

Dispute No. CC/II/02/2023

Exh. No.05

Kamlesh Gandhi Vs. Haripreet CHS and Ors 1

ORDER BELOW EXHIBIT - 05.
(Passed on 08/05/2024)

1. This application is made by the disputant for the interim reliefs below Exh-05. The disputant sought interim injunction against the opponent No.2 restraining him from alienating, creating third party interest in respect of disputed parking space.

2. Perused application and say filed by the opponent society and opponent No. 2 below Exh-11 and 10 respectively. Heard learned advocate for the disputant and learned advocate for the opponent. I have also gone through the written argument filed by both the parties.

ARGUMENT ON BEHALF OF THE DISPUTANT

3. The advocate for the disputants argued that, the opponent No. 2 is the member of the society and in illegal occupation open parking space allotted to the disputant. The society framed car parking policy in SGBM dated 26/06/2005. The mother of disputant by way of letter dated 13/01/2010 requested the society to allot parking space. On 01/01/2015, the society allotted disputed car parking as per their decision held in AGBM dated 30/11/2014. At that time, the disputant was secretary of the society. From the year 2015 till March, 2017 the disputant was parking his car in the allotted space. But, in the year 2017, after newly committee took charge of the society, some members damaged the disputants car. Hence, the disputant took his car to the garage. Meanwhile the opponent No.2 illegally occupied

parking space. The society in the mid 2017 taken away parking space allotted to the disputant and also removed parking charges from maintenance bill. Hence, he prayed to allow the application.

ARGUMENT ON BEHALF OF THE OPPONENT No.2

4. The advocate for the opponent No. 2 argued that, he was allotted parking space by the society vide letter dated 01/01/2015. The opponent No.2 never encroached the disputants parking space. The disputant has not made out prima-facie case. Hence, he prayed to reject the application.

ARGUMENT ON BEHALF OF THE OPPONENT No.1

5. The advocate for the opponent No. 1 argued that, the disputant was managing committee member in previous years. The disputant misappropriated the society money, hence, special auditor was appointed. The disputant is facing criminal charges. The disputant is always defaulter. The disputant was never ever allotted parking space in the compound of the society. The disputant being ex-committee member had fraudulent made various bogus documents favouring himself. The letter dated 01/01/2015 seems to be bogus letter. The disputant and opponent No.2 were never allotted parking space in the society premises. The society has allotted parking spaces to its members. No prima-facie case made out. Hence, he prayed to reject the application.

6. For the just decision of this application following points arose for my determination. My findings thereon with reasons therefor are as under:-

Sr. No.	Points	Findings
1)	Whether the disputant has prima-facie case in his favour?	<u>No.</u>
2)	Whether balance of convenience lies in favour of the disputant ?	<u>No.</u>
3)	Whether the disputant shall suffer irreparable loss if injunction is refused ?	<u>No.</u>
4)	What order?	<u>The application is rejected.</u>

REASONS

As to Point No.1 to 4 :-

7. The point no. 1 to 3 are interlinked, hence discussed together. Firstly, the disputant has to show that, he has prima-facie case and balance of convenience is in his favour. Moreover he has to prove that if the application came to be rejected then it will cause irreparable loss to him.

8. The disputant has sought declaration and Injunction in respect of parking spaces in his dispute application. By way of present application the disputant sought temporary injunction against opponent No. 2 restraining him from alienating, creating third party interest in respect of disputed parking space.

9. It is the contention of the present disputant that, the society framed car parking policy in SGBM dated 26/05/2005. The mother of disputant by way of letter dated 13/01/2010 requested the society to allot parking space. On 01/01/2015, the society allotted disputed car parking as per their decision held in AGBM dated 30/11/2014. In support of his contention, the disputant has filed only letter dated 01/01/2015. The Disputant contends that, as per this letter, the society allotted disputed car parking to him. It is to be noted here that, the disputant was the Secretary of the opponent No. 1 society at that relevant time. The opponent No.1 society contends that, the society never ever allotted parking space to the present disputant. Therefore, it creates doubt over the above mentioned letter dated 01/01/2015 filed by the disputant.

