
(2017) 12 DEL CK 0405

In the Delhi High Court

Case No : Regular First Appeal No. 1023 Of 2017

R.S. Gautam & Ors

APPELLANT

Vs

Delhi Development Authority & Ors

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Delhi Development (Master Plan And Zonal Development Plan) Rules, 1959 — Rule 8
Code Of Civil Procedure, 1908 — Section 96
Delhi Development Act, 1957 — Section 53B
Delhi Municipal Corporation Act, 1957 — Section 313
Indian Easements Act, 1882 — Section 15

Citation : (2017) 12 DEL CK 0405

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Keshav Dayal, J.N. Aggarwal, Dhanesh Relan, Rajesh Dagar, Swastik Singh

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

C.M. No.44052/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.1023/2017 and C.M. Nos.44050/2017 (stay) and 44051/2017 (directions)

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of

the Trial Court dated 1.9.2017 by which the trial court has dismissed the suit for declaration and injunction filed by the plaintiffs. By the suit the

appellants/plaintiffs claimed easementary rights in a passage from their houses. This passage ran through the area owned by the respondent

no.1/defendant no.1/Delhi Development Authority (DDA) and with consent of the respondent no.1/DDA controlled by the respondent no.3/defendant

no.3/Indian Oil Corporation (IOC). Respondent no.3/IOC on 7.6.1991 had got executed in its favor a perpetual lease deed of the plot adjoining the

area from which the right of passage is claimed and for which lease deed the respondent no.3/IOC paid a consideration of Rs. 22 crores to the

respondent no.1/DDA. The building site allotted was 2438.10 sq. meters to the respondent no.3/IOC. Respondent no.3/IOC constructed a multi storey

commercial building on the leased plot which commenced in June, 1991 and was completed in the year 1997. As already stated above the disputed

passage falls and is part of the area adjoining the leased plot of the respondent no.3/IOC. The possession of this adjoining plot was handed over to the

respondent no.3/IOC by the respondent no.1/DDA for development and the respondent no.3/IOC has spent over Rs.35 lacs for construction of roads,

parking and landscaping on this open piece of land.

3. The facts of the case are that the appellants/plaintiffs filed the subject suit for declaration, injunction pleading that they purchased lands on which

their houses are built from the earlier owner one Sh. Leela Ram. The lands in question of the appellants/plaintiffs are situated in Khasra nos.116/93/1

of Mauza, Yusuf Sarai Jat now known as abadi Yusuf Sarai. The appellants/plaintiffs claimed to have purchased the lands on which their houses had

built by registered sale deeds. The appellants/plaintiffs pleaded that they constructed their houses sometime in 1960s and that they have been residing

in their houses since then. It was further pleaded in the plaint that the respondent no.1/DDA regularized the construction/houses of the

appellants/plaintiffs and others in terms of their resolution dated 13.2.1979. It is further pleaded in the plaint that during the emergency time, illegal

encroachments which existed on the plot which was leased to the respondent no.3/IOC as also the area of which the disputed passages forms a part,

were demolished, and respondent no.1/DDA thereafter fenced the whole area in the year 1982 by constructing a boundary wall and fixing a main gate

on the Mehrauli Road side on the said open plot. It was however pleaded that passage remained in existence for use of the appellants/plaintiffs for

ingress and egress to their houses i.e there were passages in the open plot of land from the houses of the appellants/plaintiffs right till the other side

end of the open plot adjoining the main Mehrauli Road. The appellants/plaintiffs pleaded that they have no other outlet or passage between their residences and the main Mehrauli Road except through the open plot of land which is now called as Plot No.1, Yusuf Sarai, New Delhi and therefore the appellants/plaintiffs submitted their representations to the respondent no.1/DDA on 7.8.1984 for getting ingress and egress to their houses from the Mehrauli Road by the disputed passage. On these representations, it is pleaded that the Chief Engineer of the respondent no.1/DDA made a recommendation that there should be proper access to the houses of the appellants/plaintiffs. It is further pleaded in the plaint that after the transfer of the plot to the respondent no.3/IOC, the respondent no.3/IOC raised the height of the existing boundary wall and narrowed down the passage to 10 feet and thereafter finally closed it resulting in loss of the ingress and egress of the appellants/plaintiffs to their houses. The appellants/plaintiffs thus filed a writ petition being CW 2283/89 titled as Shri H.S. Gautam & Others Vs. Lt. Governor & Ors. in this Court and in this writ petition appellants/plaintiffs were successful in getting interim orders for their unobstructed passage to their houses. The writ petition however was dismissed as disputed questions of facts were involved vide order dated 21.11.1997. The appellants/plaintiffs thereafter filed the subject suit seeking rights in the passage and which has been enclosed and bounded by the respondent no.3/IOC.

