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Court : Delhi

Decided On : Oct-15-2014

Judge : Manmohan Singh

Appellant : Arvind Singhal and ors.

Respondent : Max therapiya Limited and ors.

Advocate for Pet/Ap. : Mr. Raman Duggal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on:

17. h September, 2014 Judgment pronounced on:

15. h October, 2014 + CS(OS) No.1724/2014 ARVIND SINGHAL & ORS. Plaintiffs Through Mr.Raman Duggal. Adv. with Mrs. Manjula Gandhi, Mr. Shivanshu Kumar, Advs. versus MAX THERAPIYA LIMITED & ORS. Defendants Through Mr. Sandeep Sethi, Sr. Adv. with Ms. Anant Garg, Adv. for D-1. Ms. Khushboo Tyagi, Adv. for D-2. Mr. Gaurany Kanth, Adv. for D-3. Mr. Jaswinder Singh, Adv. for D-4. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By this order I propose to decide all the pending applications in this suit for declaration, permanent and mandatory injunction filed by the plaintiffs against the defendants in respect of property bearing No.2, Padmini Enclave, Aurobindo Marg,

New Delhi- 110016 (hereinafter referred to as the suit property).

2. The details of the applications are given as under : The following applications are pending disposal at this stage: (i) I.A. No.10958/2014 under Order 39 Rules 1 and 2 CPC. (ii) I.A. No.10959/2014 under Section 478 (3) of the DMC Act read with Section 80(2) and Section 151 CPC. (iii) I.A. No.11975/2014 under Order 26 Rule 9 CPC. (iv) I.A. No.13602/2014 under Section 151 CPC. (v) I.A. No.14450/2014 under Order 7 Rule 11 read with Section 151 CPC.

3. Brief facts are that Padmini Enclave is a colony adjacent to Q- Block of Hauz Khas on Aurobindo Marg, New Delhi -110016 that comprises of only 12 dwelling units all of which are residential since the said colony was carved out only for residential purposes as per the approved Lay-Out Plan sanctioned by defendant No.3 vide Resolution No.13 dated 30th July, 1958. The said colony comprises of 20 bighas of land in Khasra Nos. 370 and 371 min in Village Kharera, Tehsil Mehrauli, Delhi.

4. The plaintiffs are the owners and residents of property Nos.3, 10, 11 and 12, Padmini Enclave, Aurobindo Marg, New Delhi - 110016. Defendant No.1 is the lessee and defendant No.2 is the owner and lessor of the suit property.

5. The defendant No.1 has taken on lease the suit property measuring 1169 sq. yards, the built-up area of about 6900 sq. ft. comprising of ground floor, first floor and second floor including the entire terrace and all open spaces within the suit property, for the purposes of running an Ayurvedic Well-beinf Healing and Spa vide registered lease agreement dated 5th March, 2014 from defendant No.2.

6. Defendant No.3 is South Delhi Municipal Corporation, defendant No.4 is Ministry of Culture, Government of India and defendant No.5 is the National Monuments Authority. The defendant No.6 is Delhi Jal Board.

7. The plaintiffs have alleged in the plaint that the suit property is a residential property wherein defendant No.1 has undertaken heavy repairs and construction works in contravention of the Sanctioned Building Plan of the suit property sanctioned by the Municipal corporation of Delhi as well as the Master Plan of

Delhi 2021 and the Zonal Development Plan of Zone F (South Delhi) which earmarked the entire colony i.e. Padmini Enclave exclusively for residential use. Further, entries (xxxi) and (xxxii) of Notifications dated 15th September, 2006 for commercial streets in the Zonal Development Plan for Zone F excludes from its purview the properties from Red Light of Kaushalya Park to the Boundary of NCERT in Aurobindo Marg, thus the said area is completely covered under residential use.

8. It is also stated by the plaintiffs that vide Notification dated 16th June, 1992, an area extending upto 100 meters from limits of a nationally protected Monument has been declared to be a Prohibited Area and a further area upto 300 meters have been declared to be a Regulated Area by the Archaeological Survey of India. All 12 properties of the said colony i.e. Padmini enclave fall within the prohibited Area of 14th Century, nationally Protected Monument of Idgah. The only Authority to grant permissions for carrying out any construction activity in the Prohibited or Regulated area of a nationally Protected Monument is defendant No.5 as per the Ancient Monuments and Archaeological Sites And Remains Act, 1958 as amended (hereinafter referred to as the AMASR Act).

9. It is the case of the plaintiffs that on 4th May, 2014, plaintiff No.1 who is owner of the property adjacent to the suit property on observing and enquiring thereof came to know about the suit property being leased to defendant No.1 by defendant No.2 for commercial/non-residential purposes. Pursuant thereto the plaintiffs wrote a letter to defendant Nos. 1 and 2 to stop the repairs and construction in the suit property which as per the plaintiffs are illegal and unauthorized and also emailed defendant No.2 in this regard.

10. It has been stated that defendant No.1 is intending to start full- fledged multiple non-residential/commercial activities of running an Ayurvedic nursing Home i.e. Ayurvedic Wellbeing Healing and Spa in the suit property. However, no such activity can commence without a sanctioned revised Building Plan. Therefore, the plaintiffs then approached defendant No.3 vide letter dated 14th May, 2014 with a request to inspect the suit property and in case of violations, to seal the suit property. Plaintiffs vide letter dated 15th May, 2014 also approached defendants

No.4 and 5 with a request to initiate immediate action to stop the illegal construction activities going on.

11. The plaintiffs have also lodged complaints with SDMC Control Room on 15th May, 2014 and 16th May, 2014 about the illegal heavy construction activity underway and the need to put immediate halt to it. However, the construction is being continued with commercial activities having commenced partly without any revised Sanction Plan or an approved Regularization Plan.

12. The plaintiffs have further approached defendant No.6 i.e. Delhi Jal Board informing about the misuse of the domestic water supply connection for the purposes of illegal non- residential/commercial activity in violation of the relevant provisions and the local police authority/officials i.e. P.S. Hauz Khas, New Delhi informing about the said construction being undertaken by defendants No.1 and 2 and public nuisance being created in the residential colony of Padmini Enclave.

13. It is alleged by the plaintiffs that after having approached the relevant authorities but to no avail, the plaintiffs filed the present suit. The illegal commercial activities in the suit property needs to be regulated in order to manage and mitigate the associated adverse environmental impact related to congestion, increased traffic and resultantly, lack of parking including the increased pressure on civic amenities and would damage the residential character of the said colony.

14. It is mentioned in the plaint that defendant No.1 has already paid registration and conversion charges to defendant No.3 for the period of December, 2013 to March, 2014, in respect of which permission is alleged to already been accorded to it by defendant No.3 vide letter dated 31st December, 2013. The said permission ought to be declared void and illegal as in contravention with the relevant provisions.

15. The present suit has been filed by the plaintiffs against the defendants seeking restrain order as well as mandatory injunction against the defendant No.1 from using the property bearing No.2, Padmini Enclave, Delhi (suit premises) for any use other than the residential use as well as for restraining the defendant No.1 from carrying out any construction or repair activity. Plaintiffs have further alleged

that repair work carried out by the defendant No.1 in the suit premises is in violation of the bye-laws, provisions of Delhi Municipal Corporation Act, 1957 (DMC Act), Ancient Monuments and Archaeological Sites and Remains Act, 1958 (ASI Act) and Master Plan Delhi, 2021 (MPD2021.

