



2026:DHC:5712



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

% **Reserved on: 02nd July, 2026**

Pronounced on: 17th July, 2026

+ **RSA 198/2023, CM APPL. 30826/2025 (for early hearing)**

1. RAVINDER SONI

Son of Shri Shesh Nath Soni
R/o A-594, Gali No. 3, Prem Nagar,
Nabi Karim, New Delhi.

....Appellant No.1

2. SHRI PAPPU

Son of late Shri Khalil Ahmed
R/o 6871, Qila Kadam Sharif
Nabi Karim, Paharganj,
New Delhi-110055.

...Appellant No. 2

3. SANJAY

Son of Inder Kumar
R/o 669, Gali No. 3, Prem Nagar
Nabi Karim, Paharganj,
New Delhi-110055.

....Appellant No. 3

4. REHMAN

Son of Late Khalil Ahmed
R/o 6770, Qila Kadam Sharif
Nabi Karim, Paharganj,
New Delhi.

....Appellant No. 4

Through: Mr. R.K. Bhardwaj, Advocate.

versus

1. SANATAN DHARAM SABHA HARI MANDIR (REGD.)

Through its President
Shri Pawan Bhatia
Son o Late Shri Desh Raj Bhatia
Property No. 6893, Sanatan Dharam Sabha Hari Mandir,
Nabi Karim, Paharaganj,



New Delhi-110055.

...Respondent No.1

2. **SHRI PAWAN BHATIA**

President of Sanatan Dharam Sabha Hari Mandir (Regd.)
Uchatam Madhyamik Balika Vidyalay
Desh Raj Bhatia Marg
Sadar Thana Road
New Delhi.

...Respondent No. 2

3. **RAKESH PATWA (BUILDER)**

R/o 6718, Qila Kadam Sharif,
Nabi Karim, Paharganj,
New Delhi-110055.

...Respondent No. 3

4. **RAJA (BUILDER)**

R/o House No. BB-38, Kacha Rasta,
Nabi Karim,
Delhi.

....Respondent No. 4

5. **HAFIZ-ULLAH**

R/o 6822, Qila Kadam Sharif
Nabi Karim, Paharaganj,
New Delhi-110055.

....Respondent No.5

6. **HAJI HAFIZ**

R/o 6831, Qila Kadam Sharif
Nabi Karim, Paharganj,
New Delhi-110055.

....Respondent No. 6

7. **DELHI MUNICIPAL CORPORATION**

Through its Commissioner
Civic centre,
Minto Road, JLN Marg,
New Delhi.

...Respondent No. 7

8. **THE STATION HOUSE OFFICER**

PS Nabi Karim
Delhi.

....Respondent No. 8



Through: Ms. Nusrat Hossain, Mr. Manish Kumar Singh, Ms. Sarv Mangla, Advocates for R-1 and 2.
Ms Chetanya Singh, Mr. Chetan Sharma and Ms. Swati, Advocates for MCD.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Second Regular Appeal under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellants against the *Judgment and decree dated 19.04.2023* whereby the learned Additional Senior Civil Judge, Delhi had upheld the Judgment of learned Civil Judge dated 12.02.2020, *dismissing the Suit of the Plaintiff for **Permanent Injunction*** for restraining the Defendant Nos. 2 to 6 from raising an illegal and unauthorised construction in the Suit Property and for ***Mandatory Injunction*** for directing the Defendants to demolish the unauthorised construction raised in the Suit Property and further to restrain them from raising any unauthorised construction in future.
2. The Plaintiffs/Appellants had instituted **Civil Suit No. 873/2018** for Permanent Injunction and Mandatory Injunction.
3. The ***facts in brief***, as narrated in the Plaint, were that the Plaintiffs were residing in the same locality at the addresses mentioned in the Memo of Parties and had since long also been working as social workers in the locality.
4. It was asserted that the Defendant Nos. 2 to 6, who are the officials of the Defendant No. 1, a registered Organisation, in connivance with the



Defendant Nos. 7 and 8, were raising unauthorised and illegal construction of a multi-storey commercial complex for shops and multiple floors, at the Property bearing No. 6893, Qila Kadam Sharif, Nabi Karim, Paharganj, New Delhi-110055 (*hereinafter referred to as “the suit property”*).