4. The respondent no.1/DDA filed its written statement and pleaded that appellants/plaintiffs are in fact unauthorized encroachers on public lands where their houses have been made. It was further pleaded that if the appellants/plaintiffs are owners of the lands then when the erstwhile owner of the land which was sold, had to give the path/passage for ingress and egress from his own land and not from the government land i.e the land belonging to the respondent no.1/DDA i.e the seller to the appellants/plaintiffs had no right to give any access to the main Mehrauli Road from the plot owned by the respondent no.1/DDA. It was pleaded by the respondent no.1/DDA that two passages of about 10 feet and 12 feet were created by the appellants/plaintiffs by demolishing the boundary wall which was constructed in the year 1982 but the same was without consent, knowledge or authority of the respondent no.1/DDA. The portions of the boundary wall which were demolished by the appellants/plaintiffs were thereafter got

plugged by the respondent no.1/DDA with the aid of the police. Respondent no.1/DDA further pleaded that user of the passage by the

appellants/plaintiffs through the land of the respondent no.1/DDA was illegal as it was created by demolishing the boundary wall of the land of the

respondent no.1/DDA. It was further pleaded in the written statement that there was in fact a passage adjacent to the nallah from where the

appellants/plaintiffs had access to Gautam Nagar via an 80 feet road but due to unauthorized constructions the passage has been reduced to 4 ½

feet but this passage is still available to the appellants/plaintiffs for access to the main Mehrauli Road via the Gautam Nagar road.

5. Respondent no.3/IOC filed its written statement denying the claim of the appellants/plaintiffs. It was pleaded that the appellants/plaintiffs had no

legal or vested right to use the land in question and that the appellants/plaintiffs had failed to demonstrate any legal right with respect to the passage on

the basis of either the pleadings or documents. It was stated that possession of the subject plot which adjoined the leased plot of the respondent

no.3/IOC was given to the respondent no.3/IOC on 24.10.1989.

6. After completion of pleadings the trial court framed the following issues:-

1. Whether RASTA claimed by the plaintiff is on the land belonging to the D.D.A.?

2. Whether the plaintiff is entitled to the passage as claimed in the suit?

3. Whether the notice under Section 53B of the D.D. Act has not been served upon the defendant no.1 (D.D.A.)?

4. Relief.

7. Trial court has discussed the leading of evidence by the parties from paras 31 to 59 of the impugned judgment and some of the relevant paras read

as under:-

34. PW1 Ms. Sangeeta Jain, Local Commissioner deposed that she had visited the spot on 18.02.1998. She had prepared the rough

notes/proceedings at the spot, which is in her hand and is Ex. PW1/1. She had also taken the photographs numbering 64 at the site which are Ex.

PW1/2 (collectively). She had submitted her report dated 23.02.1998 to the court on the basis of inspection conducted by her as Ex. PW1/3.

36. PW1 in her cross-examination on behalf of defendant no.3, in reply to a question that whether Hon'ble High Court had authorized to form an

opinion or to give opinion, she replied she has not given any opinion and she submitted her report as per order passed by the Court. She further

deposed that she had not measured the roads. She volunteered that there was no direction to take road measurement. Further, to a specific question

that there is already passage available from the road towards the houses of the plaintiff from the side of Sharma Property as shown in photographs

serial no. 57 to 59, the PW1 replied that as per her report this could not be said to be a passage from the plaintiff's house to the road. She further

deposed that Gate reflected in photograph no.1 in her report belongs to Indian Oil Corporation Building. She did not know that roads reflected in

photographs no. 5 to 12 was built by IOC. As per report this could not be said to be passage in the Man Mohan Building and para 11 of her report will

be read. She was not aware which passage was available to the plaintiff for egress or ingress before the construction of the Indian Oil Corporation

building and road. She denied the suggestion that she has expressed her opinion in her report.