16. The defendant No.1 has filed the written statement wherein defendant No.1 has denied the allegations, contentions and averments made in the plaint. It is averred that filing of this suit is an abuse of process of law. The plaintiffs have no locus standii to file the present suit which has been filed with the ulterior motive of carrying out a fishing and roving enquiry and for invasion of personal space and private property of the defendant No.1.

17. The suit is not maintainable in view of the specific bar contained in Section 347 E read with Sections 347B(1) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the DMC Act) and Section 20-O of the Act. Plaintiffs have sought a declaration in prayer (A) of the Suit for the permission dated 31st December, 2013 issued by the MCD to be declared to be illegal and void-ab-initio instead of availing the remedy provided under Section 347B(1) the DMC Act. Based on the premise that the said permission issued by the MCD is illegal, the plaintiffs have also sought permanent and mandatory injunctions in prayers (B to D) in respect of the suit property.

18. The defendant No.1 has already approached the MCD requesting for permission for using the property for Ayurvedic Nursing Home in accordance with terms of MPD2021vide letters dated 5th November, 2013 and 17th December, 2013. In response, vide its letter dated 31st December, 2013, the MCD granted permission for use of the property for Ayurvedic Nursing Home as per Clause 15.7 of the MPD-2021. The conversion charges in this respect were also accepted by MCD for the period upto year 2014-15.

19. As far as repairing in the properties is concerned, it is stated that the defendant No.1 was only carrying out repair and renovation activity in the premises in accordance with the Bye Law No.6.4.1 of Building Bye-laws, 1983. The defendant No.1 on, 28th May, 2014 received a notice dated 21st May, 2014 issued by MCD directing stoppage of work on the ground that no permission has been obtained

from Archaeological Survey of India (ASI). The defendant No.1 was under the bonafide belief that such work in the said property does not require any permission from ASI. Upon receipt of the said notice on 28th May, 2014, the defendant No.1 was apprised by the authorities for the very first time about the requirement of approval from ASI. The defendant No.1 stopped the work in the suit property and applied to the ASI for seeking its approval for carrying out the repair work in the suit property under Section 20C and 20D of the AMASR Act. Further, defendant No.1 also supplied the site plan, necessary approvals and other requisite documents with ASI for getting the permission. After inspection of the Suit Property and upon its satisfaction, ASI has granted the permission vide its letter dated 25th June, 2014. The said permission has been granted by the Competent Authority as per provisions of Ancient Monument and Archaeological Site and Remains (Framing of heritage bye-laws and Other Functions of the Competent Authority) Rules, 2011 in accordance with law.

20. It has been stated that the concerns raised by the plaintiffs are beyond the scope of jurisdiction of this Court. Plaintiffs by way of the present suit are trying to interfere into the scope of ASI which is not permitted under the AMASR Act. In case of objection regarding the permission granted by the ASI, plaintiffs have to approach the concerned authority under the AMASR Act only and not this Court as Section 20-O of the AMASR Act clearly bars the jurisdiction of civil courts in entertaining any matter or granting injunction in respect of which Authority is empowered. Section 20-O reads as under :

20-O. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

21. It has been stated that MCD and Archaeological Survey of India (ASI), are the competent/statutory authorities exercising jurisdiction over the issue. Once the said authorities have granted permission to the defendant No.1 after carrying out inspection of the premises on several occasions, there is no reason for the plaintiffs to verify the actions of these authorities including challenging the

permissions granted by them by way of invasion of private property of defendant No.1.

22. With regard to the contention of the plaintiffs that the residents of the colony where the suit property is located are facing problems due to the activities of the defendant No.1, it has been stated that no inconvenience has been caused to any of the residents of the colony or the nearby area. In total, there are 12 occupants in the colony, out of them, 4 are plaintiffs herein and 1 is defendant No.1. All the remaining 7 occupants have already granted no objection for the activities carried out by the defendant No.1 in the suit property.

23. It is denied that the said colony, i.e. Padmini Enclave, can be used only for residential purposes under MPD-2021 and the Zonal Development Plan of Zone F (South Delhi-1), and not for any other purpose. It is stated that in accordance with provisions of MPD2021and MCD bye-laws, the property can be used for any other purpose as permitted therein which includes Nursing Home. It is stated that the suit property can be used for Ayurvedic Nursing Home in accordance with Chapter 15 of the MPD2021and the permission of defendant No.3 dated 31st December, 2013.

24. It is also denied that the defendant No.1 is intending to use the suit property for any other purpose other than Ayurvedic Nursing Home as permitted by the MCD. Defendant No.1 is only carrying out repair and renovation activity in the premises in accordance with law for which the responsibility of granting permissions is vested with ASI. The plaintiffs have deliberately not impleaded ASI as a defendant. Hence the present suit is liable to be dismissed for nonjoinder of proper and necessary parties.

25. It is stated that since the execution of the said Lease Deed is for the purpose of running Ayurvedic Nursing Home, defendant No.1 has only carried out requisite repair and renovation work in the suit property as is permitted under the building bye-laws of Delhi. It is denied that any misuse of the suit property has been carried out by the defendant No.1 or the activity carried out by the defendant No.1 is contrary to the terms and conditions of the AMASR (Amendment and Revalidation) 2010, or AMASR Rules, 1959 as amended or the DMC Act or the DMC Rules,

1958 or the MPD-2021 and so far no illegal commercial activity in suit property has been carried out by the defendant No.1. The repair work carried out by the defendant No.1 in the suit property have no any adverse environmental impact or result in congestion, increased traffic, lack of parking or increased pressure of civic amenities. It would not damage the residential character of the Padmini Enclave colony and its neighbourhood or any public nuisance is likely to be caused. The user permitted by MCD vide its letter dated 31st December, 2013 is as per the terms of MPD-2021 and MCD bye-laws.

26. It is stated that the defendant No.1 has already obtained permission from the MCD vide letter dated 31st December 2013 and ASI vide letter dated 25th June, 2014 which have been granted in accordance with law. As such, in case the Plaintiffs have any grievance against the order dated 31st December 2013 or 25th June, 2014, the same cannot be raised by way of the present suit. The challenge to the said order by the plaintiffs in the present suit is barred under the DMC Act and AMASR Act.

27. The purpose for which the defendant No.1 is intending to use the suit property will not result in any occupancy load on the facilities like water, sanitation or drainage of the residential society. In fact, the same would be beneficial to the public at large and will be advantageous to the residents of the colony. The defendant No.3 has jurisdiction to sanction the revised building plan for any purpose other than the residential use. The sanction granted by the defendant No.3 is contrary to the terms of the MPD-2021. The permission is to be granted as per the procedure prescribed under law and is in terms of the provisions of MPD-2021. The same hence should not be declared void and illegal or is liable to be set aside by this Court.