10. The disputant has also filed number of maintenance bills issued by the opponent No.1 society. It appears that, the opponent No.1 society issued maintenance bill from the month of January, 2016 to March, 2017. In the said bills, the opponent society levied parking charges of Rs. 300/- against the present disputant. It is to be noted here that, the disputant was the Secretary of the opponent No. 1 society at that relevant time. Therefore, the disputant has to prove the genuineness of the said maintenance bills and the letter dated 01/01/2015 at the time of hearing. But, at this juncture, since the opponent No. 1 society raised objection over the said letter dated 01/01/2015 and maintenance bills, these documents need not be looked into.

11. It is the contention of opponent No.1 society that, the disputant was never ever allotted parking space in the compound of the society. The disputant being ex-committee member had fraudulently made various bogus documents favoring himself. The letter dated 01/01/2015 seems to be bogus letter. Therefore, in such circumstances, the disputant should have filed the minutes of meeting dated 26/06/2005 and 30/09/2014. But, the disputant has not filed minutes of meeting and the resolutions passed therein by which the society resolved to allot car parking to its members. Therefore, the disputant has suppressed material facts from this court. Hence, adverse inference can be drawn against the present disputant. Hence, the disputant failed to prima-facie prove that, the disputed parking premises was allotted to him by opponent No.1 society vide letter dated 01/01/2015. Therefore, on this count the disputant is not entitled for any kind of relief.

12. It is the contention of present disputant that, the opponent No. 2 encroached upon the disputants car parking space and now in illegal occupation open parking space allotted to the disputant. I have gone through the record. The disputant has not filed a single documentary evidence to show that, the opponent No.2 has encroached upon his disputed car parking space. For the sake of argument, if we assume that, the opponent No.2 encroached upon the car parking space belonging to the disputant, in that case, the disputant should have filed letter cum complaint with the opponent No.1 society. But, the disputant neither raised objection nor filed any complaint against opponent

No.2 with the opponent No. 1 society. The disputant has not filed photographs or other documentary evidence to show the encroachment by the opponent No.2. The disputant has not filed affidavit of any other member of the society in support of his contentions. Except bare words there is nothing on record to substantiate the contentions of the present disputant. Therefore, the disputant failed to prima-facie prove that, the opponent No. 2 encroached upon the disputants car parking space and now in illegal occupation open parking space allotted to the disputant. Therefore, on this count the disputants are not entitled for any kind of relief.

13. It is pertinent to mention here that, as per the judgment of Hon'ble Supreme Court in **Nahalchand Laloochand Pvt. Ltd. vs. Panchali Chs Ltd. reported in 2010 (6) Bom. C.R.. 74**, the Hon'ble Supreme Court has clearly laid down the following law,

"MOFA restricts the rights of the Promoter in the block or building constructed for flats/shops or to be constructed for flats / shops to which that Act applies. The promoter has no right to sell any portion of such building which is not "flat" within the meaning of Section 2(a-1) and the entire land to the has to be conveyed and building organization; the only legal right remains with the promoter is to sell unsold flats. "

14. Therefore, the builder / promoter can not sell any open space and/or amenity space to any unit purchaser as the

same is for the use and benefit of the Society and amounts to an illegal transaction. Even though the conveyance may not have been granted to the society, the property belongs to the society as they are the deemed owners thereof and no unit purchaser or third party can claim any right over any part or portion of the open space and amenity area. Moreover, as per the above mentioned judgment, common areas and facilities include parking areas open or stilt parking space and such areas are not flats and cannot be sold by promoter.

15. It is settled principle of law that, the co-operative housing society is the only authority who can decide the parking policy in its premises for their members. Considering the pleadings and documentary evidence, the disputant has no prima-facie case in his favour. It is well settled that when there is no prima-facie case, the balance of convenience and irreparable loss need not be considered. Hence the application deserves to be rejected. Accordingly, I answer point no.1 to 3 in the negative and in answer to point No.4, I pass the following order:-

ORDER

- 1) The application below exhibit-05 is rejected.
- 2) The cost in cause.

Place : Mumbai.
Date : 08/05/2024

I/c. Judge
(S. K. Devkar)
Co-Operative Court No. II,
Mumbai.