

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. S. K. Tonpe, Judge)

Dispute No. CCT 218/2022

CNR No. MHCO04-000237-2022

Mr. Roshan Jaikumar Jambhe and another

Disputants

Vs

Irvetta CHS Ltd. and another

Opponents

Order
(Below application Exh. 5)

1. Disputant have filed present application for interim relief against opponent society.

Brief facts of the application are as under :

2. The disputants are the members of the opponent no. 1 society in respect of the flat no. 703 in 'B' wing of the opponent no. 1 society. The opponent no. 1 is a registered Co-operative Housing Society, registered under the provisions of MCS Act 1960. The opponent no. 2 is a member of the opponent no. 1 society in respect of flat no. 202 in B wing of the society. In the month of January 2019, they were searching flat in the project of Lodha at Dombivali. They learnt that, Mr. Puneet Vinod Dhawan and Mrs. Lalima Thakur are the owners of the flat no. 703, admeasuring 686 sq. ft. carpet area with one open parking space no. G9-517 in building known as Irvetta Co-operative Housing Society Ltd., in a "Casa Rio Gold" project, lying being on piece and parcel of land bearing survey no. 76, 73 situated at Village Nilje, Dombivali East (hereinafter for sake of brevity flat no. 703 will be referred to as the 'suit flat' and parking no. G9-517 will be referred to as the 'suit parking').

3. The disputants further stated that, said Mr. Puneet Vinod Dhawan and Mrs. Lalima Thakur (hereinafter for sake of brevity referred to as the “First original owners”) informed that, they are in peaceful possession of the said flat along with the said parking no. G9-517 and they are willing to sell the suit flat along with the suit parking. Accordingly, the disputants agreed to enter into transaction, the said “First Original Owners” agreed to sell the suit flat along with suit parking for total consideration of Rs. 49,50,000/-. The said first Original Owners executed the agreement for sale dated 17/01/2019 in favour of disputants. The said agreement for sale is duly registered with office of Sub-Registrar Kalyan-5 at serial no. 742/2019 dated 17/01/2019.

4. The disputants further stated that as per agreement for sale dated 17/01/2019 the disputants have paid entire amount of consideration to the original owner. On receipt of entire consideration the original owner had executed sale deed dated 20/04/2019, said sale deed is duly registered with the office of Sub Registrar Kalyan. On receipt of the entire consideration the said owners had signed and executed necessary transfer papers in favour of the disputants. The opponent no. 1 society has transferred the share certificate no. 91 bearing distinctive nos. 901 to 910 in favour of disputants on 17/01/2019. The opponent no. 2 was secretary at the time of purchase of suit flat. The opponent no. 2 was allotted the parking slot no. G9-381, however, it is learnt that the opponent no. 2 in collusion with the developer has obtained back dated letter dated 13/08/2018 regarding allotment of suit parking slot no. G9-517 instead of parking slot no. G9-381. The opponent no. 2 is no way concern in respect of the suit parking no. G9-517. As per the

procedure followed by the developer for allotment of parking, the disputants are entitled for the suit parking no. G9-517 and the opponent no. 2 is entitled for parking slot no. G9-381.

5. The disputants further stated that the opponent no. 2 during his tenure as a secretary in collusion with developer obtained the letter in respect to the change of parking slot. There is no any reason or ground for change of parking slot. The then owner had acquired right, title and interest in respect of the suit parking. Prior to selling of the suit flat, the suit parking was used and occupied by the first original owners. By the registered agreement for sale and sale deed the first original owners had transferred the suit flat along with the suit parking to the disputants. The disputants have made representation to the opponent no. 1 society regarding parking issue created by the opponent no. 2. The opponent no. 1 society has kept the said issue for discussion and consideration in annual general body meeting held on 15/09/2022. As per agenda no. 7 the issue regarding parking was discussed and accordingly following resolution is passed : -

Resolution

It is resolved and ratified by the annual general body meeting held on 18th September 2022 to adopt the parking allocation by Lodha group at the time of handover to society in 2017. Any changes to parking number through reallocation or by any other means by society or by builder must be ratified by this body. Only original parking letter and allocation details incorporated in the sale agreement registered with Government of Maharashtra via registered sale deed where stamp

duty is paid is the only valid document to claim the ownership and allocation for parking under all circumstances.

