

Maharashtra State Co-op. Appellate Court, Mumbai
Apeejay House-6th Floor, Near K.C. College,
D.V. Road, Chhatrapati, Mumbai - 400 029.

Received on - 19/12/2020
Decided on - 09/02/2021
Duration - Y M D
00 01 21
Exh:-10

THE MAHARASHTRA STATE CO-OP. APPELLATE COURT,
AT MUMBAI.

(Before Smt. S. S. Kakade, Member)

A.O.No.31/2020

[Arising out of order passed on 05/11/2020 by the Ld Judge, Co-operative Court No.II, Mumbai in Dispute No.123/2020]

Brig. Shivender S. Kadan
Age: 68 yrs.,
R/at: Flat No.12 B, New Miramar CHS Ltd.,
3, L. Jagmohandas Marg,
Mumbai-400 026
And
3, Atlantis, Near Parimahal,
Doctor's Colony, Kasumpti,
Simla-171007, Himachal Pradesh

... Appellant.
(Org.Disputant)

VERSUS

New Miramar Co-operative Housing Society Ltd.,
Through its Hon. Secretary,
3, L. Jagmohandas Marg,
Mumbai-400 026

... Respondent.
(Org. Opponent)

Appearance
Mr. Prathamesh Bhosle, Ld Counsel for the appellant.
AAK Legal, Advocates and Solicitor, Ld Counsel for the respondent.



JUDGMENT

(Delivered On 09/02/2021)

This AO arises out of the order dated 05/11/2020 passed below application for interim relief at Exh.5 by the Ld Judge, Co-operative Court No.II, Mumbai in dispute No.CC/II/123/2020, whereby the Ld Trial Court has rejected interim application at Exh.5. Being aggrieved by and dissatisfied

with the order impugned the present appellant/ original disputant has filed instant appeal for challenging legality of the order impugned on the facts and the grounds interalia mentioned in the appeal.

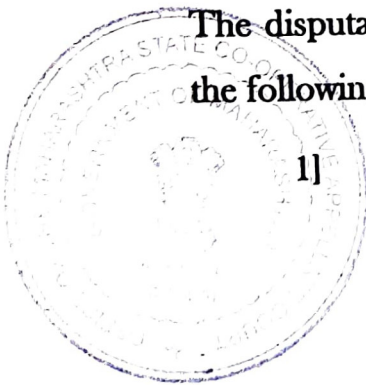
2] In order to appreciate correctness of the order impugned one must know the facts of the dispute and cause of action for filing the dispute.

3] Facts in short of the dispute are as under:-

The appellant/ disputant has filed dispute bearing No.123/2020 for declaration that the disputant's prospective tenants or persons claiming through him are entitled to utilise car parking slot for parking their car in the society premises. Declaration that the car parking policy of the society framed in the AGM of the year 2014 is arbitrary unreasonable and not in consonance with the byelaw and therefore be quashed and set aside. Direction to the society to follow and implement byelaw Nos.79 to 84. Permanent injunction against the society, its managing committee members, agents, servants etc. from obstructing and / or interfering in any manner with the allotted open car parking slot, from being utilised by the disputant, his prospective tenant or person claiming through him for parking their car and consequently restraining the society from levying any penalty other than appropriate car parking charges.

The disputant has also filed interim relief application at Exh.5 and he sought the following interim reliefs.

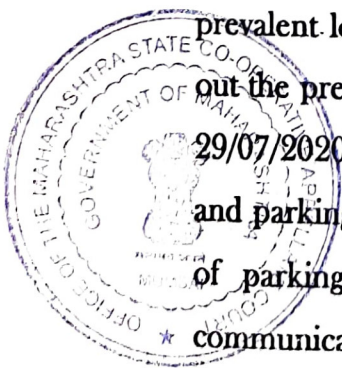
- 1] Pending the hearing and final disposal of the dispute permanent injunction be granted against the society its managing committee members, agents, servants etc. from obstructing and / or interfering in any manner with the allotted open car parking slot, from being utilised by the disputant, his prospective tenant or person claiming through him for parking their car and consequently restraining the society from levying any penalty other than appropriate car parking charges.
- 2] Pending the hearing of the dispute society be directed to follow and implement byelaw Nos.79 to 84.
- 3] Pending the hearing of the dispute the society be directed to provide inspection of records pertaining to allotment of carparking space to its members and also to provide certified copies thereof to the disputant.



