

MHCO120000452023



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

Dispute No.38/2023

Shri. Ravindra Ishwarchandra Khanna

-----Applicant

In the matter of

Dr. Mukund Daji Shastri

-----Disputant

V/s.

Kumar Presidency Co-operative Housing Society Ltd. ----- Opponent

ORDER BELOW EXH.20

(Dictated and pronounced on 23/11/2023)

1] This is an application filed by one Shri. Ravindra Ishwarchandra Khanna who is member and Ex-chairman of opponent No.1 society for intervention as party opponent in this dispute on the grounds more specifically mentioned in application Exh-20. Mainly on the ground that, the Kumar Presidency Co-operative Housing Society Ltd. Was constructed by the M/S. Kruti Construction Ltd. Having 83 flats. It is submitted that society of all the 83 flats was formed in the year 2005. Till 2023 Managing Committee were successfully, with respect, without any allegations were perfectly running the day today management of the society. This intervenor was involved in framing of parking policy 2017. Thereafter, everything was going smooth and parking's were occupied by the members as per allotment. When new committee took charge in the year 2023 it was for the first time, they decided to change the previous parking policy of 2017. The reasons for it are best known to current managing committee.

2] Initially upon the request of previous management committee builder had appointed Mr. Shailesh Bafana and Mr. Durgesh Solanki, Mr. Ravindra Khanna and Late Mr. A. Ghalani to look into the problems and verify open parking spaces allotted to the flat owners. In this entire process this intervenor was thoroughly involved and he is aware of the entire process which was completed before parking policy 2017 was formed and parking's were allotted to the members.

3] During the framing of parking policy 2017 detail report was prepared (Report at Annexure 1) on 11/07/2013. All these discrepancies were rectified in SGM of 2018. Parking rules were framed and sanctioned in S.G.M. According to that holders were not having parking facilities as is required by law of one flat one parking, flat owners were allotted parking's and possession given, no one objected to the allotment.

4] As per 2017 parking policy allotments were made but now in upcoming new 2023 parking policy there are several lacunas and allotment is done purely to benefit selected members to cater benefits to management committee and who are the well wishers of the committee. This can be clearly seen through below allotments.

a) Mr. Kailash Parab : 3 Cars b) Mr. Hiraaji Dhanwatey : 2 Cars c) Mr. Aditya Maharaj Singh : 2 Flats, 3 Cars d) Mrs. Vidya Lolge : 1 Flat, 3 Cars e) Mrs. Ashokibai Kewalramani : 2 Flats, 1 Extra Car Parking f) Mrs. Thakkar : 1 Flat g) Mr. Ajay Jain h) Mr. Jain I) Mrs. Tourani j) Mr. Ravindra Khanna k) Mr. Kukund Shastri : 1 Car Park, 2 Extra Car Park

Out of the above g, h, I, j was allotted with the parking in the year 2017 as builder did not allot them parking initially. Now new committee is allotting parking to g, h, I and not asking them to pay Rs.12,000/-. This entire procedure is framed in such a way to manipulate entire parking allotment and just to harass this intervenor.

5] Newly elected committee when decided to frame new parking policy failed to consider the view of the past management committee as they were busy implicating Ex committee and chairman over an issue of account of misappropriation of funds, corruption, etc. They had complained to DDR Pune City-2 who had investigated the entire matter and no substance was found and they have cleared all the allegations levied. Now, current management committee has left with no option but to harass this intervenor and original disputant as both of them were previous management committee members.

6] Present committee has conferred together is forcing their illegal, bogus decision with malafied intention to torture Ex-chairman and Dr. Mukund D. Shastri for following reasons:

a) Both third party and original disputant are opposing and bringing truth about their illegal action at proper forum. They have not taking any action against Kumar Presidency Phase II, who have grabbed our land of 235 Sq.Mtr. i.e. 2350 Sq. Ft. costing about 2.35 cr. Their answer is very vague, irresponsible Annexure II and without going into merit they submitting they claim, that land 2350 Sq. Ft. belongs to Phase II on this count only they do not have right to continue and administrator should be appointed.

b) After 2013 till 2023 there was no problem with parking till self-created by present committee it proves their upper hand and dictate, disturb, insult both of us Dr. Mukund D. Shastri and this present intervenor.

c) Their parking policy has no approval from Ld. DDR. Changing parking slots, increasing the parking, by blocking pathway, putting flower plots and no approval from Pune Municipal Corporation.