28. It is denied that the defendant No.1 or defendant No.2 have mis-used the ground water through bore-well. It is stated that till date defendant No.1 has not used the domestic water provided by Delhi Jal Board for the repair work or for any for any commercial purposes. The defendant No.1 has awarded a contract to a contractor for carrying out the repair work in the suit property and it was the responsibility of the said contractor to arrange water required in the said repair

work. In any case, the defendant No.1 has already applied with the Delhi Jal Board for a commercial water connection in the Suit Property vide letter dated 30th June, 2014. Therefore, there is no occasion for defendant No.6 to initiate any action against the defendant No.1 or defendant No.2 on the false complaint filed by the plaintiffs.

29. Various applications which are filed by the parties are being decided by this Court, as per brief details given below : (a) I.A. No.10958/2014 under Order XXXIX Rule 1 and 2 read with Section 151 CPC has been filed on behalf of the plaintiffs seeking ad-interim injunction restraining defendants No.1 and 2 from carrying out any construction or repair activity and use of the suit property for any other purpose(s) other than for residential purposes including specifically not for purposes of running an Ayurvedic Nursing home or for any other use in the nature of nonresidential/commercial use and/or from misusing the suit property till disposal of the suit. (b) I.A. No.10959/2014 under Section 478 (3) of the DMC Act read with Section 80(2) and Section 151 CPC has been filed on behalf of the plaintiffs seeking permission from the Court to dispense with the requirement of notice under Section 478 (3) of the DMC Act and Section 80(2) CPC. (c) I.A. No.11975/2014 Order XXVI Rule 9 read with section 151 CPC C has been filed on behalf of the plaintiffs seeking appointment of a Local Commissioner to visit the suit property and to inspect and verify the construction/changes carried out by defendant Nos. 1 and 2 vis--vis the approved Building Plan of the suit property with the help of a videographer and a photographer. (d) I.A. No.13602/2014 under Section 151 CPC has been filed on behalf of the plaintiffs again seeking appointment of a Local Commissioner to visit the suit property; restrain the defendant No.1 from carrying out construction/repair/renovation in the suit property; direction to defendant No.3 and 5 to initiate action against defendant No.1 in accordance with law for contravening the terms of the alleged permission vide letter dated 25th June, 2014. (e) I.A. No.14450/2014 has been filed by the defendant no.1 under Order VII Rule 11 read with Section 9 of the CPC for rejection of this suit being barred under Section 347 E read with Section 347B (1) of DMC Act and Section 20-O of the AMASR Act.

30. There is no doubt that permission by ASI was subject to approval by local authorities. It is argued by Mr.Sethi that said allegations are without substance as the requirement to seek any approvals from local authorities arises, only if it was necessary. As per the ASI permission, defendant No.1 was to obtain necessary approvals from local authorities in accordance with law. When the law doesnt prescribe any approvals for carrying out the repair work in accordance with Bye-Law 6.4.1, there was no reason or need for the defendant No.1 to approach any local authorities for any permission/approval. It is the case of defendant No.1 that the defendant No.1 is carrying out only those activities in the suit premises which are permissible as per Bye-law 6.4.1.

31. A short affidavit has been filed by defendant No.3 to application of the plaintiff being I.A. No.10958/2014 under Order 39 Rules 1 and 2 CPC and it was clarified that the defendant No.5 has not issued No Objection Certificate in favour of defendant No.1 to use the said property as desired. With regard to repair and renovation, notice was issued to defendant No.1 who has filed the reply and requested for preponed hearing.

32. Both the parties have made their submission and have also filed written arguments.

33. From the entire gamut of the case, three moot issues are involved in the matter : i) Whether the repairs and renovation being carried out by defendant No.1 requires prior permissions from MCD and ASI or not in the nature of the present case ?. ii) Whether the suit filed by plaintiffs is maintainable in view of averments made in the plaint ?. iii) Whether before commencing any activity other than residential i.e. commercial or other activity under the relevant provisions of Master Plan of Delhi-2021 and Delhi Municipal Corporation Act, 1957 ?. Repairs and Renovation 34. It is argued by Mr. Raman Duggal, learned counsel for the plaintiffs that the nature of unauthorized construction is being carried-out in the Suit Property within the designated Prohibited Area of the Idgah of Kharera - a Centrally Protected Monument. Under the Ancient Monuments Archaeological Sites Remains (Amendment & Validation) Act, 2010 even repairs/renovation of existing structure/structures within the designated Prohibited Area of a Centrally

Protected Monument without obtaining a NOC from the Competent Authority for the carrying-out of such repairs/renovation to the existing structure/structures is illegal.

35. Mr.Raman Duggal, learned counsel for the plaintiffs has argued that the suit property has already been booked for violation of the provisions of AMASR (A&V) Act, 2010 by the Archaeological Survey of India (ASI) as well as by the SDMC and the violation was also reported to the Deputy Commissioner of Police, South District, Hauz Khas, New Delhi -110016 for taking necessary action and for issuing necessary instructions to the SHO - Hauz Khas Police Station to immediately put to stop, the said unauthorized construction being carried-out in the Suit Property. Thereafter, defendant No.1 sought the permission from ASI only on 27th May, 2014 i.e. much after when the Suit Property was booked by the ASI on 6th May, 2014 and issued a Show Cause Notice on 19th May, 2014.

36. It is admitted by Mr. Duggal that after filing of present suit, the Competent Authority, ASI vide its letter dated 25th June, 2014 had granted a conditional permission which was subject to, inter alia, the following conditions:

(i) Undertake the repair/renovation strictly in accordance with the plan approved / sanctioned by MCD / NDMC / DDA. (vii) Use the premises for purpose as per approval of local authorities concerned and no negative trade or usage shall be allowed which may affect adveresely the ambience around the site. No cell tower shall be allowed. (ix) Obtain necessary sanctions prior to carrying out the proposed repair and renovation as per the provisions of MCD Act and MPD2021

37. Mr. Duggal states that no doubt the permission is granted but it was subject to the conditions mentioned above. He argues that none of the above three conditions imposed by the Competent Authority - ASI, were fulfilled by the defendant Nos. 1 and 2. They have neither applied to the SDMC for obtaining requisite sanctions as per the provisions of Sections 331, 333 and 347 of the DMC Act 1957 prior to carrying-out the proposed repairs and renovation nor has any sanction or permission been granted by defendant No.3 (SDMC) for the same. The repairs and renovation including construction work being carried-out by defendant No.1 in the Suit Premises is not in accordance with the sanctioned

Building Plans dated 19th February, 1990. Any permission now applied or accorded cannot ratify/cure the inherent illegality. Hence, even if the permission is granted by SDMC at this stage, there is a violation of the approval of the Competent Authority - ASI. The entire repairs and renovation including construction activity being undertaken is illegal.

38. The proposed repairs and renovation work could not have been commenced by defendant No.1 without prior compliance with the requirement to secure the requisite sanctions as per the relevant provisions of the DMC Act 1957 and the MPD2021 The defendant Nos. 1 and 2 hence are liable to be prosecuted as per the relevant provisions including Section 30 A of the AMASR Act, 1958 read with AMASR Rules 1959 as the repairs and renovation including construction work had commenced prior to the securing of the above referenced Conditional Permission dated 25th June, 2014 from the Competent Authority - ASI. The work already carried-out till date cannot be said to be in consonance with the said Conditional Permission. The SDMC vide its Show Cause Notice dated 21st May, 2014 had booked the suit premises for the repairs and renovation including construction work being carried-out by defendant No.1 without any approval and sanction.