Proposed by : Piyush Pandey (D104)

Seconded by : Amit Shishupal (D206)

6. The disputants further stated that it is settled position of law that the developer can sale only saleable area. The opponent society is formed on 19/01/2017, after formation of the society, the society is entitled to maintain and administer the affairs of the building of the society as per the provisions of MCS Act 1960 and MCS Rules 1961 and approves byelaws of the society. As per the provisions of byelaws, the society can frame parking rules. In view of the resolution no. 7 passed in Annual General Body Meeting held on 15/09/2022, the opponent no. 1 society has taken decision regarding parking space, the said resolution is in accordance with the law, hence binding on members. It is required to be declared that, the resolution no. 7 passed in annual general body meeting held on 15/09/2022 for adopting the parking allocation by Lodha Group at the time of handover to the society in year 2017 as per the original parking letter and allocation details incorporated in the registered sale agreement, is legal, valid, subsisting and binding on the members.

7. The disputants further stated that the suit parking is mentioned along with the suit flat in the registered agreement for sale dated 17/01/2019 and sale deed dated 20/04/2019. Further the society has also passed the resolution as per resolution no. 7 in annual general body meeting held on 15/09/2022, hence it is required to be declared that, the disputants are entitled for use and occupy the suit parking no. G9-517 along with the suit flat as per

registered agreement for sale dated 17/01/2019, sale deed dated 20/04/2019 and resolution as per resolution no. 7 in Annual general body meeting held on 15/09/2022. The opponent no. 2 has no any right to use and occupy the suit parking no. G9-517. The opponent no. 2 is entitled to use and occupy originally allotted parking no. G9-381. The opponent no. 2 is disturbing the suit parking no. G9-517, hence the opponent no. 2 is required to be restrained by order of injunction of this Court from disturbing the possession of the disputants in respect of suit parking no. G9-517 and further restrained from parking his vehicle in the suit parking no. G9-517.

8. The disputants further stated that they have paid huge amount to acquire the suit flat. Before entering into transaction in respect of the suit flat, the disputants had inspected the suit flat along with the suit parking. On satisfaction of availability of the suitable parking along with the suit flat, the disputants had agreed to enter into the transaction. The opponent no.2 in collusion with the developer cannot change the allocation of the parking space which was originally allotted to the first original purchaser. As per the provisions of law, the society is entitled to frame the rules of the parking and accordingly, the disputants are entitled to use and occupy the parking space. The opponent no. 2 is disturbing the possession of the disputants in respect of the suit parking, therefore pending hearing and final disposal of the present dispute, the opponent no. 2, his servants, agents, relatives, legal heirs or any other persons claiming through or under them is required to be restrained from disturbing the possession of the disputants in respect of suit parking no. G9-517 and further restrained from parking his vehicle in the suit parking no. G9-517.

9. The disputants further stated that disputant no. 2 is existing managing committee member, however, the present dispute is being filed in the capacity of being members of the opponent no. 1 society in respect of the suit flat. The present dispute is for implementation of the resolution passed by the society which is passed in accordance with the provisions of law. The disputants have made out prima facie case, balance of convenience is in favour of the disputant. Irreparable loss would be caused to the disputant, if interim relief is not granted in favour of the disputant, hence the disputants are entitled for the relief as prayed for. Hence prayed that the opponent no. 2, his servants, agents, relatives, legal heirs or any other person/s claiming through or under them be restrained by order of temporary injunction of this Court from disturbing the possession of the disputants in respect of suit parking no. G9-517 and further restrained from parking his vehicle in the suit parking no. G9-517.