5. It was claimed that such construction would create a problem of parking and hurdles in the street, due to increase in the number of occupants/owners in such illegally constructed portions of the suit property. The Plaintiffs claimed that the area was thickly populated and congested and it would be unsafe for the Plaintiffs to pass through the said gali/road.

6. The Plaintiffs had made several complaints to Defendant Nos. 7 and 8 for taking action against the unauthorised and illegal construction, but all in vain.

7. Hence, *the Suit for Permanent and Mandatory Injunction was filed by the Plaintiffs/Appellants.*

8. ***Defendant No. 7, NDMC, in their Written Statement***, took the *preliminary objections* that the Suit was barred under Sections 477 and 478 of DMC Act, for want of service of Statutory Notice under DMC Act.

9. It was further asserted that the Suit Property was inspected on 07.03.2018 by the Field Staff of NDMC and during inspection, unauthorised construction of Ground Floor and rooms, etc. on First Floor were noted, which were booked vide File dated 07.03.2018 under Section 343 and 344 of the DMC Act. Show Cause Notice was issued on 07.03.2018 to the owner/builder of the Property to the respondent within three days, as to why demolition Order be not passed in regard to unauthorised construction carried out on the Property. It was stated that the action against unauthorised



construction on the Property was under contemplation and would be taken, as per the provisions of DMC Act.

10. There was no ongoing construction in the Property, which has been stopped with the help of local Police. *Sealing action under section 345A of DMC Act*, has also been initiated in regard to unauthorised construction. It was therefore, stated that the Complaint did not disclose any cause of action and the Suit was liable to be dismissed.

11. The ***Status Report*** dated 12.02.2020 was filed on behalf of the Defendant Nos.7 and 8, wherein it was stated that unauthorised construction in the Suit Property was booked vide File dated 07.03.2018 and action under Section 345A of DMC Act was initiated vide File dated 28.03.2023 and Sealing Order was passed on 08.05.2019 at the time of execution of Sealing Order, it was found that owner of the builder had carried out further unauthorised construction on Second and Third Floors. Demolition action was taken for Second and Third Floors, *after which the Property was sealed on 23.05.2018*, at 12 points in the presence of Police of PS: Nabi Karim.

12. However, the seal, so affixed, was found tampered and the sealing action was again undertaken on 11.03.2019, and the premises were sealed, which are till date, under seal.

13. The **learned Civil Judge** in the impugned Judgment 12.02.2020, observed that in view of the *Status Report filed on behalf of MCD*, it was evident that the Suit Property had already been sealed and unauthorised construction has been demolished and the prayer 'b' made in the Complaint was duly satisfied.



14. It was further observed that since the premises have already been sealed, there is no question of Defendant Nos.2 to 6 raising any unauthorised and illegal construction therein.

15. In so far as the relief seeking *Permanent Injunction* with respect to raising unauthorised construction in the future was concerned, it was held to be premature, and the cause of action was not subsisting on the date of Order. The *Relief of Mandatory Injunction* for directing Defendant Nos.7 and 8 to restrain Defendants from raising further illegal construction, was also found to be a relief in future. Moreover, it was observed that Defendant Nos.7 and 8 being Government Bodies, are statutorily obligated to perform their duties in accordance with law. **Accordingly, the Suit was dismissed.**

16. Aggrieved by dismissal of the Suit, ***Plaintiffs / Appellants preferred RCA No.01/2021***, essentially on the ground that the learned Civil Judge held that the Property was under seal or that unauthorised construction stood demolished and the relief sought in the Suit was satisfied. *It was claimed that only a small portion had been demolished by NDMC with an intent to misguide the learned Trial Court and the entire illegal and unauthorised construction was still subsisting.* The entire building was illegal and unauthorised and was liable to be completely demolished.

17. Moreover, it has not been appreciated that despite sealing of the premises, the seal was tampered with and further construction was carried out, till the property was again sealed. Respondents have been trying to break the seal of the suit property.