38. PW1 Sh. R.S. Gautam in his cross-examination by Ld. Counsel for the defendant no. 1 to a specific question that since when he has been residing

in Kaushambi, he replied that since the suit property is in a dilapidated condition his family has shifted to Kaushambi on a temporary basis about 2-3

years ago but their goods are still lying in the suit property. His nephew Dr. Rishi Kumar Gautam has been residing in the suit property. He

volunteered that he himself also residing in the suit property. He has not filed the copy of the sale deed executed in respect of the suit property in his

father's favour. There was no mention of any Rasta in the said sale deed. He volunteered that only Khasra number of the property has been

mentioned therein. He admitted that in para III (d) of his affidavit Ex. PW1/A, he has inter alia mentioned that there is a pucca road of 20 ft. wide

constructed and maintained by defendant no.2/ MCD. He further admitted that he still use the same road for going to Mehrauli Road. To a specific

question that there aa jhuggi jhopdi cluster on a chunk of land in Yusuf Sarai which had been acquired by the DDA and the DDA demolished the said

jhuggi jhopdi cluster and developed a plot meant for Community Centre there, he replied that there was infact kuchha pucca houses on this chunk of

land and the same were removed by the DDA in 1975 and the DDA developed a plot meant for Community Centre there. He did not have the copy

of the resolution no.11 vide which their colony/locality had been regularized by defendant no.1 DDA for all purposes on 13.02.1979. He admitted that

they have still a pucca road in order to go to Mehrauli Road from the suit property.

41. PW1 Sh. R.S. Gautam in his cross-examination conducted by Ld. Counsel for the defendant no.3 further deposed that he has not filed any

record/document with regard to the regularization of their colony. He volunteered that Secretary, DDA has already filed an affidavit to this effect in

this court. He has never paid any development charges in the DDA. He volunteered that the same have never been demanded. To a specific question

that did your brother or you ever apply to DDA for regularizing your house, he replied that his brother had received a letter from the Screening Board

of DDA and my brother had been informed that the DDA had accorded its sanction to the passage/ rasta in dispute. He never applied for

regularization of their house. He cannot read any site plan. He has seen the photographs Ex. PW1/D-1 to Ex. PW1/D-2 and the same are correct

according to the site. The rasta/passage shown in these photographs is coming from Manmohan Building, Yusuf Sarai and going towards Mehrauli,

Badarpur Road. He never use this passage/rasta for going to his house. He volunteered that this is a private passage/rasta meant for the residents of

Manmohan building. He denied the suggestion that it is a common rasta/passage for use by all and sundry. Photographs Ex. PW1/D-3 to Ex. PW1/D-

5 are correct. He deposed that at the time of purchase of the plot underneath the suit property by his father, the road in front of it was about 20 ft.

wide. He denied the suggestion that the said road belongs to DDA or MCD. He volunteered that a pucca road has been constructed by the MCD.

45. DW1 Sh. Jai Parkash, Patwari further deposed in his cross-examination that he saw the passage 20 ft. wide referred to in para 5 of his affidavit.

To a specific question that as to when this passage 20 ft. wide referred to in para 5 of his affidavit was reduced to 4 and 5 ft by encroachment as

propounded in para 8 of his affidavit, he replied that he can say about the same after going through the record and after going through the record, he

replied that he did not know as to when encroachment took place in the locality and passage was reduced to 4 ½ feet only. He never lodged any

complaint with the police or his superior officials regarding the encroachment. He has never prepared any plan of the locality to show the passages

available to the plaintiffs for ingress and egress. He has never taken any photographs of the locality to establish all what he has said in his affidavit

regarding breaking of walls and encroachments. He has never measured the khasra referred to in para 6 of his affidavit. He has never demarcated

khasra 116/93/1 Mauza Yusuf Sarai. He volunteered that this is the duty of the office kanoongo and not the Patwari. He did not have any documents

regarding allotment made in favour of defendant no.3 for the consideration of Rs.22 Crores. He has deposed the contents of para 6 of his affidavit on

the basis of his record.

47. DW1 Sh. Jai Parkash, Patwari further deposed in his cross-examination that he had seen the record on which basis his affidavit Ex. DW1/A was

got prepared by him. He cannot tell the exact date and month but it was in the year 2013. The documents were already available in the litigation file.

He did not know whether he had filed the record brought today by the department was enclosed along with his affidavit. He was not present when the

plaintiffs had encroached the Khasra no. 116/93/1 min, Village Yusuf Sarai. The plaintiffs had constructed houses. He did not remember the date of

allotment of above said Khasra to defendant no.3 Indian Oil. The Khasra No. 116/93/1 min was comprising of total land of 40 Bigha 10 Biswa.