39. As mentioned earlier, it is the case of defendant No.1 that the defendant No.1 is only carrying out repair and renovation activity in the premises in accordance with the Bye Law No.6.4.1 of Building Bye-laws, 1983. It is argued by Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of defendant No.1 that as per the Bye Law No.6.4.1, activities listed in the clause do not require any prior permission from MCD. The suit premises falls under the category of Prohibited Area and as per the provisions of ASI Act, prior permission from ASI is required for carrying out any repair or renovation work in the property falls in the said area. The defendant No.1 was not aware initially, however, after having knowledge, defendant No.1 applied for the same with ASI. After inspection of the suit premises, and upon its satisfaction, ASI granted permission vide its letter dated 25th June, 2014.

40. It is pertinent to mention here that after the order was reserved, the defendant No.1 has produced the copy of the order passed by defendant No.3. The operative

part of the orders reads as under :

As such, the notices has submitted NOC from Archaeological Survey of India, to corroborate or justify the averments of the written submission dated 14/08/14, the site got inspected by concerned JE(B) and it has been reported that the existing construction is well within the envelop and does not violate the sanction accorded vide file No.65/B/HQ/90 dt. 30/05/90 and no new additional coverage was noticed at site. Further, the renovation carried out at site falls within the definition of clause 6.4.1 of Building Bye Laws, 1983. Therefore, taking note of the submissions (with documentary evidence), NOC from Archaeological Survey of India and site inspection conducted by the JE(B) concerned, the undersigned is of the considered view that the notice bear no significance. Now, I, P.K. Rastogi, Assistant Engineer (Bldg.), South Zone vested with the powers of the Commissioner, SDMC (erstwhile MCD) under Section 343 (1) read with Section 491 of DMC Act, hereby close the show cause notice under reference.

41. It is not disputed by the plaintiffs that ASI is empowered to cancel the permission granted in case it considers appropriate based on facts. The said permission was not cancelled. The plaintiffs have not challenged the validity of the permission granted.

42. MCD and ASI are the competent/statutory authorities exercising jurisdiction over the issue. Once the said authorities have granted permission to the defendant No.1 after carrying out inspection of the premises on several occasions, there is no reason or occasion for the plaintiffs to challenge in the suit proceeding by way of civil action rather to approach to the concerned authority under the various provisions by raising the objections as Section 20O of ASI Act bars the jurisdiction of Civil Courts in entertaining any matter or granting injunction.

43. Rather ASI (Competent Authority) is empowered to grant such permission for repair and renovation under Rule 6(VI) read with rule 8 of the ASI Rules with intimation to the Authority, i.e. defendant No.5. The said permission for repair and renovation was granted to defendant No.1 by ASI with intimation to the Authority. Under Section 20-I(c) of the ASI Act, one of the powers and functions of the Authority include the function to oversee the working of the Competent Authority.

Therefore, Authority has jurisdiction over the permission granted by Competent Authority, and therefore the bar under Section 20-O of the ASI Act in the facts and circumstances of the present case.

44. It is not denied that complaints were filed by the Plaintiffs with the various authorities, defendant No.1 was also served with the show cause notice (SCN) on 28th May, 2014 from MCD directing it to stop work on the ground that no permission has been obtained from Archeological Survey of India (ASI). It is case of the defendant No.1 that it had stopped the work in the suit premises and applied to the ASI seeking its approval for carrying out the repair/renovation work in the suit premises under Section 20C and 20D of the ASI Act. After inspection of the suit premises and upon its satisfaction, ASI was pleased to grant permission vide its letter dated 25th June, 2014. The said permission has been granted by the Competent Authority as per provisions of Ancient Monument and Archaeological Site and Remains (Framing of heritage bye-laws and Other Functions of the Competent Authority) Rules, 2011 (ASI Rules)and a copy of the said permission was also marked/ intimated to National Monument Authority. The ASI (Competent Authority) is empowered to grant such permission for repair and renovation under Rule 6(VI) read with rule 8 of the ASI Rules with intimation to the Authority, i.e. defendant No.5. Therefore, there is force in the submission of Mr.Sethi that under these circumstances, the relief for appointment of Local Commissioner is not called in order to conduct fishing and roving enquiry and for invasion of personal space and private property of the defendant No.1.

45. Even otherwise there is a specific bar under Section 347 E read with Sections 347B(1) of the Delhi Municipal Corporation Act, 1957 and Section 20-O of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (ASI Act). As it is evident from the plaint, the Plaintiffs have sought a declaration in prayer (A) of the Suit for the permission dated 31.12.2013 issued by the MCD to be declared to be illegal and void-ab-initio instead of availing the remedy provided under Section 347B(1) the Delhi Municipal Corporation Act, 1957. Based on the premise that the permission dated 31st December, 2013 issued by the MCD is illegal, the plaintiffs have also sought permanent and mandatory injunctions in prayers (B to D) in respect of the Suit premises. The concerns raised by the plaintiffs are

beyond the scope of jurisdiction of this Court. Plaintiff by way of the present suit is trying to interfere into the scope of ASI which is not permitted under the ASI Act as Section 20-O of the ASI Act clearly bars the jurisdiction of civil courts in entertaining any matter or granting injunction in respect of which Authority is empowered.

46. The reference by the plaintiffs to Annexure 1 of the Lease Deed between the defendant No.1 and defendant No.2 has no force since the said Lease Deed clearly states that requisite approvals from the concerned authorities, as may be required, shall be obtained, if required. Relevant Clause in this respect from the Lease Deed is reproduced below:

9. Modifications, Repair & Maintenance: (ii) The Lessee shall not have any restriction with regard to fit outs either interior or exterior provided that fit outs are solely for the Purpose or as required by the statutory body for smooth running of Purpose, including but not limited to installation and/or erection of lifts, DG Sets, cabins, rooms, work stations, telephone, air conditioner, computers, water cooler, and any other structures/equipment that the Lessee may require from time to time to carry on its Purpose at the Lease Premises at the cost of the Lessee. The Lessee shall ensure that no building Regulations are violated and it shall at its own cost and responsibility seek and obtain the prior permissions and approvals as may be required from all concerned authorities and it shall pay all the charges and costs in respect thereof and shall keep the Lessor fully free and indemnified form all costs claims demands and losses whatsoever in that connection. The Lessee shall ensure that any repair, modification, alteration or addition etc. work carried out by it shall not cause any damage to the main structure of the Leased Premises. It is agreed between Parties that the Lessee shall carry out alteration/modification the Lease Premises more specifically mentioned in Annexure 1 attached hereto. If any further alteration/modification is required in the Leased Premises for the Purpose, the Lessee may carry out the same with prior intimation to the Lessor and subject to the prior approvals of all concerned authorities as may be required. The Lessor at its own cost shall be responsible for applying for and obtaining all prior approvals and permissions from concerned authorities.