18. It was further asserted that the illegal and unauthorised construction had taken place in connivance with NDMC and Police officials and false Reports are being submitted by NDMC that entire illegal construction has



been demolished. It is clear that the prayer made by the Plaintiffs/Appellants has not been satisfied.

19. It has also not been considered that the entire construction was illegal and unauthorised as no Sanction Plan had been filed, to show that any part of construction was legitimate or legal.

20. *Learned District Judge considered the contentions of the Plaintiffs and concurred with learned Civil Judge* in upholding findings that illegal and unauthorised construction has already been sealed. When the seal was found to be tampered with, it had again put afresh. There was no relief of Injunction against unauthorised construction, which survived.

21. *Learned District Judge further noted* that perusal of the plaint and memo of parties reflects that none of the Plaintiffs was residing adjacent to the suit property. They have no personal interest in the Suit Property. There was no averment made that any infringement was made to their personal right, or if any of their rights was adversely affected by the alleged illegal construction. Plaintiffs have no personal interest in the Suit Property.

22. Suit had also not been filed under Section 91 of CPC, which entitles at least two persons, to institute a *Suit against public nuisance*. Moreover, Suit was barred under Section 41(j) of the Specific Relief Act, 1963.

23. Reliance was placed on the Judgment of this Court dated 16.10.2017, passed in RSA No.243/2017 titled as Rajinder Motwani vs. MCD. It was held that merely by virtue of being residents of a locality, persons cannot become entitled to file Suit for challenging any unauthorised construction. Parties fail to show that their Legal Rights to Air, Water and Light were being affected on account of this construction. **The Appeal was dismissed by observing that there was no merit in the Appeal.**



24. Aggrieved by the dismissal of the first Regular Appeal, the *present Second Regular Appeal has been preferred.*

25. The *Appellants formulated the following substantial questions of law*, which are as under:-

1. *Whether the first appellate court has correctly and rightly relied upon the provisions of Section 91 of the Code of Civil Procedure, 1908, more so when it is not pleaded by the respondents/defendants.*

2. *Whether for a public cause, the provisions of Order 41(j) of the Specific Relief Act are applicable.*

3. *Whether the plaint can be rejected under the provisions of order vii rule 11 cpc being without cause of action and locus.*

4. *Whether the first appellate court has correctly applied the provisions of section 15 and 33 of the Easement Act, 1882.*

5. *Whether the first appellate court has failed to consider the report dated 12.2.2020 wherein the respondent No. 7, NDMC, categorically stated that “the seal was fixed on 23.05.2018 and found tampered. Again, sealing action was taken on 11.3.2019 and the premises were sealed again.”*

6 *Whether both the courts below have committed an error in declining the relief of mandatory injunction against respondents No. 7 & 8, more so, when it is an admitted fact from the reports filed by respondents no.7 & 8 that the construction is being raised illegally and unauthorisedly and has been sealed, are not liable to be demolished under the provisions of DMC Act, 1957.*



26. In the light of these suggested substantial questions of law, a prayer was made that the impugned Judgment be set aside and the Suit of the Plaintiffs, be decreed.

Submissions heard and the record perused.

27. The first and foremost aspect that deserves mention is that the present matter is a Regular Second Appeal, wherein only such substantial questions of law which arise from the impugned judgment can be considered and adjudicated upon.

28. Essentially, the prayer made by the Plaintiffs in the Suit for Permanent and Mandatory Injunction was as follows: -

*a) pass a decree for **permanent injunction** in favour of the plaintiffs and against the defendant, thereby restraining the Defendant No. 2 to 6, their agents, associates, legal heirs, representatives etc. **from raising the illegal and unauthorised construction** in the suit property H. No. 6893, Qila Kadam Sharif, Nabi Karim Paharganj, New Delhi - 110055, area measuring 500 sq. yards, hereinafter called the said property, as shown in the site plan;*

*b) pass a decree of **mandatory injunction** thereby directing the Defendants, their agents, associates, legal heirs, representatives etc. **to demolish the illegal construction** from the property bearing H. No. 6893, Qila Kadam Sharif, Nabi Karim Paharganj, New Delhi- 110055, area measuring 500 sq. yards, hereinafter called the said property, as shown in the site plan;*

