Order Below Exh.5 in CC/438/2023
(Ms. Jatin Hiroo Badlani. Vs. Hubton Viva Premises CHSL)

1. Perused the interim application and say filed by opponents. Heard Disputant and Opponents advocates at length. Considering the rival submissions of both sides following points arise for my consideration.

Sr. No.	POINTS	FINDINGS.
1)	Whether the disputant established prima facie case?	Partly affirmative
2)	Whether balance of convenience is in favor of disputant?	Partly affirmative
3)	Whether disputant will suffer irreparable loss if interim injunction is not granted in their favour ?	Partly affirmative
4)	What Order?	Application is partly allowed

REASONS

As to Point No.1 to 3

2. Ld. Advocate for disputant orally argued before me and filed written arguments below Exh. 22. Disputant submitted that the Disputant is registered company and lawful owner of Unit No. G/4 and G/5 alongwith license of 2 car parking spaces (in short will be referred as 'said property') as mentioned in the agreement of sale. Opponent No.01 is society and Opponent no.2 is the builder who constructed the said building. The disputant is in possession of unit alongwith the parking space from the year 2014. Till 2023 the disputant was in continuous possession of the said property. However, on 14.08.2023 opponent no.01 gave threats and entry of the disputant was stopped by the bouncers. Thereafter Opponent No.01 issued circular dtd. 14.08.2024 and obstructed the disputant from parking car.

3. Disputant further argued that, the provisional committee of the Opponent No.01 formed in the First General Body Meeting dtd. 29.05.2021 has been already expired its term in May 2022. However, the said provisional Committee is still in continuation as there is no election called or procedure adopted to form new managing committee of the opponent society. Instead of calling fresh elections Jaleshwar Singh secretary of the expired provisional committee arbitrarily preferred to call Special General Body Meeting dtd. 08.10.2022 and replaced Sudhir Jhunjunwala, Mayur Shaha, Carl Vaz, Vishal Gupta Jayanti Kamat with Manohar Rohra, Bharat Shaha , Hardik Hundia, Rajkumar Dubey and Mehr Ashr. This proves that the present managing committee is illegal.

4. Adv. for the Disputant further argued that unauthorized managing committee without any resolution levied penalty charges of Rs. 5000/- in the Disputants maintenance bill of July to September 2023. Hence, the present dispute is filed. By filing interim application disputant prayed to pass a temporary injunction from obstructing the parking of disputant. Further prayed to direct the office bearers of opponent no.01 society to vacate the premises, to maintain the status quo regarding circular dtd. 14.08.2021 and to allow disputant to enjoy their rights on properties and parking rights.

5. Ld. Adv. for the Opponent No.01 also orally argued and filed written arguments below Exh. 17 and submitted that the interim prayers are final in nature and application needs to be dismissed. Prayers sought by the disputant are barred by law. No reason quoted by the disputant for silence over 18 months on the issue of provisional managing committee. The entire election took place in the presence of returning officer. Relief pertaining to the provisional managing committee is not within the jurisdiction of this Court. As per judgment in **Nahalchand Laloochand Pvt. Ltd. Vs. Panchali CHSL** developers cannot sell open spaces and stilt car parking areas. Hence, parking sold by the developer is illegal. Utilization of open space by the

disputant is illegal encroachment by the disputant and by their licensee hence, several requests were made to the disputant not to park their vehicle in the open space. Act of disputant is endangering life of 196-unit holders of the society. . Hence, in the AGM decision was taken by society to impose penalty of Rs. 5000/- to the Disputant. But disputant continued to use open space. The disputant has granted said premises for operation of Maruti Suzuki Showroom and getting huge license fee out of such grant, but such showrooms attract customers by displaying their vehicles outside the showroom for which they pay huge license fees. The disputant is falsely claiming open space in contravention of bye laws. As per Fire department conditions, no covered parking shall be allowed in compulsory open space of the building. Balance of convenience is in favor of opponent members. Disputant not came with clean hands. No prima facie case is in favor of disputant. Hence, prayed to reject the application.

6. Ld. Advocate for the Opponent no.02 filed written arguments below Exh. 20 and orally submitted that after the sell of building and formation of the society Opponent no.02 is not necessary party and dispute is barred by mis-joinder of necessary parties. The disputant is enjoying the possession of the said premises alongwith car parking from the date of possession. Since society has taken the charge of the affairs of the building developer has no role. Hence, prayed to dismiss the application against the opponent no.02.

7. Perused the application and say. Perusal of dispute and interim application shows that the disputant raised two issues. One is pertaining to the parking and other is pertaining to the provisional managing committee. Lets deal with two issues one by one.