10. The opponent no. 1 filed written statement at Exh. 8 and submitted that the disputants are members of the opponent no. 1 society. The opponent no. 1 is a registered Co-operative Housing Society, registered under the provisions of MCS Act 1960. The opponent no. 2 is member of the opponent no. 1 society in respect of flat no. 202 in B wing of the society. Opponent no. 2 was secretary at the time of purchase of suit flat. The opponent no. 2 was allotted the Parking slot no. G9-381, the opponent no. 2 has obtained back dated letter dated 13/08/2018 from builder regarding allotment of suit parking slot no. G9-517 instead of parking slot no. G9-381. The opponent no. 2 is no way concern in respect of the suit parking slot no. G9-517. As per the procedure followed by the developer for

allotment of parking, the disputants are entitled for the suit parking no. G9-517 and the opponent no. 2 is entitled for parking slot no. G9-381.

11. The opponent no. 1 further submitted that opponent no. 2 during his tenure as a secretary he had obtained the letter in respect to the change of parking slot without intimating to the society. There is no any reason or ground for change of parking slot. The then owner had acquired right, title and interest in respect of the suit parking. Prior to selling of the suit flat, the suit parking was used and occupied by the first original owners. By the registered agreement for sale and sale deed the first original owners had transferred the suit flat along with the suit parking to the disputants. The registered agreement for sale dated 17/01/2019 and sale deed dated 20/04/2019 in respect of suit flat and suit parking is self explanatory.

12. The opponent further submitted that the disputants have made representation to the opponent no. 1 society regarding parking issue created by the opponent no. 2. The said issue was discussed in AGM dated 20/03/2022 at item no. 6. The opponent no. 1 society has kept the said issue for discussion and consideration in Annual General Body meeting held on 15/09/2022. As per agenda no. 7 the issue regarding parking was discussed and accordingly following resolution is passed.

Resolution

It is resolved and ratified by the annual general body meeting held on 18th September 2022 to adopt the parking allocation by Lodha Group at the time of handover to society in 2017. Any changes to parking

number through reallocation or by any other means by society or by builder must be ratified by this body. Only original parking letter and allocation details incorporated in the sale agreement registered with Government of Maharashtra via registered sale deed where stamp duty is paid is the only valid document to claim the ownership and allocation for parking under all circumstances.

Proposed by : Piyush Pandey (D104)

Seconded by : Amit Shishupal (D206)

13. The opponent no. 1 further submitted that it is settled position of law that the developer can sale only saleable area. The opponent no. 1 society is formed on 19/01/2017, after formation of the society, the society is entitled to maintain and administer the affairs of the building of the society as per the provisions of MCS Act 1960, MCS Rules 1961 and approved byelaws of the society. As per the provisions of byelaws, the society can frame parking rules. In view of the resolution no. 7 passed in Annual General Body meeting held on 15/09/2022, the opponent no. 1 society has taken decision regarding parking space, the said resolution is in accordance with the law, hence binding on members.

14. The opponent no. 1 further submitted that as per the resolutions passed in Annual General Body meeting dated 15/09/2022 disputants are entitled for the suit parking. The opponent no. 2 was allotted parking no. G9-381. The opponents are not aware about the letter dated 13/08/2018 regarding allotment of the suit property no. G9-517 instead of parking slot no. G9-381. As per the procedure followed by the builder for allotment of parking, the opponent no. 2 is entitled for the parking no. G9-381 and

disputant is entitled for suit parking no. G9-517. The suit parking is mentioned in registered agreement dated 17/01/2019, said parking was originally allotted against the flat of disputant. Hence disputants are entitled to park parking no. G9-517. As per the procedure followed by the builder for allotment of parking, the opponent no. 2 is entitled for parking no. G9-381 and disputant is entitled for suit parking no. G9-517. The suit parking is mentioned in registered agreement dated 17/01/2019, said parking was originally allotted against the flat of disputant. Hence disputants are entitled to park parking no. G9-517. The resolution passed in AGM dated 20/03/2022 regarding parking is passed in accordance with provisions of law, therefore the same is binding on opponent and disputant and as per said resolution disputant is entitled for suit property. The opponent have already stated that as per resolutions passed in general body meeting dated 15/09/2022 disputant is entitled for suit parking. The resolution pertaining to parking is passed in accordance with the provisions of law. Hence prayed to dismiss the dispute with costs.