48. DW1 Sh. Jai Parkash, Patwari further deposed in his cross-examination that the allotment letter dated 23.2.1989 is with regard to plot no. 1 Yusuf

Sarai in favour of defendant no. 3, IOC, original of which is seen returned and photocopy taken on record. He was not present at the time of Kabza

Karwai of the land in question. He has no knowledge whether any possession slip was taken by DDA by IOC. He never took the measurement of the

encroachment/houses of the plaintiffs. The houses of plaintiffs are situated in Khasra No. 116/93/1 min, Village Yusuf Sarai. He further deposed that

as per record the houses of the plaintiffs were situated in the above said Khasra number. No document filed on record in this regard. During his

tenure he had not written to Commissioner Land that plaintiffs had constructed their houses after encroachment of DDA Land. He did not remember

the date, month and year when IOC, defendant no. 3 had constructed boundary wall on the above said allotted plot. The houses of the plaintiffs are

out side the boundary wall of defendant no. 3. He admitted that house of plaintiffs are situated outside the boundary of plot of IOC. No document

available on record to show that the houses of the plaintiffs are on Nazul land. No house was constructed on the plot allotted to IOC. No house was

demolished. He volunteered that the plaintiffs were repeatedly breaking the boundary wall of the plot of IOC and DDA was removing the

encroachment made by the plaintiffs of the boundary wall. A FIR was lodged and again a complaint was lodged with the police. He has no knowledge

with police had registered any case or not or any proceedings under Public Premises Act initiated or not. There is a passage which leads to Gautam

Nagar at Khasra No. 116/93/1 min, Village Yusuf Sarai. He volunteered that no passage is available to the land allotted to IOC, defendant no. 3. He

has no knowledge since when this passage is in existence in Khasra No. 116/93/1 min. To a specific question to see the Aks Shzra of Village Yusuf

Sarai and specify the above passage, he replied that the copy of Aks Shzra brought by witness does not show any passage. The Aks Shzra is Ex.

D1W1/X1.

50. DW1 Sh. Jai Parkash, Patwari further deposed in his cross-examination that there is a passage not from the boundary wall of IOC but it is from

the side of the wall. He volunteered that the site plans are prepared by the Engineering department. He has not made entry in outdoor register about

the 20 feet passage in existence. He did not know whether DDA had issued notice to plaintiffs for encroachment of DDA land. On the day of

preparation of his affidavit Nala was in existence but it was covered by constructing a road. He did not know when the road was constructed on the

Nala. One can go to Gautam Nagar and Yusuf Sarai through this Nala Road. It might be 80 feet wide. He volunteered that some passage is also left.

The witness ask to put mark on the Aks Shzra Ex. D1W1/X1 to show the road at Mark Y. Witness further ask to identify the plot of IOC at Mark Z.

He denied the suggestion that his marks on Aks Sazra on Ex. D1W1/X1 with regard to houses of the plaintiffs are wrong. He volunteered that he has

marked by way of estimation. He denied the suggestion that he is deposing as per instructions from my senior on the basis of what is scribed in the

written statement of DDA.

58. D3W1 Sh. Ashok Bhatia in his cross-examination further deposed that he was not present at the time of visit of Local Commissioner. He cannot

say that shop of Mahesh Kumar is in existence for the last 60 years. He cannot

say whether the residents of Gautam Nagar have right of passage through the IOC land (disputed suit land) for the last 40-45 years. He volunteered that the residents of Gautam Nagar have no passage through IOC plot. They have not maintained any register at their gate for ingress and egress for the residents of Gautam Nagar. He volunteered that anybody can go through the main Gate of IOC. He admitted that the gate remained opened till 11 p.m. Even then no lock put to the gate but a security guard is deputed. He denied the suggestion that the plaintiffs are enjoying ingress and egress into Yusuf Sarai through this land demised to IOC even today.â

(underlining added)

8. The main issues to be decided are issue nos.1 and 2 which have been framed as to whether the appellants/plaintiffs have rights in passage over the land which was owned by the respondent no.1/DDA and possession of which has been legally handed over by the respondent no.1/DDA to the respondent no.3/IOC for maintenance, upkeep and landscaping and for parking.

9. Before I proceed for discussion on the relevant issues, I find the present is a case where appellants/plaintiffs were encroachers on government land

whereupon houses were constructed by the appellants/plaintiffs. Originally some passage had been illegally created to connect the main Mehrauli

Road although there existed access from Gautam Nagar Road. However as is usual in unplanned urbanized village in Delhi, this passage/road from

the appellants'/plaintiffsâ?? houses to Gautam Nagar Road for reaching the Mehrauli Road got narrowed down to 4½ feet road because of illegal

construction and encroachments. The appellants/plaintiffs therefore are seeking easementary rights in the form of a passage from a part of the land

which is an open plot of land admittedly not admittedly in their ownership. Merely because the alternative original and legally available passage to their

lands which was of around 20 feet on account of the illegal construction by other villagers and other owners of the adjoining land getting narrowed

down to 4½ feet, this would not mean that the appellants/plaintiffs should/would not use the same passage for ingress and egress to their lands. In

fact the present case is a stark example of illegal colonies being carved out in Delhi without any lay-out plan being sanctioned under Section 313 of the

Delhi Municipal Corporation Act, 1957, and that on account of haphazard and illegal constructions made in these unplanned areas, the passages legally

available as of right for ingress and egress have been constructed. Since colonies are completely haphazard and unplanned, consequently there is a

situation of lack of proper roads or civic amenities for use of the properties especially in the constructions made in urbanized villages of Delhi.