(Emphasis Supplied) 47. In any case, without deciding controversy as carrying out the nature of construction activity permissible was required whether under Bye Law No.6.4.1 or not as of today, there is an order dated 29th September, 2014 passed by Asstt. Engineer Building South Zone having come to the conclusion that site got inspected by the concerned JE (B) and it has been reported that the existing construction is well within the envelop and does not violate the sanction and no new additional coverage was noticed at site. The renovation carried out falls within the definition of clauses 6.4.1 of Building Bye Laws, 1983. Thus, no interim orders are called for. The plaintiffs are at every liberty to challenge the same before higher authority in accordance with law.

48. With regard to second issue regarding maintainability of suit, learned counsel for the plaintiffs has referred the following decisions : (i) A Division Bench of this Court in S Hardayal Singh Mehta and Anr Vs. Nirmala Devi and Ors., AIR1984 Del 350, wherein it had an occasion to deal with a similar situation to the present case i.e. the plaintiff therein had filed a suit against the defendants alleging that running of a guest house in the residential premises/apartment was causing nuisance to the plaintiff, the said guest house being operated without obtaining requisite approval and sanctions form the authorities, had held in the following terms :

12. ADMITTEDLY, the activity of running of a guest house in the premises is unlawful inasmuch as no license either under the Delhi Municipal Corporation Act or the Delhi Police Act has been obtained in the absence of which it is an offence to run a guest house.

13. To my mind, absence of a statutory license which entails prosecution may certainly be a relevant consideration for grant of injunction or otherwise when the question of balance of convenience is considered (17) It would have been more appropriate for the Mehtas to make a submission to the court that they would not run the guest house till they were granted license by the authorities and to defer consideration of the applications filed by Nirmala Devi till such time as a license was granted. Their attitude, however, appears to be one of defiance of law which the court cannot countenance.

Justice D.K. Kapur, in his separate concurring judgment separately held:

(28) If the activity is without a license, it is per se unlawful and, Therefore, any disturbance which can be described as intolerable is likely to lead to the grant of an interim injunction to restrain the carrying on of such activity. (29) There is, Therefore, no doubt that a trade carried on with a license is to be viewed quite differently from a trade carried on without a license So, it is a case in which injunction had to be granted at the interlocutory stage. In as much as the learned single judge has thought fit to grant the injunction, I do not think this is a fit case where the discretionary relief already granted to the plaintiffs should be discharged (ii) Another Division Bench of this Court in Rohit Talwar & Ors. Vs. MCD and Ors., 49 (1993) DLT25(DB), wherein the contention of the Petitioner was that the property in question was allowed for residential use only and it cannot be used cannot be used for commercial purposes or non residential use and that will be contrary to the Delhi Development Act, 1957 (DD Act), the rules and regulations framed there under, under the Master Plan, the Zonal Plan and the Layout Plan of the colony, all being statutory in nature and that the use of the property in question for any other purpose except residential was illegal and contrary to the provisions of Delhi Municipal Corporation Act, 1957 (DMC Act), it was held by this Court :

17. The case of the petitioners is more in the realm of tort of nuisance for which they have to knock at the door of civil court. However, respondents MCD and DDA shall be bound by their statement that they will initiate actions in accordance with law. That action on their part certainly brooks no delay The aforesaid judgment has also been relied by the Division Bench of this Court in Shiv Charan Vs. MCD and Ors., 69 (1997) DLT180(DB), which has also held inter-alia to the effect that Civil Suit is maintainable in such disputes. (iii) In yet another case of Fatima Joao Vs. Village Panchayat of Merces, AIR2000 Bom. 444, a Division Bench comprising of Justice F. I. Rebello and Justice V. C. Daga of the Bombay High Court, discussing the scope and jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure, 1908 to deal with and the maintainability of the Petition on the ground of alternative efficacious remedy by way of Suit in a Petition which was the culmination of feud between two neighbours against misuse of the suit property and illegal construction therein, it was held as:

21. It is also well settled that when an alternate equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke writ jurisdiction to seek a prerogative writ. It is true that the existence of an adequate legal remedy does not affect jurisdiction to issue writ, but as observed by the Apex Court in Rashid Ahmed v. Municipal Board, Kairana, [1950].1SCR566 that the existence of an adequate legal remedy is to be taken into consideration in the matter of granting prerogative writs; and wherever such remedy exists, it will be a sound exercise of discretion to refuse the relief in exercise of discretion under Article 226 unless there are good grounds therefor. None of such good grounds | exist in the present case. On the other hand, the point for determination whether respondent No.1 was justified in regularising the alleged construction and/or regularisation thereof has affected the easementary rights of the petitioner turns on the interest of the respective parties in the property and recognition thereof. These are the questions on which there are serious disputes between the parties which cannot be satisfactorily answered without taking evidence. It is not the practice. Since all these questions of that character are raised in the writ petition, in our opinion, it would be a proper exercise of discretion in the present case, if the parties are directed to adopt the civil remedy. 33. Independently of the discussion, is it possible to hold that the Civil Court would have jurisdiction. Under Section 9, jurisdiction of the Civil Court to entertain all civil disputes, can be taken away by excluding its civil jurisdiction. Goa Panchayat Raj Act, 1993 has no provision excluding the jurisdiction of the Civil Court. Earlier it has been discussed that there is also no implied ouster. Under Section 38 of the Specific Relief Act, a perpetual injunction can be granted to prevent the breach of an obligation existing in favour of a party whether expressly or by implication. "Obligation" has been defined to mean every duty enforceable by law. What therefore, is the duty which is enforceable against a neighbour who violates the provisions of the Goa Panchayat Raj Act, 1993. Will putting up a construction without taking a licence or by taking a licence and constructing contrary to the licence, give to the neighbour a right. Does the person constructing owe a duty to the neighbour not to construct without a licence or contrary to the licence ?. Can this be said to be a right enforceable in a Civil Court ?. Easements, in so far as light and air, are concerned in areas falling within the jurisdiction of local bodies are subject to the Acts, Rules and

Regulations of such bodies. This is pursuant to the powers conferred on local bodies by various statutes to regulate construction activities within their jurisdiction. Therefore, does this duty cast by the statute on the neighbour, create an obligation which would be enforceable in a Civil Court. If it can be spelt out from the act itself, then the Civil Court would have jurisdiction. In respect of construction contrary to licence, extraordinary jurisdiction of this Court can be invoked to direct the local body to enforce the provisions of the acts, rules and regulations. If, therefore, the extraordinary jurisdiction available, a civil suit would be maintainable to direct by way of mandatory injunction, the local authority to discharge its duties under the Act. Where therefore, a local body is a party, there is no difficulty whatsoever. 35. Any scheme framed under the Act, is for the benefit of the residents of the locality. The local authority acts in the aid of the scheme. The rights of the residents in an area are invaded by illegal construction. A scheme for the residents must be planned in accordance with the requirements of the residents. It is, therefore, clear that making of a scheme, or bye-laws or building regulations is for the planned development of the area. It is for the benefit of the citizens residing in the area. A neighbour who is affected, therefore, by an illegal construction, has an obligation in his favour based on which he can maintain a suit for perpetual injunction. We, therefore, find no difficulty in holding that a neighbour would have the right to maintain a suit.

