

MHCO120000452023IN THE COURT OF HON'BLE JUDGE, CO-OPERATIVE COURT
NO.2 PUNE AT PUNE

Dispute No.38/2023

Dr. Mukund Daji Shashtri

-----Disputant

V/s

Kumar Presidency Co-operative Hsg. Ltd., & Others

-----Opponents

ORDER BELOW EXH.5 & 11

(Dictated and Pronounced on 07/08/2023)

1] Application Exh-5 is filed by the disputant for temporary injunction against opponent society from implementation of new parking policy which is introduced as per resolution dated 04/02/2023 and for continuation of parking policy of year 2017 on the grounds more specifically mentioned in the application, mainly on the ground that, the promoter/builder has executed the sale agreement with the flat purchaser along with said agreement the promoter / builder has allotted open and or cover parking to the flat purchaser the builder has prepared map of allotted parking spaces on 06/02/2000 as per this map the parking space is allotted to the disputant and disputant is using said allotted parking space without any obstruction till today.

2] On 18/11/2017 opponent No.1 society has called Special General Body Meeting and in the said Special General Body Meeting it was decided that, the members who wants additional parking has to pay Rs.500/- for every four wheeler vehicle per three months. In the said meeting it was decided no charge will be levied for one scooter parking.

As per this resolution disputant had applied for allotment of parking space accordingly, the Managing Committee by their letter dated 31/05/2018 has allotted one parking space to the disputant in the west south corner near the wall of club house. Said parking space is also shown in the original map of the building of the society, as per sanction plan, in that place only two parking spaces are available and disputant is using said parking spaces for parking his vehicles.

3] Surprisingly opponent society has called the Special General Body Meeting dated 04/02/2023 wherein one of the subject was to finalize the parking policy for the year 2023-2024 the said meeting was attended by 35 members out of total 83 members. In the draft minutes of said meeting it was mention that, only 28 members was present to the said meeting excluding 7 Managing Committee members out of which 17 was present through online mode there is no any proof to show that the actually these members has attended the meeting by online mode. As such excluding the Managing Committee Members only 10 members had attended the meeting. There is no mention about the special permission to attend the meeting by the online mode. In the meeting dated 04/02/2023 the opponent society illegally cancelled the previous parking policy. The opponent society has no right to cancel the parking policy by such resolution due to cancellation of old parking policy there is cavas in the society and the members are parking their vehicles as per the space available without any discipline.

4] The new parking policy is accepted and adopted illegally by the opponent society with the view to give the benefit to the members who are supporters of the new Managing Committee and opponent is trying to obstruct the disputant from parking their vehicles upon the allotted parking spaces.

5] Application Exh-11 is filed by the disputant for the temporary injunction against the opponent society from obstructing the disputant to park their vehicles as per old parking policy on the ground that, since from 01/03/2023 new parking policy is implemented by the opponent society. The parking space which is used and occupied the disputant is allotted to other member who has started parking his vehicle on the said parking space, due to this the vehicle of the disputant is stuck and it was impossible to remove the vehicle of disputant from the parking space of the disputant. Opponent society distributed new sticker to be affixed on the vehicle and without sticker the vehicle is not permitted to enter in to the society gate as such disputant is not able to park his vehicle in the parking therefore, disputant prays for continuation of old parking policy and temporary injunction against the society not to obstruct the disputant from parking his vehicle on the old parking space.

6] Show cause notice of application Exh-5 and Exh-11 is duly served on the opponent society. Opponent society appeared through advocate and objected application Exh-5 and Exh-11 by filing its written statement and reply. Which is at Exh-19 the defense of opponent society as pleaded in its written statement is that, the dispute filed by the disputant is not legal, proper and maintainable at law. The disputant is abusing the process of law. The subject matter is the resolution passed in the Annual General Meeting dated 04/02/2023, of the opponent society, pertaining to the parking. The said resolution is perfectly legal and proper and it is within the purview as well as prerogative vested in the name of the opponent society, being a Co-operative Body, who looks after the business and management of the movable and immovable assets and the resolution referred in the dispute is legally enforceable and passed by the Supreme Body of the society i.e. the Annual General Body Meeting by

looking after and by taking care of the best interest of all its members including disputant. No cause of action has arisen for the disputant to prefer the present dispute. On bare perusal of the dispute application, it is clear that even the disputant has failed to point out any valid and legal reason for setting a-side the resolution. The disputant being the member was present in the Annual / Special Body General Meeting dated 04/02/2023 and never disputed any of the resolution passed in the AGM / SGM or even in the draft minutes of the meeting.