However it is no answer to such a situation created that because hundreds of illegal colonies having come up in Delhi (including many colonies on

acquired government lands) and the government has thought it fit to regularize these illegal colonies that residents of unplanned colonies can claim

passages for access and to which such persons have no legal rights.

10. With this preface, let us turn to the facts of the present case. At the outset it is necessary to refer to Section 15 of the Easements Act, 1882 and

which provision states that an easementary right will become absolute only if the same is enjoyed in an uninterrupted manner for a period of 20 years

at least. In other words unless and until it is established by sufficient evidence being led on record that for at least 20 years a passage has been used in

an uninterrupted manner, no legal right being an easementary right will accrue in favour of a person who claims easementary rights to a passage.

Section 15 of the Easements Act reads as under:-

â?? Section 15. Acquisition by prescription.-

Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for

twenty years,

and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial

pressure or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as

of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim

to which such period relates is contested.

Explanation I.â?"Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or

occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement,

or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.â?"Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of

an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the

claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.â?"Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the

meaning of this section.

Explanation IV.â?"In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly

the servient heritage.

When the property over which a right is claimed under this section belongs to the Government, this section shall be read as if, for the words

â??twenty yearsâ?? the words â??thirty yearsâ?? were substituted.

11.(i) In the present case it is seen that the writ petition filed by the appellants/plaintiffs was of the year 1989 and therefore the appellants/plaintiffs

will have to prove continuous uninterrupted use of the passage for about 20 years prior to the year 1989 i.e from at least the year 1969 or before. The

period of usage of a passage pursuant to interim orders in judicial proceedings is not a period which in law can be considered for the period of 20

years required by Section 15 of the Easements Act. The issue is have the appellants/plaintiffs been successful in proving their rights in terms of the

ingredients of the cause of action under Section 15 of the Easements Act. Admittedly the appellants/plaintiffs to prove their 20 years usage period only

rely upon oral testimonies and also that certain representations were made during the year 1984 to the respondent no.1/DDA. On behalf of the

appellants/plaintiffs only one witness appeared as PW-1 i.e the appellant no.1/plaintiff no.1, and it is therefore, seen that there is only oral deposition on

behalf of the appellant no.1/plaintiff no.1 with respect to proof of claim of easementary rights of having used the disputed passage for 20 years. In fact the appellant no.1/plaintiff no.1 as PW-1 in his cross-examination conducted on 31.1.2013 admitted that no sale deed has been filed of the appellants/plaintiffs showing purchase of the land on which the constructions of the houses have been made. It is also conceded in cross-examination of the same date by the appellant no.1/plaintiff no.1 that there is a 20 feet wide road and maintained by the respondent no.2/defendant no.2/MCD and which is still used by the appellants/plaintiffs for going on to the Mehrauli Road. It was also conceded in the cross-examination by the appellant no.1/plaintiff no.1 on 31.1.2013 that no house-tax receipt is filed of the respondent no.2/MCD to show when the construction was made of the suit properties. The relevant portions of the cross-examination of the appellant no.1/plaintiff no.1/PW-1 are as under:-

â??I have not filed the copy of the sale deed executed by Pandit Leela Ram in respect of the suit property in my fatherâ??s favour. There was no mention of any rasta in the said sale deed. (Vol. Only Khasra No. of the property has been mentioned therein).

It is correct that in para III (d) of my affidavit Ex.PW-1/A I have, inter alia, mentioned that there is a pucca road of 20 ft. wide constructed and maintained by defendant no.2 MCD. It is correct that we still use the same road for going to Mehrauli Road.

xxxxx xxxxx xxxxx

It is correct that I have not filed any receipt issues by the house tax department of MCD in respect of the suit property. It is wrong to suggest that I have deposed falsely.

xxxxx xxxxx xxxxx I do not have any title deed in respect of the suit property.

xxxxx xxxxx xxxxx

At the time of purchase of the plot underneath the suit property by my father the road in front of it was about 20 ft wide (Vol. Now, it is about 18-18½ ft wide). In my affidavit I have mentioned the width of the road as 20 ft. It is wrong to suggest that the said road belongs to DDA or MCD.