36. It is, therefore, clear that the building regulations are enacted for the ordinary development of the area. They are to enable citizens' healthy environment. The right to healthy environment forms a part of the right to live. This has been recognized in Bangalore Medical Trust (supra). Once this right is recognized, it is traceable to Article 21 itself. The right to live therefore would be enforceable at the instance of a citizen aggrieved by construction contrary to the provisions of the Goa Panchayat Raj Act, 1993.

(iv) In a recent Order dated 20.12.2013 in Mr. K Srinivas Rao Vs Mr. S. Narayanan and Ors., 2014 (2) LW92 in CS No.382 of 2013, the Madras High Court while dealing with yet another similar situation relying upon the above judgment of Bombay High Court has held, as follows:

21C.As per the approved plan, sanction was given only for residential building. The defendant's Flat can be put to residential use alone. Due to the illegal activities carried out by the defendant, the other residents of the building would be put to serious hardship and problems. Thus, the plaintiffs have clearly made out a case that the defendant is interfering with their civil rights by creating nuisance. Therefore, the present suit is only to adjudicate the civil rights of the plaintiffs, who are co-owners of the same building. Therefore, I am of the opinion that the averments in the plaint clearly make out a definite case to strengthen the civil rights of the plaintiffs. Therefore, the submission made by the learned counsel for the defendant that the suit is barred under Section 9 of CPC cannot be accepted 35A reading of the above said judgment would show that when a person/neighbour violates the provisions of the Municipality Act and Rules and involved in a construction of building, without obtaining any licence from the authorities concerned, and thereby if he causes disturbance to the civil rights of the others, a civil suit is maintainable for restraining such person, who violates the Municipality Acts and rules, Therefore, I am of the opinion that the present suit is not hit by Section 9 of CPC. In the result, the Application No.2639 of 2013 filed to reject the plaint and the Application No.2464 of 2013 filed to vacate the interim injunction are dismissed. The interim injunctions passed by this Court on 14.06.2013 in O.A. Nos. 424 & 425 of 2013 are made absolute. Application Nos. 2558 & 2559 of 2013 are also dismissed.

49. Considering the averments made in the plaint and documents filed alongwith the plaint and decision referred by the plaintiff, it is clear that in the present circumstances a Civil Suit is maintainable and is not hit by Section 9 of CPC and under Section 38 of the Specific Relief Act, 1963 a perpetual injunction can be granted to prevent the breach of an obligation existing in favour of a party whether expressly or by implication. The said finding cannot be arrived at this stage in view of allegation made in the plaint as facts are disputed facts which cannot be decided in the writ petition. Thus, at this stage I am not inclined to reject the plaint as prayed for. However, the objection raised by the defendant No.1 in the written statement shall remain intact and would be decided at the appropriate stage of the suit.

50. With regard to third issue involved in the matter, no doubt that as per scheme of the Master Plan mandates its compliance by conformity to the prescribed Use. The use in Padmini Enclave as per Master Plan, Zonal Development Plan, Layout Plan and Sanctioned Plans is only residential. As per the MPD2021is a rule and a departure therefrom, is an exception, which is subject to several restrictions and limitations. It is argued by Mr.Duggal that prior to use the Suit Property for running an Ayurvedic Nursing Home, more precisely a Ayurvedic Well-being Healing and Spa, the essential permissions/NOC have to be obtained as prescribed by the MPD2021by defendant Nos.1 and 2. Counsel has referred para 15.3.2.1 of the MPD2021which defines the words Other Activity i.e. restricted to the running of guest houses, nursing homes and pre-primary schools and shall be permissible only in plots abutting roads of minimum 18 meters. ROW (Right of Way), in regular plotted development, subject to the fulfillment of conditions contained in para 15.7 of MPD2021 The Other Activities are permissible in Category A & B Colonies, in regular plotted development, is 18 meters (approximately 60 feet).

51. It is argued by Mr. Duggal that the suit property is abutting a road with a 40 feet ROW against the mandatory requirement of 18 meters (approximately 60 feet) ROW, as such the proposed activity cannot be permitted/allowed from the suit property. For such calculation the width of ROW is to be taken into account and not that of a Street. According to him that the suit property does not cover the mandatory condition of 18 meters, thus, proposed other activities cannot be allowed.

52. He referred that case of Ashok Kapoor Vs Municipal Corporation of Delhi, 2014 (142) DRJ473 this Court in clear terms has held that Section 2(57) of the Delhi Municipal Corporation Act, 1957 defines a street as including any way, road, lane, square, court, alley, gully, passage, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the roadway or footway over any bridge or causeway. It is thus evident that 'street' has wider definition than a right of way and would also include the pavements, berms along with the street as well as lane abutting the street and till the set back of the buildings abutting the streets

53. However, it is undisputed by the plaintiffs that para 15.9.i of MPD-2021 provides that for use of residential premises for nonresidential/commercial use, the owner/allotted/resident of the plot, in a plotted development is required to declare such mixed-use by filling-up a Form in this respect and depositing it with the local body concerned and pay the one-time registration charges at rates to be notified with the approval of the Central Government. Mr.Duggal argues that in the present case the defendant Nos.1 and 2 have failed to obtain such permissions from the said authorities.

54. Mr.Duggal argued that as per para 15.9.iii of the MPD2021 no modification to the Suit Property for non-residential activities, under the mixed-use policy is permitted unless the allottee/owner has obtained sanction of the Revised Building Plans and has paid necessary fees or charges. In the present case defendant Nos. 1 & 2 have not obtained sanction of any Revised Building Plans per the provisions of para 15.9.iii of the MPD2021 The sanction of Revised Building Plan is required to be obtained under Section 331 and Section 333 of the DMC Act, 1957. Mr.Duggal has referred Para 15.9.iv. which casts a duty on defendant No.3 to conduct of test check of the Suit Property, whether it is registered with it or not. Para 15.9.vi provides for penal action if a property is found by the local authority without registration or in violation of the provisions of the MPD2021 which states that in addition to other penal actions available under the relevant Act (DMC Act, 1957 in the present case), the owner of such property is liable to pay, to the local body, a penalty amounting to 10 times the annual conversion charges for mixed-use.

55. It is stressed by counsel that in the present case, neither defendant No.1 or Defendant No.2 have not taken mandatory permission/NOC from MCD for mixed-use as such apart from other penalties as provided for in the DMC Act, 1957 from defendant No.5. Thus, they are liable to pay to Defendant No.3, a penalty amounting to 10 times the annual conversion charges for mixed-use.

56. Mr. Duggal has referred the decision of Supreme Court in case of misuse of a property in a landmark judgment of M.C.Mehta vs Union of India and Ors., (2006) 2 SCC399 has held that:

33. Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Provision for household industries in residential areas does not mean converting residential houses in the commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading activities and sale and purchase of goods. Master Plan contemplates shops in District centers, Community centers, Local Shopping centers etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use.

34. In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement of layout plan of the land. It, inter alia, provides that before utilizing, selling or otherwise dealing with any land under Section 312, the owner thereof shall send to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will be used. For breach of Section 313, action can be taken under Section 314. It has rightly not been disputed by any counsel that neither layout plan, nor the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the Master Plan, the land use is residential, MCD cannot sanction the Plan for any purpose other than residential.