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- 4) Pending the hearing of the dispute the society be directed to disclose on the affidavit details of flats with two or more car parking slots with their date of allotment.
- 5) Pending the hearing of the dispute the society be directed to disclose on affidavit details of garage owning members who have car parking slots.

4) With these interim reliefs the disputant has set out the case that he is a retired Brigadier of Indian Army and the member and shareholder of the society. It is his contention that he purchased the flat bearing No.12-B in the society in the year 2006. According to him upon purchase of the said flat he was allotted one open to sky fixed parking slot by the society. Since 2006 he has been giving his said flat on the leave and license basis to the tenants and all his tenants used to park their respective vehicles in the said parking slot. According to him, since 2014 onwards his daughter was residing in the said flat and was utilising car parking since then for parking her car. Since 2018 onwards till today he has been residing in the said flat and using said car parking slot to park his car. He further stated that recently he had decided to rent out the said flat on leave and license basis to prospective licensee. Since he is a retired Army Officer and he is not from Mumbai originally and he has lived majorly in other parts of India therefore he decided to let out premises for leave and license basis. It is his contention that he does not know any prevalent local laws to obtain the permission or NOC from the society to let out the premises. It is his contention that by his letters dated 24/07/2020 and 29/07/2020 to the society he sought the authenticated copies of parking plan and parking rules. The society vide its reply dated 30/07/2020 provided copy of parking policy from the Minutes of AGM of the year 2014 and communicated to the disputant that they cannot give car parking slot for his tenant for the reasons stated therein. According to him certain members of the society are utilising two or more car parking slots and therefore he called upon the society to provide the details of such members however the society failed to do so. On the contrary the society vide its letter dated 14/08/2020 justified the



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occupation of second parking slot by certain members. The justification of the society negates the society's own car parking policy. According to him there are total 110 member in the society and there are 101 parking slot in the premises of the society. He learned that there are some members who do not own cars, there are certain members who have two or more parking slots since past several years. According to him there is enough space in the society's premises for providing single parking slot for each car owner member. Aggrieved by the society's reply dated 30/07/2020 whereby the society was refused parking space to the tenants of the disputant and hence cause of action arises to file dispute as well as interim application.

5] The society has filed written statement and resisted the averments made in the dispute. It is not denied that the disputant is a member of the society and he purchased flat No.12-B in the year 2006. It is also not denied that the disputant was allotted open to sky parking space in the premises of the society. It is also not denied that since 2006 till 2014 the suit premises was given on leave and licence basis and the tenants those who have occupied the premises on leave and license basis in between 2006 to 2014 were used parking space allotted to the disputant to park their vehicles. It is also not denied that since 2014 daughter of the disputant was occupying the premises and had also used parking space to park her car.

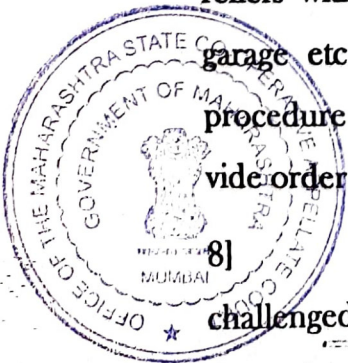
6] It is submitted that the society has adopted parking policy in the AGM in the year 2014 and as per the said policy the tenant of member is not entitled to enjoy the parking facility in the premises of the society. According to them the policy adopted by the society is well within ambit of Byelaw No.78 (b) which specifically states that if the society has right to allot parking space then no other member can transfer or assign the same to any other person. The parking policy adopted by the society is approved by passing the resolution by majority in the AGM held in the year 2014. There is no ample parking space available in the society. Since total number of flats are 110 and there are only 70 car parking spaces available for allotment. The allotment




method adopted has been explained in detail under the said policy. The members occupying/ allotted two or three spaces has claimed even allotted depending upon number of flats owned. Every endeavour has been taken by the society that each member of the society, owning a vehicle is allotted atleast one parking space. The disputant being member of the society has been allotted and is currently using parking space is attempting to challenge said parking policy on behalf of its tenant. The parking policy framed is based on just principle and is not against the right of any of the members of the society. Therefore same cannot be called in question. With these contentions the society has submitted that the disputant failed to establish prima-facie case to grant relief as prayed for and therefore disputant is not entitled for relief.