(Vol. A pucca road has been constructed by the MCD)â??

(ii) It is therefore seen that there is no documentary proof at all of purchase of the land by the appellants/plaintiffs or when their houses were

constructed, and therefore there is no documentary proof of any user of the passage at least for 20 years prior to the year 1989 i.e at least from the year 1969 or before. Admittedly the case of the appellants/plaintiffs was that their houses being illegal constructions were regularized by the respondent no.1/DDA only in terms of the resolution dated 13.2.1979 and thus there is only proof from the year 1979 of existence of the constructed houses of the appellants/plaintiffs and not from the year 1969. Onus of proof was upon the appellants/plaintiffs to show that when their houses existed and at least from the year 1969 but the appellants/plaintiffs have miserably failed in this regard because single oral testimony of the appellant no.1/plaintiff no.1 cannot be taken as discharge of onus of proof of the easementary right being uninterruptedly used for 20 years and which has the effect of taking away valuable rights of a person in an immovable property/land i.e those rights are sought to be created in favour of the appellants/plaintiffs in terms of the claim of easementary rights. In fact even if the appellants/plaintiffs proved construction of their houses in the year 1969 or before however it is necessary that there is proof filed which on balance of probabilities would establish consistent and uninterrupted user for 20 years but it is seen that the appellants/plaintiffs have failed to do so. Also it has come on record that a boundary wall was constructed over the plot in question which was then illegally broken by the appellants/plaintiffs to claim a passage, and in fact even otherwise as per the admissions made by the appellant no.1/plaintiff no.1 that the appellants/plaintiffs can still reach the Mehrauli Road even if the disputed passage is not used and for that however they will have to take a slightly longer route via Gautam Nagar Road. In my opinion therefore trial court was justified in arriving at a finding that the appellants/plaintiffs failed to prove their legal rights of the claim of easementary rights for 20 years in the disputed passage and which forms part of the plot of land in possession and controlled presently by the respondent no.3/IOC with the owner of this plot being the respondent no.1/DDA who has handed over this plot to the respondent no.3/IOC for the purpose of maintenance/upkeep, landscaping, parking etc. Once the appellants/plaintiffs have completely failed to discharge the onus of proof upon them by showing continuous uninterrupted use of the passage for 20 years in terms of Section 15 of the Easements Act, hence the appellants/plaintiffs could not have succeeded in the suit of claiming easementary rights

to the disputed passage.

12.(i) Learned senior counsel for the appellants/plaintiffs sought to draw attention of this Court to Ex.PW1/2 to Ex.PW1/6 and which are

representations made by the appellants/plaintiffs to the respondent no.1/DDA and also certain letters to the respondent no.1/DDA to one of the

appellants/plaintiffs, as also comments of the Executive Engineer of the respondent no.1/DDA, however, firstly such representations on and after the

year 1984 cannot prove and be taken as discharge of onus of proof upon the appellants/plaintiffs that the appellants/plaintiffs from at least the year

1969 or before were having uninterrupted user of the disputed passage. Self serving representations cannot be taken as proof of the using a passage

for 20 years at least. In order to understand the lack of substance in this argument urged on behalf of the appellants/plaintiffs by placing reliance upon

Ex.PW1/2 to Ex.PW1/6, these documents are reproduced as under:-

Ex.PW1/2

No. HUPW/SA/84/763-66

Dated 3-9-84

To

Mr. H.S. Gautam,

131-B, Yusuf Sarai,

New Delhi:

SUB: PASSAGE FOR THE RESIDENTS OF YUSUF SARAI (EAST
NEW DELHI)

Sir,

Please refer to your letter addressed to the Vice Chairman, a copy of which has also been forwarded to us by the Secretary to the Executive

Councilor (Dev.). We are examining your request in details and we hope to solve your problem soon.

Sd/-

(SANTOSH AULUCK)

SR. ARCHITECT.

Ex.PW1/3

A delegation of residents from Y Sarai had met me on 29.5.84 and told that provision of gate and posting of chowkidar was in their interest as would

prevent unauthorized encroachments. When the complex is developed, we will to see that provision is made for proper access to their houses. They

were satisfied. Please make arrangements that scooters/3 wheelers/cars of residents are allowed to pass through without harassment. Sub: Passage

for residents of Yusuf Sarai (East) New Delhi Sir,

We the residents of Yusuf Sarai (East) New Delhi beg to bring the following facts for your kind consideration:-

(1) Our only passage to come out of locality to the main road i.e through DDA land marked community centre.

(2) This passage has been used by us for more than decade over since our houses were built.

