

\$~8

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

*Decided on:- 12<sup>th</sup> February, 2018*

+ CM(M) 537/2016 and CM APPL.20638/2016 (stay)

DDA

..... Petitioner

Through: Mr. Rajiv Bansal, Senior Advocate  
with Ms. Sriparna Chatterjee,  
Mr. Hitasish Chauhan, Ms. Vasudha  
Trivedi, & Ms. Astha Chopra,  
Advocates.

versus

HILL VIEW APARTMENTS

..... Respondent

Through: Mr. S.K. Rout, Advocate with  
Mr. P. Rath, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petitioner, Delhi Development Authority (DDA) is aggrieved with the orders dated 02.02.2013 of the Senior Civil Judge on the file of the civil suit (No.154/2011) of the respondents (the plaintiffs) and dated 29.04.2015 of the Additional District Judge-01 on the file of miscellaneous appeal (MCA No.20/2013) whereby, on the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC), an *ad interim* injunction was granted against the DDA (the defendant) restraining it, its officials, administrators, servants, agents, *etc.* from closing three gates in the rear side boundary

wall of residential colony known as Hill View Apartments within the area of Vasant Vihar, New Delhi-110057, the effect of which restraint orders essentially is permitting continued use of a portion of land described as “*vehicle parking space*” abutting the said outer boundary wall. It is the contention of the petitioner that *ad interim* injunction was granted by the trial court and affirmed by the first appellate court arbitrarily even while observations have been recorded against the case set up by the plaintiff having the effect of bringing out that there is no *prima facie* case established.

2. The civil suit in which the impugned orders were passed was instituted in June, 2011 by the respondent which is an association of residents of Hill View Apartments, it being a residential colony developed by DDA, it comprising of 120 flats in Block B, Vasant Vihar, New Delhi wherein allotments were made in 1987-88. It is the plaintiff’s own case that the colony abuts an area developed by the DDA as bio-diversity park. The copies of two plans have been submitted one of which is described as “survey plan” of DDA land at Hill View Apartment and a plan which depicts layout of colony as in year 2012. It is undisputed fact, as was submitted at the hearing, that the portion described in the plaint as “the suit property” *i.e.* “*the vehicle parking space*” is depicted in the survey plan by the legend “*metalled portion road*” in southernly direction of the border of the locality. It was further conceded at the hearing that the locality is connected to the main roads through metalled road on the other side, the said road moving along the boundary walls of other similarly developed area leading to North direction. It was also conceded during

the hearing that there are internal roads within the society in question, developed as a gated community, for movement and circulation of the motor vehicles of the local residents. The bio-diversity park concededly is on the side where the disputed area lies.

3. It is the case of the plaintiff that the three gates were provided on the Southern border of the society with a road for parking of vehicles which was constructed by the defendant to facilitate the parking of vehicles of the residents, the maintenance including re-laying of road, service, lighting, etc. having been arranged by the “*concerned department*”, such facility having been enjoyed by the residents since inception. The suit was filed claiming cause of action on the basis of action initiated on 01.06.2011 by the officials of DDA digging up the parking area for closing the three said gates thereby blocking ingress and egress of the people of the locality in that directions and so as to preclude the use of the space in question for parking of vehicles of the local residents. The prayer in the suit is for permanent injunction against DDA so as to restrain it against “*taking over the suit property ..... by closing the above-said three gates*”. The application for *ad interim* injunction made similar prayer.

4. The suit has been contested by DDA contending that the area in question falls within the bio-diversity park and that the plaintiffs have no right, title or interest therein. It is the stand of the DDA that the plaintiffs have unauthorizedly opened the gates in question and have created a metalled space in an attempt to encroach on the government land, the said portion of the land not being part of the area which was developed or allotted to the residents of the society.

5. At the hearing, the counsel for the respondent was repeatedly asked to show the documents of allotment, if any, respecting the portion of land wherein the disputed parcel described as “vehicle parking space” falls. While conceding that no such document of allotment has been issued, he insisted that this would be a matter of trial, his submission being that the plaintiffs have been in use of the area in question for purposes of parking their vehicles since the date of their respective allotment. He also countered by submitting that DDA has not come with any document showing it to have made any “progress” so as to develop the “bio-diversity park” for which the land in question is stated to be earmarked.

6. Given the fact that the pleadings in the plaint themselves affirm that the disputed area known as “vehicle parking space” exists on the bio-diversity park of DDA, it is not necessary for DDA to account for in a case of this nature, “*the progress*” or “*lack of progress*”, if any in the development of the bio-diversity park. It was conceded by the counsel for the plaintiffs that neither the plaintiffs society nor any of its members have been charged or have paid any damages or fee towards lease or licence of the “*vehicle parking space*”. In these circumstances, mere assertion on the part of the plaintiff that they have been in use of said space for parking of their private vehicles cannot make out a *prima facie* case for *ad interim* injunction to be issued. Having regard to the pleadings in the plaint, there is no dispute as to the fact that the land used as the vehicle parking space is a government land. In absence of any letter of allotment or payment of any charges for its use, the plaintiffs cannot legitimately lay a claim for restraint

order of the kind which has been granted by the courts below, primarily on considerations of balance of convenience.

7. During the course of hearing, the learned senior counsel for the petitioner submitted that the *ad interim* injunction granted by the courts below restraining DDA from blocking the unauthorized access to or use of government land has the effect of perpetuating encroachment, the DDA reserving its right to take all steps available in law not only to remove encroachment but also to recover damages for unauthorized use in the past.

8. In the facts and circumstances noted above, it is clear that the plaintiff of the suit has not been able to establish a *prima facie* case. In absence of any letter of allotment *qua* the area in question and in absence of any documents substantiating assertion that the gates in question were opened and the area was metalled or has been maintained by the DDA, interim relief could and should not have been granted only on considerations of balance of convenience. In fact, it was conceded by the counsel for the plaintiffs that there is no road on the southern end of the society connecting the metalled space with any nearby public road, the only connection to the public road being from the points of ingress and egress on the Northern border of the society to which there is no obstruction. Thus, even the considerations of “*balance of convenience*” or “*irreparable loss*” are not available to the plaintiffs.

9. For above reasons, the petition is allowed. The *ad interim* injunction granted by the courts below shall stand vacated. The application of the respondent-plaintiff under Order 39 Rules 1 and 2

CPC stands dismissed.

10. Given the fact that the respondents-plaintiffs have been using the government land all these years, it is for DDA to press home its claim for *mesne* profits in accordance with law by appropriate proceedings in this case or otherwise.

11. Lower court records be sent back.

12. The parties shall appear before the trial Court on 12.03.2018.

13. The petition and the application filed therewith stand disposed of in above terms.

**R.K.GAUBA, J**

**FEBRUARY 12, 2018**

vk

भारतमेव जयते