7] All the allegations of the disputant are vague. He has not pointed out any specific provision under which the concerned resolution can be termed as illegal. Hence, the concerned resolution cannot be set aside mechanically and for mere asking of the disputant. The opponent society has acted in consonance with the provisions stipulated in the Bye-laws as well as M.C.S. Act, 1960 and Rule. The disputant is illegally and without any authority is claiming the right and possession over the unallotted parking space. The disputant is bound to adhere with the AGM / SGM resolution dated 04/02/2023, under which he has been equitably allotted a parking space on the equal footing of all the other members. It is true that pursuant to the deemed conveyance the entire right, title and interest has been vested in the name of this opponent society. It is denied that the parking plan discussed in the Special General Body Meeting dated 18/11/2017 is final and conclusive. In fact the disputant was illegally claiming on two parking spaces to park his vehicle, causing prejudice to the other members. The opponent society and members repeatedly called upon the disputant to stop the illegal user, in vain. The disputant always lent deaf ear to the claim of the society as his forceful use of two parking space was convenient to him.

8] Subsequently the entire society members thought it proper to streamline the parking arrangement without causing prejudice to any of the member including disputant. The disputant while attending the AGM of 2023, online, never disputed the manner of such attendance. It is denied that the said AGM / SGM is illegal for want of quorum. All the members were properly served with notice and agenda, including the disputant, under the grab of the present dispute, disputant wants to continue with the illegal user of his self allotted parking space without complying with the resolution in the meeting dated 04/02/2023.

9] On bare perusal of the minutes of the meeting it is clear that the said meeting was called for specific parking policy purpose and meeting was adjourned considering initial lack of quorum and thereafter the meeting was peacefully conducted and the AGM/SGM adopted the new parking policy for 2023-2024. The disputant and all other members of the society are and well versed with parking policy prepared by Managing Committee and the categorization therein. The parking charges were also fixed and revised and all the earlier parking rules were set a-side. The parking policy was not only read out in the meeting but was circulated to all the members. The suggestion of the members were heard in the meeting and considering the illegal parking and the difficulties arising therefrom the parking policy was formulated in the said AGM/SGM. The category A, B, C etc. were considered. The disputant was from category 'B'. The concerned resolution was unanimously passed by majority voting.

10] As per the resolution the disputant was allotted with one parking space in the society compound and the disputant has been vested with the right to park one car as per category 'A' and the disputant has failed and neglected to claim the second / additional parking as per remaining

category and illegally parking his additional two cars by encroaching on the additional parking space of the category 'A' without there being any allotment and authority. The disputant can claim only one car parking as per category 'A' and the disputant is aggrieved / dissatisfied as he illegally wants to avail category 'A' facility for all his three cars without fulfilling the criteria and without paying any additional amount. The copy of the minutes and the contents thereof enlightens the bonafide of the opponent society and it also establishes the fact that the disputant is not coming with clean hands and the disputant is not legally entitled for any final or equitable relief.

11] The disputant is already causing nuisance and annoyance to all the members by parking additional two cars in category 'A' area, contrary to AGM resolution, which is in fact binding on him and to avoid the performance of the said resolution and to avoid the removal of illegally parked two cars, the disputant is making the AGM being the subject matter of the resolution. The disputant is bound by AGM/SGM resolution and the society is entitled to use the category 'A' area being the area allotted to other bonafide members. The disputant has no prima facie case and the balance of convenience lied in favour of the society. Hence, the application for interim relief filed by the disputant deserves to be rejected in limini. The AGM resolution is perfectly legal and proper. Increase in parking charges is absolutely legal and cannot be rejected on the flimsy pretext raised by the disputant. The disputant cannot claim either immunity or preferential status being the owner of three cars. The disputant cannot go beyond his documents and bye-laws of the society. The disputant is continuing with illegal parking which is nothing but an encroachment and trespass.

12] Considering the rival pleadings of parties following points arose for my determination. I give my findings thereon supported with reasons as under.