7] Entire parking policy is to be reviewed in light of the previous parking policy of 2017. Said policy of 2017 is still in force and there is

no forma and legal cancellation of the same. This third party is required to get opportunity for putting his side before this court. Hence, he becomes the necessary party to this dispute. If this court allows the application of the third party, then it will not cause any harm or prejudice to this defendant in fact it will help this court to reach judicial conclusion in the present matter.

8] Disputant fail to file reply to this application. Opponent No.1 society has objected this application by filing its reply at Exh-32. On the ground that, the present matter is filed by the disputant regarding the new parking policy and to cancel the minutes of the meeting dated 04/02/2023. The said dispute filed as per the cause of action aroused to present disputant.

9] This third party wants to intervene the dispute and with this reason submitted the application under reply.

10] Third party raised various issues in his application like wise;

A] Deputy Registrar's action initiated against the society on the complaints of third party applicant regarding misappropriation of funds, corruption.

B] To take action against the Kumar Presidency Phase II Society, who grabbed land admeasuring about 235 Sq.Mtr.

C] Blocking pathways and putting flower pots without the approval of the Pune Municipal Corporation.

11] This third party applicant also raised the issue regarding the new parking policy which is already subjudice by way of this dispute filed by the disputant before this court.

12] It clearly shows that the objection raise or reason mentioned to intervene in this dispute can be the separate cause of action for third party intervener. By this reasons third party intervener cannot enter into the dispute.

13] The opponent underline that there is glow in hand between disputant and intervener applicant. The third party intervener not coming with clean hands.

14] The third party applicant submitted in his application that he already approached to the Deputy Registrar Co-op. Societies, Pune City-2 for his grievances. Hence, that allegations cannot be come under this court's jurisdiction.

15] Being the member, this third party applicant is not necessary party to this dispute. If, he all the way want to initiate action against the society, it can be separate cause of action for him and can't be joined as party defendant in this dispute. The present matter is filed against this opponent society who introduced the new parking policy and if disputant will succeed in this dispute then certainly third party applicant will get benefited. Hence, in view of this third party applicant cannot be the party defendant in this matter. This application is filed to harass this opponent society and its committee members. If third party applicants wants to put his view regarding new parking policy, he can proceed with separately and not in this dispute.

16] The present application is filed just to delay the present proceeding and keep it pending. The third party applicant was office bearer of the society and defeated in the committee election conducted in the year 2022. Hence, out of frustration he is fighting with the society.

17] Heard applicant / intervenor in person and Ld. Adv. For the opponent No.1 society at length.

18] From the pleadings of the dispute application it is seen that, the opponent No.1 society is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Disputant is member of opponent No.1 society. By filing this

dispute disputant had challenged the resolution passed in meeting dated 04/02/2023 in respect of new parking policy for the year 2023-2024.

19] As per Section 36 of the M.C.S. Act, 1960 the co-operative societies registered under the provisions of the M.C.S. Act, 1960 are body corporate by the name under which it is registered and has power to institute and defend suits and other legal proceedings on its own. As such it is held that, opponent No.1 society is competent to defend this dispute. In the present dispute there is no any relief is claimed against the applicant / intervenor also there is no any relief is claimed against the individual property of applicant / intervenor. The disputant had claim the relief against the society in respect of parking policy. Hence, as per section 36 of the M.C.S. Act, 1960 the opponent society is competent to defend the suit and for deciding the dispute finally on merit applicant / intervenor is not necessary or proper party.

20] In the case of State Of U.P. & Another V/s. C. O. D. Chheoki Employees Co-operative Society Ltd., & Others reported in (1997) 3 Supreme Court Cases 681. It is held that, ---- *A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and bye-laws and is subject to its operation. The stream cannot rise higher than the source.*

Is squarely applicable to the case in hand and the applicant is not entitle to defend on behalf of the society.

21] In the case of Daman Singh & Others V/s. State of Punjab & Others reported in (1985) 2 Supreme Court Cases 670. It is held that, ---- *Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except*

those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.-----

Is squarely applicable to case in hand.

22] From perusal of the contents of application Exh-20. It is seen that, this intervenor wants to join this dispute as party opponent to help the disputant. In my view the person who wants to help the disputant cannot be joined as opponent in the dispute application. For the purpose of addition of party it is necessary to see whether, the proposed party is necessary or proper party and the presence of proposed opponent as party to the dispute is necessary for deciding all questions involved in the dispute between the parties.

23] In view of above discussion, it is held that, the present applicant / intervenor is not necessary or proper party to this dispute. Accordingly, I proceed to pass following order.

ORDER

- 1] Application Exh-20 is rejected.
- 2] No order as to cost.

Date:23/11/2023
Place: Pune .

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