(3) When iron wires were fixed round the DDA's guard and subsequently boundary wall was built. Suitable passage was left for us and we were

assured by the then Architect Sh. T.S. Pannu that a vehicle passage will be left for the residents.

(4) If the gate is not locked, it will create very difficult situation for the residents because the case of emergency like serious illness, there will be no

vehicle approach passage to our house. It is requested that status quo may kindly be allowed to continue so that we may use this passage as here to

fore. We hope you will kindly realize our genuine difficulty and do the needful.

Thanking you Yours faithfully

A.E. II J.E

E.E. ABII

Ex.PW1/4

To

Chairman

SUBJECT: MASTER PLAN FOR DELHI (AS PROPOSED-TO BE MODIFIED)

Respected dear sir,

1. In response to your kind letter No.F7(349)/85/PPW/-631 dated 18 Sep 85, a deputation of our colony appeared before the screening Board on 27

Sep 85.

2. We thank you from the core of our heart for sympathetic hearing our genuine case for providing direct vehicle passage to the main Mahrauli Road

through Plot No.1, and giving assurance for the same.

Thanking you again.

Yours faithfully,

Sd/-

(HS Gautam)

131 B Yusuf Sarai and 36 others of Yusuf Sarai (East) (South Part of Gautam Nagar and behind Eastern Wing Yusuf Sarai Market and adjacent to

the North of Plot No.1)

Ex.PW1/5

F7(349)85/FFW/631 Dated: 18/9/85

Regarding Master Plan for Delhi (as proposed to be modified) in response to the Public Notice published in the Gazette of India

â??EXTRAORDINARYâ?? No.289 (E) of the Govt. of India dated 6th April 1985.

To

Sh. H.S. Gautam

131 B, Yusuf Sarai

New Delhi

110016

Ref: Your Letter No._____dt. 27.6.85

Dear Sir,

Kindly take notice that the representation/Objection/suggestion filed by you will be taken up for hearing by the Screening Board set up under rule 8 of

Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 on 27.9.85 at 11.00 a.m. in the Conference Hall, 5th Floor, Delhi

Development Authority, Vikas Minar, Indraprastha Estate, New Delhi. You may appear personally or depute a duly authorized agent on the said date

and time before the Board for a personal hearing failing which the matter will be considered exparte. Please also note that no further notice of hearing

will be given to you.

Yours faithfully

Sd/-

(M.P. JAIN)

SECRETARY

Please inform the persons who have signed on the objections/suggestion given by you dated 27.6.85, since the addresses are not legible.

Sd/-

(M.P. JAIN)

SECRETARY

Ex.PW1/6

New Delhi,

27th June 1985.

To

The Vice-Chairman,

D.D.A.

DELHI

(Perspective Planning Wing)

Subject: Objection against proposed master plan-1985.

Sir,

We, the residents of YUSUF SARAI (East), adjoining site for Community Centre, (Plot No.-1), beg to bring the following facts for your kind consideration.

1. Our locality has been included as Southern part of Gautam Nagar (F-1) as regularized residential area in the present proposed Master Plan of Delhi. This locality was already regularised by the D.D.A. vide Resolution No.11 dt. 13.2.79 as residential area.
2. However in the present proposed Master Plan, direct vehicle passage to our locality has not been clearly shown.
3. Our only passage to come out of the locality to the main road is through D.D.A.'s land marked for community centre.
4. This passage has been used by us for more than decades ever since our houses were built. In this connection a copy of old record from Patwar Khata, showing direct passage to our houses from Mehrauli road, even much

before ear-marking the land for cc., is enclosed.

5. When the iron wires were fixed round the D.D.A.'s land & subsequently the boundary wall was built suitable passage was left for us & we

were assured by the then Chief Architect Shri T.S. Punj that vehicle passage will continue to be provided for the residents at the time of finalization

of plan for plot No.1. We are still using this passage.

6. In this connection a copy of letter No.HUPW/SA/84 765-66 dt. 3.9.84 received from Senior Architect is enclosed. We were also again verbally

assured that we will be provided suitable direct vehicle passage through the site for cc, when the plan for cc is finalized.

7. As extract of noting of Chief Engineer No.C.E/CPD VII/DDA dated 13.6.85 conveying "when the complex is developed, we will see that

provision is made for proper access to their houses" is also enclosed.

8. We, therefore, request that proper provision of direct vehicle passage from our houses to Mehrauli Road as here-to-fore may kindly be made when

the plan for cc in plot I is finalized. It may kindly be realized that our request is not a luxury demand but is a necessity and nothing less than a direct

vehicle passage to the Main Road, which we have been using for decades uptill now will satisfy our genuine requirement.

