

MOHIT PAHUJA S/O ML PAHUJA Vs MUNICIPAL CORPORATION
FARIDABAD

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Present: Sh.Ashok Kumar Muthreja, Advocate for plaintiff.
Sh. Sunder Singh, Advocate for defendant No.1 & 2
Sh. Ravinder Chaprana, Advocate for defendant No.3.
Defendant No. 4 proceeded exparte v.o.d. 08.04.2026.

Application under Order 39 Rules 1 & 2 read with Section 151 CPC.**Order:-**

Vide this order, this Court shall dispose of an application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) seeking temporary injunction restraining the defendants from dispossessing the plaintiff from the suit property, i.e. House No.2714, Ground/Stilt Floor, Block-H, Sainik Colony, Sector-49, N.I.T Faridabad, measuring approximately 500 sq. ft., (hereinafter referred to as the suit property) and from interfering with his possession thereof. The plaintiff has further sought directions to defendants No.3 and 4 to issue a request letter for compounding of the alleged zoning violation and to defendants No.1 and 2 to compound the same and accept compounding fee from the plaintiff.

2. Succinctly, the facts as stated in the application are that the plaintiff claims to be in possession of the suit property by virtue of an agreement to sell dated 27.12.2013 and General Power of Attorney dated 15.01.2014 executed by defendants No.3 and 4. It is submitted that defendant No.2, on behalf of defendant No.1, issued a notice dated 11.09.2017 under Section 261(1) (wrongly mentioned as 261(A) in the plaint) of the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as ‘The Act’) regarding zoning violations in the flats constructed in the

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ground/stilt floor. The plaintiff then submitted a representation to defendant no. 1 and 2 vide letter dated 13.04.2018.

It is further submitted that the plaintiff had already instituted Civil Suit No.1262 of 2018 against defendants No.3 and 4 in respect of the suit property. It is submitted that defendants No.3 and 4, in collusion with defendants No.1 and 2, are trying to pressurize the plaintiff to withdraw the said suit by threatening him with dispossession on the pretext of zoning violation. It is specifically alleged that on 16.04.2025 the defendants threatened the plaintiff that he would be dispossessed from the suit property on account of the alleged zoning violation. Hence, the present application has been filed.

3. Per contra, defendants No.1 and 2 have opposed the application contending that the allegations of collusion and threat are false. It is submitted that illegal construction at stilt/parking floor is not permissible and is in violation of zoning plan and hence show cause notice under Section-261(1) of 'The Act' was issued. The defendants have denied having threatened the plaintiff or having acted in collusion with defendants No.3 and 4. It is further submitted that stilt-floor violation is not compoundable and the competent authority is entitled to take action in accordance with law.

4. Defendants No.3 and 4 have denied execution of the agreement to sell dated 27.12.2013 and receipt of sale consideration. Their case is that the General Power of Attorney dated 15.01.2014 was executed only for management and control of the property.

5. Arguments heard. Case file carefully perused.

6. It is trite law that while adjudicating an application under Order XXXIX Rules 1 and 2, the court is to consider:

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- (i) whether the plaintiff has a prima facie case;
- (ii) whether balance of convenience is in favour of the plaintiff;
- (iii) whether the plaintiff will suffer irreparable loss and injury if an order of injunction was not passed.

7. In the present case, the very substance of the relief sought by the plaintiff against defendants No.1 and 2 is to restrain them from taking action in respect of the unauthorized zoning violation in the suit property. It is pertinent to note that the plaintiff himself relies upon the notice dated 11.09.2017 issued by defendant No.2 on behalf of defendant No.1 under Section 261(1) of 'The Act'. Thus, the initiation of proceedings by the municipal authorities on account of the alleged zoning violation is a matter forming part of the record. The plaintiff also admits to have submitted a representation dated 13.04.2018 in response thereto.

8. The defendants No.1 and 2 have specifically pleaded that the construction at the stilt/parking floor is unauthorized and contrary to the zoning plan and that the same is not compoundable. Whether the construction is ultimately found to be unauthorized and whether it is compoundable or otherwise are matters to be determined by the competent authority in accordance with the applicable statutory provisions. At this stage, this Court cannot, in exercise of its interlocutory jurisdiction, direct the municipal authority to suspend proceedings initiated under Section 261 of 'The Act'.

The statutory scheme contained in Section 261 of 'The Act' is also material. Section 261(1) of the Act empowers the Commissioner to direct demolition of any erection or work which has been commenced, carried on or completed without or contrary to the requisite sanction or in contravention of the provisions of the Act or bye-laws made thereunder,

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subject to the procedure prescribed therein. The provision also contemplates issuance of notice and affording a reasonable opportunity of showing cause to the concerned person. Section 261(4) of the Act specifically provides:

“(4) Save as provided in this section no court shall entertain any suit, application or other proceeding for injunction or other relief against the Commissioner or restrain him from taking any action or making any order in pursuance of the provisions of this section.”

Thus, the statutory embargo created by Section 261(4) applies and prima facie operates as a complete bar against the grant of an injunction against an order under the provisions of Section 261 of ‘The Act’.

9. Further, the plaintiff alleges that defendants No.3 and 4, in collusion with defendants No.1 and 2, are using the issue of zoning violation to pressurize him to withdraw Civil Suit No.1262 of 2018 and that he was threatened with dispossession on 16.04.2025. However, apart from the bald allegation of collusion and threat, no material has been brought on record at this stage which would demonstrate that defendants No.1 and 2 are acting otherwise than in discharge of their statutory functions. The mere fact that defendants No.3 and 4 are contesting the plaintiff's claim in respect of the suit property and that municipal proceedings regarding the alleged construction are pending does not, by itself, establish collusion between them.

10. Thus, the plaintiff has failed to establish a prima facie case for grant of temporary injunction. The balance of convenience is also not in his favour, as restraining the defendants would prevent the statutory authorities from performing their duties under the Haryana Municipal

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Corporation Act, 1994. As regards irreparable loss, the apprehension of the plaintiff as to dispossession, even if accepted, cannot override an express statutory bar to the grant of injunction.

11. In view of the foregoing discussion, all the three principles for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss are not made out in favor of the plaintiff. Ergo, the **application under Order XXXIX Rules 1 and 2 CPC stands dismissed** with no order as to costs.

Nothing stated herein shall be construed as an expression on the merits of the case.

Pronounced in open Court:-
Dated: 17.08.2026

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Note:- This order contains five pages and all the pages have been signed by me.

Rakesh

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