15. The opponent no. 2 filed written statement and reply at Exh. 7 and submitted that all the allegations made by disputant are fake, frivolous and it shows the intention of the defamation of opponent no. 2. The disputants are made personal grudges by utilizing the power of managing committee member and unnecessarily drag opponent no. 2 in this dispute. The information and documents made before this Court are incomplete, altered and manipulated. Documents provided by the disputants are contradict their own statement in this suit. The disputant stated that they have purchased the flat from Mr. Punit Vinod Dhawan and Mr. Lalima

Thakur (hereinafter referred as “First Owner”) vide the agreement for sale dated 17/01/2019 registered with office of Sub Registrar Kalyan-5, however disputants not produced said documents before this Court.

16. The opponent no. 2 further submitted that Mr. Punit Vinod Dhawan and Mrs. Lalima Thakur are the first owner of the said flat vide the agreement for sale with Lodha Dweller Pvt. Ltd. (hereinafter referred as “Developer”). The agreement for sale is the part of chain of agreement however disputant purposely avoid to produce this document before this Court as they found that such parking numbers is not mentioned in the said agreement. It is clear intention to hindrance of justice. The sale deed of said flat between First Owner and Lodha Dweller Pvt. Ltd. (hereinafter referred as “Developer”) is also not produced by disputant purposely to hindrance of justice. The opponent no. 2 is the member of the opponent no. 1 society in respect of the purchase flat no. 202 B wing of Irvetta Co-operative Housing Society Ltd. vide the agreement of sales dated 19/05/2012 with Lodha Dweller Pvt. Ltd. The developer has created the parking spaces as per layout and plan sanctioned by the concern authority. The said developer issued the allotment letter to opponent no. 2 for allocation of parking no. G9-517 on 13/08/2018. The developer also issued the parking allotment letter to First owner on 17/11/2018 with same parking no. G9-517. The said developer realise the mistake which he allots the same parking to two different residents and rectify the issue as on “first come first serve basis”. Henceforth developer issues the letter to first owner and intimate the changes of parking vide letter dated 23/02/2019.

However the first owner has denied this changes and approached to the developer.

17. The opponent no. 2 further submitted that developer denied all the request and intimated through the email dated 22/03/2019. No concern was raised to any authority after this denial. The first owner hide the parking status from disputants to take the benefit of the sales. Opponent no. 2 has no relation of the agreement for sales and sales deed done between first owner and disputants. The first owner purposely mentioned the parking number G9-517 in the sales deed made between disputant and first owner which is in the possession of opponent no. 2 and the opponent no. 2 has no relevance with the said sales deed. It is clear intention to grab the space illegally and the said sales deed is to be null and void. The disputants claim that the opponent no. 2 was obtaining back dated letter from developer by using their collusion, however disputants not produce any relevant document to strengthen the claim and has done a baseless accusations over opponent no. 2.

18. The opponent no. 2 further submitted that disputant no. 2 is the managing committee member of opponent no. 1 and after 3 years of the purchase said suit, disputant mis use her power as a managing committee member and force to pass the resolution mentioned in the para 7 in 6th AGM dated 18/09/2022. The opponent no. 1 has taken this issue wrongfully in the annual general body meeting and passed the resolution which is not abide by the MCS Act 1960. As per byelaws adopted byelaw no. 77 describes that

a. The society shall in the general body meeting frame and adopt parking rules to regulate the parking slots, in accordance with the Act and Rules thereunder.

- b. The allotment of parking space shall be made by the committee on the basis of "First Come First Served", for available parking slots. However the member shall have no right to sell or transfer the parking slot allotted by the society.*
- c. No member shall be entitled to utilize more parking slots than that officially allotted to him by the society.*

19. The opponent no. 2 further submitted that the resolution passed by general body in annual general meeting held in 18/09/2022 did not comply the byelaw no. 77 hence this resolution is abide the law. As per byelaw no. 80, in case the number of eligible members for parking slots is in excess of the available parking slots, then the managing committee shall allot parking slots on annual basis by fair and transparent process, in concurrence with the general body regulations. The resolutions passed by general body in annual general body meeting held in 18th September 2022 did not comply byelaw number 80 hence this resolution are abide the law. The resolution passed by the general body in annual general body meeting against the opponent no. 2 with animosity by chairman, secretary and body intentionally.