Sr No.	Point	Findings
1	Whether prima facie case is in favour of the applicant?	In the affirmative
2	Whether the balance of convenience is in favour of the applicant?	In the affirmative
3	Whether applicant will suffer from irreparable loss if, injunction as prayed for is not granted?	In the affirmative
4	What order?	As per final order

13] Heard learned advocate Shri. D. C. Adkar for disputant at length.

14] Heard learned advocate Shri. S. A. Thite for opponent society at length.

As to point No.1 to 3:-

15] From perusal of the documents filed along with list Exh-3 particularly the agenda notice for meeting dated 18/11/2017, the minutes of Special General Body Meeting dated 18/11/2017 it is prima facie seen that, in the SGM dated 18/11/2017 the parking policy is decided by the opponent society and the resolutions in respect of allotment of parking space and charges for allotment of extra parking spaces is decided by the opponent society.

16] On 18/05/2018 the disputant applied to the society for the allotment of the additional parking space. By allotment letter dated 31/05/2018 opponent society had issued the allotment letter of open parking space to the disputant and the disputant is allowed to park two vehicles in the open parking space which is situated at south west corner (Club house compound wall).

17] As per the resolution passed in SGM dated 04/02/2023 copy of which is filed on record along with list Exh-3 at serial No.1 as per agenda No.1 new parking policy is adopted for the year 2023-2024. On page No.4 of this resolution it is mention that, all the earlier parking policy rules null and void. It is pertinent to note that, it is no where mention how many parking spaces are available with the opponent society. It is also not mention how many parking spaces are already allotted by the opponent society. It is also not mention whether, the parking spaces which was allotted by the opponent society to the disputant is withdrawn or cancel also there is nothing on record which shows that, the opponent society has cancelled the allotment of parking space to the disputant by its letter dated 31/05/2018.

18] From the documents filed on record it is prima facie seen that, the opponent society as per SGM dated 18/11/2017 had adopted and finalized the parking policy, the parking spaces is allotted to the members. The disputant has filed application for allotment of parking space to park his two cars dated 18/05/2018. The opponent society by allotment letter dated 31/05/2018 allotted the disputed parking space to the disputants. The opponent society before adopting the new parking policy or before withdrawing the parking space from the disputant has not issued any notice to the disputant in respect of withdrawal of allotted parking space also there is no any acceptable explanation is given by the opponent society as to why the previously allotted parking space is withdrawn from the disputant. The opponent society in its written statement is trying to show the reasons for adoption of new parking policy but in the resolution passed in the SGM dated 04/02/2023 there is no any reason mentioned or discussed for cancellation of previous parking policy.

19] The Ld. Adv. For the disputant argued that, only because new Managing Committee came into power and they want to show there authority and power to the members and wants to give some benefits to their supporter members therefore the new Managing Committee has implemented this new parking policy. I can not accept this statement as it is but it is prima facie seen that before withdrawing the disputed parking space from the disputant opponent society has not given any intimation to the disputant and also disputant was not permitted to put up his submissions before the opponent society. As such the decision of opponent society in respect of withdrawal of disputed parking space from the disputant is prima facie seen to be arbitrary and is taken by the opponent society without following the principle of natural justice i.e. it is taken without giving a chance to the disputant to put up his grievance before taking any decision in respect of withdrawal of his previously allotted parking space.

20] The disputant is parking his vehicle on the disputed parking space at least since from 31/05/2018 the opponent society arbitrarily withdrawn the parking space from the disputant and now the disputant has no alternate space to park his vehicle as such the prima facie case and balance of convenience is in favour of the disputant. As to the point of irreparable loss is concern the disputant will suffer comparative hardship if he is prevented from parking his vehicle in the disputed parking space also, disputant is ready to pay the parking charges as decided by the opponent society as per its resolution dated 04/02/2023. As such if the temporary injunction as prayed for is not granted then disputant will suffer from irreparable loss.

21] In view of above discussion, I answer point No.1 to 3 in the affirmative and in answer to point No.4. I, proceed to pass following order.

ORDER

- 1] Application Exh-5 and Exh-11 is partly allowed as under.
- 2] Opponent society is restrained by an order of temporary injunction from obstructing the disputant from parking his two cars in open car parking space situated at south west corner (Club house compound wall) allotted to the disputant as per allotment letter dated 31/05/2018 by the opponent society, till disposal of this dispute.
- 3] No order as to cost.

Date :- 07/08/2023

Place :- Pune

(A. S. Wanve)
Judge,
Co-operative Court No.2, Pune