57. The submission of Mr.Duggal is that the Suit Property falls in a designated Category B Colony, residential in nature. The MPD2021prescribes the procedure, which is applicable when the user of the property intends to change the use of the property from Residential to Non-Residential for Commercial Activity or for Other Activity. Once there is a conversion of Use i.e. from residential to nonresidential or commercial, various provisions of the DMC Act, 1957 get attracted, the DMC Act,

1957 stipulating and mandating, as follows:

Section 331 of the Delhi Municipal Corporation Act, 1957 states that even the change of use of the Building amounts to erection of a Building. While Section 332 prohibits the erection or commencement of erection of the Building except with the previous sanction of the Commissioner which is not otherwise than in accordance with the provisions of this Chapter and of the Bye-Laws made under this Act. Section 333 of the Act prescribes that every person who intends to erect a Building shall give notice in writing of his intention to do so alongwith requisite documents and Plans to the Commissioner. Further, Section 334 of the Act provides that a person who intends to execute any additions, alterations, repairs, etc. in a Building shall apply for sanction by giving notice in writing of his intention to do so alongwith requisite documents and Plans to the Commissioner. Moreover, Section 347 of the Act prescribes that no person without the written permission of the Commissioner or otherwise than in conformity with the conditions, use or permit to be used, for human habitation any part of a Building not originally erected or authorized to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of the Act and the ByeLaws made thereunder or change or allow the change of the use of any land or Building. Whereas Section 336 of the Act provides that the Commissioner shall sanction the erection of the Building subject to the conditions as laid down under Section 336 (2) or Section 340.

58. His argument is that no permission through the alleged letter dated 31st December, 2013 has been granted by defendant No.3 for conversion of the suit property from residential use to non- residential use. This fact is evident from the reply dated 4th June, 2014 of defendant No.3 in the form of short affidavit to the stay application of the plaintiffs and the reply under RTI dated 9th June, 2014, which categorically state that the said letter dated 31st December, 2013 was a mere clarification to the query raised by defendant No.1 vide its letter dated 17th December, 2013. Therefore, the defendant Nos. 1 and 2 have made themselves liable to be prosecuted as per the provisions of Section 461 of the DMC Act 1957 and under the provision of Section 345-A of the DMC Act, 1957 which provides power to the Commissioner of MCD to seal the premises in case of misuse of any

premises. Counsel has again referred the decision of Supreme Court dealing with the power of the Commissioner of MCD under Section 345-A to seal premises in case of misuse of a property in a landmark judgment of M.C.Mehta vs Union of India and Ors., (2006) 2 SCC399 paras 20 to 37.

59. Counsel for plaintiffs has also referred the decision of a Full Bench of this Court in Joginder K. Singla and Ors. Vs. Govt. of NCT of Delhi and Ors., 117 (2005) DLT220(FB), has held interalia to the effect that:

10.Considering the number of vehicles, including heavy motor vehicles and the public vehicles i.e. taxis or autorickshaws, if the people are permitted to use the buildings other than the purpose for which they were constructed certainly it would be nothing but adding to the problems. Considering the nature of the use zones provisions have been made for roads, parking, sewerage and other general facilities. If there is a change in the use zones unauthorisedly, that would be burdensome on the public facilities and people will suffer. It is in view of these reasons other authorities are also bound by the provisions contained in the Development Act and the Building Byelaws made there under. While issuing a license or permit it is not open to such authority to ignore the provisions contained in Development Act, Corporation Act and Building Byelaws. Section 14 of the Development Act, specifically indicates that after coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Therefore, it is clear that the residential areas where the buildings are erected can only be used for residential purpose. Section 14 of the Development Act prohibits a person not only from using the building himself in contravention of the Master Plan but also prevents its use by others as well.

11. In a residential area the people, who are allotted land or the owners of the land are permitted to develop the land for the purpose of residence only. If the building is used as an office or hotel or eating house or any other commercial activity, i.e. other than the residence, it will cause nuisance and annoyance to the people occupying the building and residing in the vicinity. When in a residential area people are buying the land or property and develop the property or occupy the

property for the purpose of residence, they are assured by the legislature/rule makers that the area is meant for residential purposes and they will be in a position to enjoy a good housing atmosphere. It is in view of this also the use zone cannot be changed as the people have invested money for housing accommodation. 18. When there is a mis-user which amounts to violation of the provisions contained in the Development Act and the Rules made there under as also the violations of the provisions contained in the lease deed, the Corporation and the Development Authority ought to have taken action immediately. Learned counsel for the petitioners submitted that in view of Section 347 of the Corporation Act no person shall, without the written permission of the Commissioner or otherwise than in conformity with the conditions, if any, of such permission, change or allow the change of use of any land or building. Thus in view of this provision even Commissioner is required to take action when there is a change of user or mis-user.

19. It would be clear from the aforesaid discussion that : i) there cannot be a commercial activity in residential zone and thus chemists shops are not permitted. ii) the area in question does not fall in the mixed-use. iii) the DDA & MCD are required to take action under the respective laws against these violators running chemists shops in the residential zone, viz in a building allowed to be used for the purpose of residence only by the competent authority.

60. It is argued by Mr.Sethi that it is the admitted position that defendant No.1s application dated 5th November, 2013 and 17th December, 2013 seeking permission to use the suit premises for other use i.e. for running Nursing Home, MCD responded vide letter dated 31st December, 2013 stating that such use is permissible and acknowledged the receipt of conversion charges. In the said letter, MCD did not mention about requirement of any other permission under the MCD Act. Therefore, now at this stage, it cannot be alleged that the said letter was not a permission and any other permission is required. It is argued that Plaintiffs in their own prayer in the suit refer to the said letter as permission. Thus the plaintiffs cannot now allege that the said letter is not a permission. The suit premises can be used for running a nursing home without any permission. The permission, if so required for change of user, may be required only when the premises are put to

use for the purpose other than the sanctioned plan. In the present case, suit premises is only at the stage of repairs and renovation and its use for running a nursing home will arise at a later stage. Therefore, plaintiffs argument that since there is no permission, injunction be granted is misplaced and not maintainable.

61. It is submitted that defendant No.1 is not seeking change in nature of the suit premises and the category always remains as residential. What Defendant No.1 is intending to do is to use the residential property for the other activities as provided under the MPD-2021. Therefore, the intending activity by the Defendant No.1 in the suit premises i.e. running of Nursing Home amounts to erection/re-erection in view of the Section 331(c) and (j) of the DMC Act and therefore, in view of the Section 332 of the MCD Act, prior sanction is required from the Commissioner, MCD. It was pointed out by Mr.Sethi that Section 331 of the MCD Act is qualified since it refers to the meanings stated therein, unless the context otherwise requires. In the present case, MPD-2021, a subsequent legislation drafted considering all the existing provisions, grants the permission to use the suit premises for nursing home, Section 331 shall not be applicable.