*c) pass a decree of **mandatory injunction** thereby directing the Defendants No. 7&8, its agents, associates, legal heirs, representatives etc. not to allow the Defendant No. 2 to 6 to raise any further construction upon the subject property bearing H. No. 6893, Qila Kadam Sharif, Nabi Karim Paharganj, New Delhi - 110055, area measuring 500 sq.*



yards, hereinafter called the said property, as shown in the site plan;

d) pass any other order/s, which this Hon'ble Court deems fit and proper in the circumstances of the case may kindly be passed in favour of the plaintiffs and against the defendants, in the interest of justice.

29. The **learned Civil Judge** had rightly held that in view of the Status Report filed by the MCD and their Written Statement, the unauthorised and illegal construction being carried out in the suit premises had already been sealed and the unauthorised construction was demolished; the relief claimed in regard to restraining the Defendants from carrying out unauthorised construction and for demolition of the same, already stood satisfied in the light of the action taken by the MCD. Nothing more survived in regard to these two reliefs.

30. The *third relief* claimed was in respect of restraining the Defendants from raising any *such construction in the future*. However, learned Civil Judge rightly noted that such relief was premature and no such relief for any apprehensive unauthorised construction that may or may not be raised in future can be granted.

31. Another significant aspect was the *locus standi* of the Appellants / Plaintiffs in filing the Suit. The **learned District Judge** observed that the Plaintiffs were required to show some personal interest. The only basis on which they were raising a grievance was that they were living in the locality and were social workers. They further stated that if unauthorised flats or floors are allowed to be constructed, *the area would become too congested for them to move with ease, through the gali and would create a problem of*



parking and hurdles in the street, due to increase in the number of occupants/owners.

32. This cannot be a ground to confer any legal *locus standi* on the Plaintiffs to file the Suit. If the construction of houses is raised on the Plot as permissible under law, there may be a strain on the public resources, including the congestion in the *gali*, *but such assertions are speculative and do not have any sustainable basis to demonstrate that there would be any impact on the easementary rights of the Plaintiff.*

33. The ***learned District Judge*** had rightly observed that the Suit was not filed under Section 91 of the Code of Civil Procedure wherein a Suit against *public nuisance*, may be filed. *Moreover, such a Suit is required to be filed at least by two persons and that too with the leave of the Court*, which is not the case in the present Suit. There was no public nuisance, which has been borne out, from the averments made in the Plaint.

34. In the case of *Rajinder Motwani vs. MCD*, RSA No. 243/2017, decided on 16.10.2017 by this Court, it was observed that an illegal construction in itself would not give any legal right to a neighbour. *An illegal construction no doubt gives a right to the municipal authorities to remove the illegal construction, but a right of a neighbour arises only if his easementary right to air and light under Section 15 of the Easement Act, 1882, is affected by virtue of illegal construction of the neighbour.* Moreover, such right has to be shown to have been enjoyed for 20 years before any such easementary right is claimed.

35. Furthermore, the right to seek an Injunction by a neighbour is not absolute, in terms of Section 33 of the Easement Act, which requires that disturbance to the easementary rights must actually cause substantial



damage to the neighbour and such infraction must materially diminish the value of the dominant heritage leading to material interference in the physical comfort of the neighbour to live in his own house.

36. In the present case, no such infringement of easementary rights, has even been pleaded by the Plaintiff.

37. *The learned District Judge had rightly observed that the Plaintiffs had no personal interest in the Suit and it was barred under Section 41 (j) of the Specific Relief Act, 1963.*

Conclusion:

38. From the aforesaid discussion, it emerges that the learned Civil Judge, as well as the learned District Judge, had rightly and correctly appreciated the facts in observing that the reliefs claimed were infructuous and the Plaintiffs have no *locus standi* to continue the Suit.

39. These are all findings of fact and the Appellant has not been able to show any infirmity in the Order. No substantial question of law has been shown to have arisen in the present Second Regular Appeal.

40. **There is no merit in the Appeal, which is hereby, dismissed. Pending Applications are also disposed of.**

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 17, 2026/RS