBB, 2016, serve advance notice of at least fifteen days, to the other party.

14. The parties are left to bear their own costs.

15. All pending applications and Chamber Appeal are also disposed of in terms of above and the interim order dated 2nd February, 2016 is vacated.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 26, 2020

‘bs’