20. The opponent no. 2 further submitted that the general body had to take the consideration of all the members of the opponent no. 1 society and reallocate the parking again by lottery or first come first serve or in any appropriate way but they intentionally passed resolution against the opponent no. 2 only. First owner of the said flat mentioned in his communication with PCMA (Palava City Management Association) dated 23/03/2019 at 10.30 AM that there are twelve vacant parking spots inside the complex but till then

demanding the parking spot of opponent no. 2 is clear intention of disputant to harass the opponent no. 2. As the conveyance deed between Lodha Dweller Pvt. Ltd. (Developer) and opponent no. 1 has not done that's why all the rights of allotment of parking spot is at Lodha Dweller Pvt. Ltd. opponent no. 1 should not interfere the decision of Lodha Dweller Pvt. Ltd., till the formation of conveyance deed. As the First Owner of the said flat hide dispute regarding the said parking spot from disputant, first owner of the flat is liable for LIS PENDENS hence disputant has to claim his parking spot to first owner not to opponent no. 2. The first owner of the said flat agreed in his communication with Palava City Management Association (PCMA) dated on 16/03/2019 at 8.07 PM that the parking slot is allocated to him on 17/11/2018 and opponent no. 2 is allotted the parking slot G9-517 by allotment letter of dated 13/08/2018, so as per byelaw no. 77 the allotment of parking space shall be made by the committee on the basis of "First come first served" for available parking slots. However the members shall have no right to sell or transfer the parking slot allotted by the society, so opponent no. 2 has a lawful rights over said G9-517 parking slot. The first owner take allotment letter from PCMA on 17/11/2018 and within two months i.e. on 17/01/2019 came in agreement for sale with disputant it is clear intention of first owner of said flat to hide the dispute regarding the parking slot from disputant to get more amount/price from them for said flat. The First Owner of the flat mentioned in his email of dated 25/03/2019 at 12.15 PM that he inquired about the parking allocation system in Irrvetta and figured that all the flats on 7th floor for all wings have a parking inside the complex like we had it till the time it was allocated to Amol Bhogale is clear intention of First

Owner of said flat targetting opponent no. 2 intentionally because opponent no. 2 got the parking slot inside the complex. The act of the first owner of the flat and disputant is under animosity with opponent no. 2. In same email first owner of the said flat demanded that the flat B-702 has vacant parking spot and was also unoccupied. It will be great if you can allocate that parking to us instead of G9-517 or any other available parking slot inside the complex, shows clear intention of first owner of the flat and disputant to grab vacant parking slot. The First owner of the said flat hid dispute regarding from the disputant at the time of selling the said flat so disputant have to demand their right over said parking slot G9-517 at First Owner (Puneet Dhawan) and not to opponent no. 2. The dispute regarding the said parking slot G9-517 was raised by the first owner of the said flat to PCMA by email putting disputant in CC but not involved opponent no. 2 in any communication with the PCMA shows clear intention of disputant to keeping him unknown about the communication with PCMA. The dispute regarding the said parking slot G9-517 was not kept for discussion in the AGM of dated 18/03/2022 and authorities of the opponent no. 1 issued a parking allotment letter on dated 26/03/2022 without discussion in AGM, shows clear intention of disputant and opponent no. 1 to harass the opponent no. 2 and hindering him from using his parking space. The dispute regarding the said parking slot G9-517 was raised in the February / March 2019 but disputant kept said dispute before annual general body meeting on 18/09/2022 i.e. after three years after becoming the committee member of opponent no. 1 shows clear intention of disputant of misuse of their position in the committee and harassing opponent no. 2. Hence prayed to cancel the resolution

item no. 7 of 6th Annual General Body Meeting of dated 18/09/2022 allocating the said parking slot to the disputant, to order the disputant to pay the cost of legal proceeding of Rs. 50,000/-, deny the request of disputants for restrained opponent no. 2 by order of temporary injunction and other reliefs.