62. Mr.Sethi says that all the decisions referred by the plaintiffs counsel were rendered by the court before passing the modified Master Plan for Delhi-2021 (as amended upto 1st December, 2011). Thus, situation and circumstances in the present case is entirely different in view of change in land. The said decisions are not directly applicable to the facts of the present case. These were relevant law prior to passing of modified MPD-2011. His argument is that the provisions of MPD-2021 does not provide for any prior permission from any authority for using the residential plot for the other activity as provided under the Chapter 15, subject to compliance of requirements mentioned therein. It is submitted that once MPD-2021 provides for a specific use of premises in accordance with the compliances stated therein, no question of any permission under MCD Act arises unless specifically stipulated. As stated supra, Defendant No.1 has already complied with the requirements of MPD-2021. It is submitted that the interpretation of Section 331 as pressed by plaintiffs renders the MPD-2021 redundant and ineffective, and thus such interpretation cannot be accepted.

63. It is also submitted by Mr.Sethi that that no inconvenience has been caused to any of the residents of the colony or the nearby area. In total, there are 12 occupants in the colony, Out of them, 4 are plaintiffs herein and 1 is defendant No.1. It is mentioned by Mr.Sethi that all the remaining 7 occupants have already granted no objection for the activities carried out by the defendant No.1 in the Suit Property.

64. It cannot be disputed that when the MPD-2021 permits use of the suit premises for the other activities, the plaintiffs have no right to raise objections after the requirements are fulfilled and permission is granted by the Competent Authority. MPD-2021 has been prepared by the experts after taking into account all the needs, requirements, resources and consequences of the change of user. In other words, if valid permission is granted as per clauses the questioning of provisions of the MPD-2021 is not permissible by way of present suit.

65. The judgment of this Court in Sagar Enterprises P. Ltd. vs. Union of India & Anr., 2009 (93) DRJ470wherein, it was held that use of residential plot for the other use as provided under the MPD2021 does not amount to change of user. Therefore, any provisions of MCD Act relied on by the Plaintiffs has no application.

66. During the course of arguments, even the MCD has not alleged any such violation under DMC Act or even under Section 331 of DMC Act, except the requirement for obtaining the permission from ASI, which has been obtained by defendant No.1. Counsel appearing on behalf of defendant No.3 has confirmed that such permission is permissible as required by defendant Nos.1 and 2 which can be granted in case all the requirements are fulfilled.

67. The judgment of this Court titled DLF Universal Ltd. Vs. Greater Kailash II Welfare Association, 127 (2006) DLT131 which was upheld by the Supreme Court of India. In the said judgment, it has been held that granting permission, regulating traffic etc. are all executive functions and it is ordinarily wholly inappropriate for the judiciary to encroach in the executive function.

68. It is undisputed position that suit premises falls in the area where mixed used/other use is permitted under the provisions of the MPD-2021. It was also

confirmed by the MCD vide their letter dated 31st December, 2013. As per clause 15.7 of the MPD-2021, subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, specified activities are permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2. Activities provide in the said clause include running of nursing home which is the activity defendant No.1 intended to start in the suit premises. Clause 15.4 read with 15.3.2 read with 15.7.2 of MPD-2021 provides that other activity is permissible on the residential plot if the said plot abuts a road of prescribed minimum ROW i.e. 18 m.

69. It is argued by Mr.Sethi that MPD-2021 nowhere provides that any permission is required to be obtained for using the residential property for other activities as provided in chapter 15 of the MPD2021 subject to above mentioned compliances. The defendant No.1 has filed the application for permission with the above stated requirements, there is no bar under the MPD-2021 to use the suit premises for running a nursing home (ayurvedic). Therefore, once the Central Government after considering all these above factors decided to make available change of user for the suit premises, it is not open for the plaintiffs to question the same on any ground of nuisance and once MPD-2021 provides requirement for change of user, upon compliance of the same. The question of any permission under MCD CS(OS) No.1724/2014 Act arises or not, the complaints of plaintiffs are already pending. As per the case of the defendant No.1 that the MCD Act doesnt provide for any permission to be sought in case occupant wants to use the residential property for other use as provided under the MPD-2021. The only requirement is deposit of conversion charges, which has been complied with.

70. Clause 15.9 of the MPD-2021 provides that for using the residential property for other use, user is required to declare such mixed-use by filling up a form in this respect and deposit the same with the concerned authority alongwith the conversion charges. Same was complied by the Defendant No.1 vide their letter dated 8th October, 2013. Copy of the application dated 8th October, 2013 along with the requisite form filed with MCD.

71. It is also the case of the defendant Nos.1 and 2 that the suit premises are situated on the Aurbindo Marg which is 100 feet wide road in addition to 40 feet

service lane. As per the Department of Town Planning and stand taken by the MCD in various litigations, for calculating the ROW, the total width of the road starting from the service lane till the ring road has to be taken into account. Defendant No.1 in support of the same, during the course of the arguments, has filed the counter affidavit filed by the MCD in another matter being W.P.(C) No.553 of 2013 titled Samudayik Kalindi Kalyan Samiti & Anr. Vs. SDMC & Ors. The relevant paras 6 to 11 are reproduced hereunder :

6. That the present writ could not have been filed in this Honble High Court seeking quashing of NOC granted to respondent No.6 in view of Section 347 B and 347 E of the DMC Act, 1957.

7. That the answering respondent had granted the No Objection Certificate only after all the defects and discrepancies in the premises were fixed and no longer in violation of any building laws or the Master Plan of Delhi 2021 (hereinafter referred to as MPD2021.

8. That the premises is abutting the ring road which is 210 feet wide and therefore as permissible activity under the MPD2021 9. That the answering respondent sought a clarification from the Department of Town Planning whereby it was clarified that the Ring Road abuts the premises in question. Therefore, a nursing home can be permitted to operate as per the MPD2021 10. The Department of Town Planning has clarified that for calculation of distance from the premises, the total width of the road starting from the service lane till the ring road has to be taken into account.

11. That it is not the first time when the answering respondent has calculated the width of the road in the manner stated above. Such method has been followed by the answering respondent for a long time and it has been uniformly implemented in all the areas which come under the jurisdiction of the answering respondent.

72. In view of the aforesaid reasons and various clauses of MPD- 2021 and provisions of The Delhi Municipal Corporation Act, 1957, it cannot be arrived to the conclusion that the owner of property is not entitled to use and utilize the same for different purpose other than residential if the same is permissible under MPD-2021

for any lawful purpose in accordance with existing law and rules. CS(OS) No.1724/2014 Competent Authority who are competent to pass an order after inspection and examination of the rules, the apprehension of the neighbours have no meaning under those circumstances, the neighbours cannot seek the interim relief except to challenge the order of the Competent Authorities in higher Court in accordance with law.

73. In the present case, it appears that no specific written permission is granted by the MCD. I feel, in view of facts and circumstances in the present case, the permission of MCD is required. The application of the defendant No.1 for the said purposes and objections raised by the plaintiffs are pending. Counsel for defendant No.3 during argument has admitted that incase all requirements are fulfilled, the permission can be granted. Thus, I direct that defendant No.3 to pass an appropriate order after hearing in accordance of the relevant provisions of MPD-2021 and under the MCD Act. If necessary, JE (B) be allowed to inspect the site under the compliance of clause 15.7.3 (iii) of MPD-2021. An appropriate order be passed within four weeks from today.

74. All the pending applications in view of aforesaid reasons are disposed of as no further orders are required to be passed. (MANMOHAN SINGH) JUDGE OCTOBER15 2014

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