8. On the point of the parking it is admitted fact that opponent no.02 sold the parking to the Disputant. As per Ld. Adv. For the Opponent in view of **Nahalchand Laloochand Pvt. Ltd. Vs. Panchali CHSL Developer** cannot sold the

parking space. In this case Hon'ble Supreme Court held that, promoter has no right to sell 'stilt parking spaces'. Now in this case Disputant is claiming the parking on the basis of agreement to sell. So, considering this judgment it prima facie appears that though the developer has no right to sell he sold the parking space by registered agreement. Whether the developer was having right to sold such parking space and why he sold parking is the matter of trial.

9. But keeping aside the issue of the right of developer to sell the parking spaces, it is admitted fact on record that in view of an agreement to sell the disputant is enjoying the possession of the allotted parking space since the year 2014. As per case of disputant was in peaceful possession of the said property along with allotted parking space till 14.08.2023. This fact is nowhere denied by the Opponents in their WS. So it is fact on record that since the year 2014 till 14.08.2023 the disputant was in continuous and peaceful possession of the said property alongwith allotted parking space. It means the disputant is in continuous and peaceful possession of said property alongwith allotted parking for ~~10~~ 8 yrs.

10. Now as per case of disputant on 14.08.2023 entry of opponent no.01 was stopped by the bouncers retained by the Jaleshwar Singh, secretary of the society causing criminal intimidation to the Disputant. As per disputant they also filed a criminal complaint. On this incident it is say of the opponent society that several times they made oral requests to the disputants not to park their car in open space because that is the only way to free ingress and egress to the society complex and it is barring the access to fire hydrant, which can turn out to be a dreadful situation at the time of unfortunate mishap due to fire accident. As per disputant the incident took place on 14.08.2023. However, it appears that the criminal complaint is filed on 09.08.2023. Whether the threat was given or what is the matter of trial. But filing of compliant on 09.08.2023 does not prima facie supports the submissions of the disputant about incident took place on 14.08.2023.

11. Moving further the opponent society to restraint the disputant from parking their vehicles in open space issued circular dtd. 14.08.2021. I had gone through this circular which is notified to all members. As per this circular members are not allowed to park two wheelers inside the compound. The car parking is only to be used for parking Cars and not tempo or other vehicles. Two wheelers will not be allowed to enter the compound till further notice. The circular is issued by signature of secretory of the Opponent society.

12. In WS Opponent Society only submitted that disputant was aware of the circular dtd. 14.08.2021. So indirectly the opponent society is accepting the circulation of this circular. However, Opponent society not given details on the basis of which resolution the above circular was issued. Working of Co-operative Housing Society took place on the basis of majority decision. Before circulating any circulars, the subject about which circular is passed has to be discussed before the members of society at large and decision on that subject is expected to be taken by following due process of law and by majority. But no meeting of members seemed to be called before issuing such circular. Parking is the core issue of Housing Society specifically in cities like Mumbai. Therefore before issuing any circular on parking subject it was duty of society to call the meeting and to discuss the same before members at large and after passing resolution only society can circulate such circulars.

13. But in the present case it prima facie appears that the opponent society has not followed the basic procedure before issuing circular dtd. 14.08.2021. No resolution is passed to the effect of passing circular. Hence, circular issued by the Opponent society dtd. 14.08.2021 prima facie seems to be illegal and bad in law.

14. In the maintenance bills of Jully to September 2023 of the disputant the disputant levied penalty charges of Rs. 5000/-. Opponent society admitted the levy of such fine. As per written arguments of opponent society the fine is levied as per decision taken in AGM. However, WS is silent on such AGM. Before levying any

penalty the opponent society has not passed any resolution. No copy of resolution, details of AGM are filed by the opponent society on record which shows that for levying the penalty the opponent society not followed the due process of law. Hence, act of opponent society imposing fine to the disputant seems to be prima facie ban in law and illegal.

15. It is further stand of the opponent society that act of the disputant is barring the access to fire hydrant, which can turn out to be a dreadful situation at the time of unfortunate mishap due to fire accident. Ld. Advocate of the disputant also relied on MCGM Rules which states that no covered parking shall be allowed in compulsory open space.

16. In respect of the same subject opponent society filed complaint with Department of Fire Brigade dtd. 21.03/2024. However, there is no document filed on record which shows that Fire Brigade taken action against the concerned persons. Moreover, the Disputant is parking their car in the same premises from last 10 yrs. Then why after 10 yrs the opponent society realized the issue of fire hydrant. The Fire Brigade who is necessary authority to comment on fire safety also not taken any action against the Disputant. So this fact is also necessary to be taken into consideration.