Thanking you,

Yours faithfully,

1. H.S. Gautam 131-B, Yusuf Sarai sd/-

XXXXX XXXXX XXXXX

37. Chander Bhan sd/??

(ii) I therefore reject the argument urged on behalf of the appellants/plaintiffs that appellants/plaintiffs have proved their legal rights as per Section 15

of the Easements Act.

13.(i) Learned senior counsel for the appellants/plaintiffs then sought to argue that the Local Commissioner Ms. Sangeeta Jain, Advocate had filed her

report, and this report was proved and exhibited by the appellants/plaintiffs as Ex.PW1/3 with 64 photographs Ex.PW1/2 (colly), and it is argued that

the Local Commissioner has opined in her report as per the last para 14 thereof that the disputed passage was the only passage to the houses of the

appellants/plaintiffs and therefore the appellants/plaintiffs are entitled to

easementary rights over the passage in question. The relevant para 14 of the report dated 23.2.1998 Ex.PW1/3 which is relied upon by the appellants/plaintiffs reads as under:-

14. Before concluding my report, I say that passage as explained, depicted and shown by me in para 7(i) of the report and photographs taken at the site, which is further claimed and prayed by the plaintiffs in the present suit and application and shown in the site plan is the only available approachable and accessible passage/access to the plaintiffs for ingress and egress from their houses to the road.

(ii) In my opinion, the argument urged on behalf of the appellants/plaintiffs is misconceived and liable to be rejected for two reasons. Firstly the report of the Local Commissioner in no manner proves 20 years uninterrupted and continuous user of the passage by the appellants/plaintiffs. Report of the Local Commissioner is only of a usage of a particular date and such usage cannot be taken automatically as a historical continuous use and that also for no less than 20 years. Therefore in the opinion of this Court the report of the Local Commissioner in no manner helps the appellants/plaintiffs to prove the user of the disputed passage continuously at least from the year 1969 or before.

(iii) The second reason for rejecting the argument urged on the basis of the report of the Local Commissioner is that the appellant no.1/plaintiff no.1 in his cross-examination conducted on 31.1.2013 has himself admitted that otherwise 20 feet wide road constructed and maintained MCD can be used for appellants/plaintiffs for going on to the Mehrauli Road. Therefore para 14 of the report of the Local Commissioner is belied by the admission of the appellant no.1/plaintiff no.1 himself. In my opinion, therefore the appellants/plaintiffs can derive no benefit of the report dated 23.2.1998 of the Local Commissioner Ex.PW1/3.

14.(i) Finally learned counsel for the appellants/plaintiffs sought to place reliance upon para 4 of the objections filed by the respondent no.3/IOC to the report of the Local Commissioner that the land in question of which the disputed passage forms a part is not owned by the respondent no.3/IOC and therefore once there is no ownership of the respondent no.3/IOC, hence therefore the respondent no.3/IOC cannot claim any rights in the land of which the disputed passage forms a part. Para 4 of the objections filed by the

respondent no.3/IOC to the report of the Local Commissioner reads as under:-

4. The Defendant No.3 submits that it has always been willing to settle the dispute. However, it is pointed out that the lease deed between the Defendants herein and the DDA is with respect to the built up area and not the surrounding area, which has been given to the Defendant No.3 for development by DDA and for which development the answering defendant has spent monies as set out in detail in the written statement.

(ii) In my opinion even this argument urged on behalf of the appellants/plaintiffs carries no weight for the reason that it is not an issue in the suit or in the present appeal as to who is the owner of the land on which the disputed passage exists. The disputed passage may exist in a plot of land which is owned by the respondent no.1/DDA, and of which though not ownership but only possession is vested by the respondent no.1/DDA with respondent no.3/IOC, however the issue is not of ownership of the land of which the disputed passage forms a part but as to whether the disputed passage was uninterruptedly and continuously used for at least 20 years before filing of the writ petition in the year 1989 and in this regard and as already discussed above, the appellants/plaintiffs have miserably failed to discharge the onus of proof upon them. Therefore, in my opinion, nothing will turn upon the fact that the plot of land adjoining the leased plot of the respondent no.3/IOC in which the disputed passage exists does not belong to the respondent no.3/IOC inasmuch as the issue is whether the appellants/plaintiffs have proved their easementary rights under Section 15 of the Easements Act of 1882 having used the disputed passage for 20 years. This argument of the appellants/plaintiffs is also therefore rejected.

15. In view of the above discussion I do not find any merit in the appeal. Dismissed.