21. After hearing both the parties and perusing the documents on record following points arise for my consideration.

Sr. No.	Points	Findings
1	Whether there is prima facie case in favour of disputant?	In the affirmative
2	In whose favour balance of convenience lies ?	Disputants
3	If application is rejected to whom irreparable loss would be caused ?	Disputants
4	What order ?	As per final order

REASONS

22. Heard the learned advocate for both the parties.

AS TO POINT NO. 1 TO 4

23. So far as the above points are concerned it is well settled principle of law that while adjudicating the interim application one has to examine three main ingredients of law of injunction. Those are prima facie case, balance of convenience, irreparable loss. Prima facie case means the existence of circumstances justifying the trial of the questions of facts and law raised in the litigation. The disputant is required to prima facie establish that in the event of non interference by the Court there will be irreparable injury and substantial loss caused. Existence of prima facie case alone does not entitle a plaintiff

to an order of temporary injunction. Both prima facie case and balance of convenience are necessary. It is not enough for the disputant to show that the disputant has a prima facie case. He must further show i) he will suffer an irreparable injury if the relief is refused ii) in the event of success in suit he will not have proper remedy in being awarded adequate damages iii) the balance of convenience is in his favour iv) he must show a clear necessity for affording immediate protection to his alleged right on interest which should otherwise be seriously injured.

24. Perused application at Exh. 5, say of opponent no. 1 and 2, proceeding, documents on record and after hearing of the parties, it appears that disputant has filed present dispute for declaration the resolution no. 7 passed in AGM dated 15/09/2022 for adopting parking allocation by Lodha Group at the time of handover of the society in the year 2017 as per original parking letter and allocation details incorporated in the registered sale agreement is legal and binding on the members and further declaration that the disputants are entitled to use and occupy the suit parking no. G9/517 along with the suit flat as per registered agreement for sale dated 17/01/2019, sale deed dated 20/04/2019 and resolution no. 7 in AGM held on 15/09/2022 and permanent injunction against opponent no. 2.

25. The disputant in the interim application prayed to restrain opponent no. 2 and his legal heirs from disturbing the possession of the disputants in respect of suit parking no. G9/517 and further restrain from parking his vehicle in the suit parking no. G9/517. Perusal of letter dated 17/11/2018 filed by the disputant shows that the Lodha Developer allocated car parking no. G9/517 to

Punit Vinod Dhawan original owner of flat no. 703. Sale deed dated 20/04/2019 between Punit Vinod Dhawan and disputant shows that open parking space no. G9/517 is allotted with the flat no. G-703. The share certificate is also issued in the name of the disputants. Further it appears that in the 6th AGBM held on 15/09/2022 resolution no. 7 in respect of parking was discussed and it is resolved and ratified by the AGBM held on 18/09/2022 to adopt the parking allocation by Lodha Group at the time of handover to the society in 2017. Any changes to parking number through re-allocation or by any other means by society or by builder must be ratified by this body. Only original parking letter and allocation details incorporated in the sale agreement registered with Government of Maharashtra via registered sale deed where stamp duty is paid is the only valid document to claim the ownership and allocation for parking under all circumstances. Further vide letter dated 26/03/2022 society allotted parking no. G9/517 in respect of flat no. B-703 is allotted to the disputant Pratibha Jambhe and parking no. G9-381 is allotted to flat no. B-202. The resolution passed in AGBM held on 15/09/2022 is passed by majority and is still subsisting. The resolution dated 15/09/2022 is not challenged by the opponent no. 2 till today. If the interim application of the disputant is not allowed irreparable loss will be caused to the disputant. The prima facie case, balance of convenience also lies in favour of disputant. Considering above discussion and documents on record I answer point no. 1 in the affirmative, point no. 2 and 3 in favour of the disputant and in answer to point no. 4 I pass the following order.

Order

1. Application at Exh. 5 is allowed.

2. The opponent no. 2, his servants, agents, legal heirs or any other persons claiming through them are hereby temporarily restrained from disturbing the possession of the disputants in respect of parking no. G9/517 and further restrained from parking his vehicle in the parking no. G9/517 till disposal of the present dispute.

Place : Thane
Date : 20 / 04 / 2023

(Smt. S. K. Tonpe)
Judge
Co-operative Court, Thane