17. Now coming to the issue of election of provisional Managing Committee. The provisional committee of the Opponent No.01 formed in the First General Body Meeting dtd. 29.05.2021 has been already expired its term in May 2022. However, the said provisional Committee is still in continuation as there is no election called and alterations in the committee took place as per SGBM dtd. 08.10.2022. Opponent society denied all the allegations.

18. Opponent society produced on record minutes of SGBM dtd. 03.11.2022. Minutes show that election process took place in the presence of the returning

officer. Returning officer by letter dtd. 06.12.2022 forwarded the election results to the Dy. Registrar by order dtd. 06.12.2022. It shows that the committee of opponent society is elected for the period 2022-2027. The documents produced by the opponent society are prima facie sufficient to show that the elections of the opponent no.01 society took place before the authorized officer and in proper manner. Hence, there seems no prima facie substance in the submissions of disputant that the managing committee of opponent no.01 society illegal.

19. In sum and substance though it is true that as per **Nahalchand Laloochand Pvt. Ltd. Vs. Panchali CHSL Developer** case law Developer cannot sell the stilt parking but the fact of continuous and peaceful possession of the Disputant over suit property alongwith allotted parking space cannot be denied. Opponent society cannot obstruct such possession without following due procedure of law. However, in the present case the Opponent society before obstruction neither called any meeting, nor passed any decision pertaining to the circular. Further before charging penalty in the maintenance bills also opponent society not passed any resolution. Therefore, issuance of circular dtd. 14.08.2021 prima facie seems to be illegal and bad in law. As the opponent No.01 society is obstructing the possession of the disputant without following the due process of law hence, disputant is having prima facie case and balance of convenience. If the order is not passed then peaceful possession of the disputant over the suit property will be obstructed and disputant will suffer loss.

20. But before passing interim order it is necessary to point out that dispute shows the allegations of obstruction by the opponent no.01 society. There appear no allegations of obstruction by the opponent No.02. Hence, it will be proper to pass interim order against opponent no.01 only. As the peaceful possession of the disputant over suit property is in danger hence, it will be proper to restrain opponent

no.01 from obstructing disputant / their tenant from parking their cars etc. on their allotted parking space ~~no.01 and 2~~ & by interim order.

21. As disputant failed to establish the prima facie case pertaining to the issue of Managing committee of the Opponent No.01 society; hence, disputant is not entitled for the interim relief as asked against in prayer clause (b) of the interim application pertaining to restrain the provisional managing committee from calling AGM.

22. The disputant also prayed to pass order to maintain status quo on ultra virus decisions and circular of 14.08.2021 enforced by the Opponent No.01 society. However the prayers claimed in the prayer clause (c) of this application are not clear. The disputant not specifically mentioned which decisions are ultra virus. Hence, in the absence of clarity of prayers it will not be proper to pass vague order. Further disputant prayed to maintain the status quo on circular of 14.08.2021. However, for granting the status quo on circular dtd. 14.08.2021 it was necessary on the part of the disputant to put before court current position and status of the circular. But no such current information on circular is on record. Hence, without knowing the current status of circular it will not be proper and feasible to pass order of maintaining status quo on circular dtd. 14.08.2021. Hence, the above prayer of the disputant is not allowed.

23. The disputant in para (d) further prayed to direct the opponents by way of injunction biding on opponents their agendas, representatives, assigns etc. whose personal action it seeks to restrain. However, the decisions passed by society are binding on society itself and no order is required to pass to declare the same. Unlike prayer clause (c) there is no clarity in this prayer clause hence, the disputant is not entitled for this relief.

24. The disputant further asked to issue directions to allow the disputant and their tenant to enjoy their rights on properties and parking. The person who is registered owner of the property is entitled for the use of that property and is free to enjoy rights on properties. No court order is required to be pass for enjoying the rights on property if the person is lawful owner of the property. Additionally order pertaining to prayer clause (a) is passed. Therefore, the Disputant is not entitled for the relief claimed in prayer clause (e)

25. Hence, I answered point no. 1 to 3 in partly affirmative and while giving answer to point no. 4 I proceed to pass following order:

ORDER

1. Application is partly allowed.

2. The opponent No.01 by this interim injunction is hereby restrained from obstructing disputant / their tenant from parking their cars etc. on their allotted parking space .

3. Other reliefs claimed by the disputant are hereby rejected.

Mumbai
Date : 12.06.2025

(S. V. Metil-Patil) 12.6.25
Judge,
Co-operative Court No.1, Mumbai.