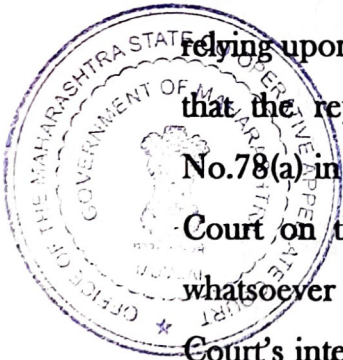
7] After considering the rival contentions, the Ld Trial Court has taken into consideration by prevailing byelaw Nos.78(a) and (b) and observed that the member of the society has every right to avail and enjoy space of car parking however, when the transfer of his right to 3rd person is concerned the eligibility of every members came in the priority by preference. Right of the licensee to use car parking is inferior in quality and lesser in gravity than any member in the society. The members are the owners and shareholders being preferred to enjoy the car parking space excluding rights of 3rd person. With these observations the Trial Court has declined to grant the relief with regard to restrain the society from preventing the disputant and his licensee from using the parking space allotted to the disputant. The Trial Court rejected the reliefs with regard to the inspection of record and details of availability of garage etc. on the grounds that those reliefs are premature and separate procedure is laid down in the Act and the bye-laws and rejected application vide order dated 05/11/2020.

8] Feeling dissatisfied with the order impugned, the appellant has challenged legality of the said order impugned on the grounds that the Trial Court has given undue importance to such aspect of the matter which were neither pleaded nor argued by either of the parties. The Trial Court has



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neither considered nor discussed certain crucial aspects of the matter which were argued by the appellant. The Trial Court has completely ignored arguments advanced by the appellant based on admitted record that there exists sufficient space in the premises of the society for providing parking space to each member and/ or persons claiming through them. The Trial Court ought to have applied principle of one member one parking as directed under byelaw No.80. The Trial Court ought to have considered that there are admittedly at least 97 car parking spaces in the society and there are 110 flats out of which several members possessed two to three parking spaces, certain members do not own cars and there are 17 tenants who have not been given car parking spaces. The number of eligible members have providing them single parking space, is lesser than available parking space. But this fact failed to consider by the Trial Court. The Trial Court has committed grave error by relying upon repelled byelaw i.e. erstwhile byelaw No.78(a) and failed to realise that the repelled byelaw No.78(a) has been replaced by the new byelaw No.78(a) in the year 2014. Significantly the entire reasoning given by the Trial Court on the said repelled erstwhile byelaw No.78(a) is without any basis whatsoever and therefore deserves to be quashed and set aside. The Trial Court's interpretation that there being two kind of parking allotment i.e. firstly by builder/developer and secondly by the society, stands negated as such interpretation is based on repelled byelaws. The observations in para 10 of the order that, "car parking allotted prior to registration of the society to the members are not subjected to re-allotment by the managing committee" is in clear contravention of Hon'ble Bombay High Court's judgment reported in 2016 SCC on line 5857. The Trial Court failed to consider that none of the members in the society including managing committee have raised any issue against the appellant/disputant or persons claiming through him parking their vehicle in the allotted open to sky car parking space from 2006 till 2020. The Trial Court for deciding interim application framed question "Whether car parking allotted to the members by the society is transferable to its tenant or not?" The question framed on an erroneous assumption that the appellant



sought to transfer the slot allotted to him to his licensee whereas it is appellant's case that the utilisation of the allotted spaces by his licensee does not amounts to transfer. The Trial Court has not even made reference to the maintenance bill issued by the society to the appellant for the quarter October, 2020 to December, 2020 even though which was brought to the notice of the Trial Court. The Trial Court failed to consider that the society in its maintenance bill for the above quarter has in addition to the non-occupancy charges also levied parking charges confirms that the society itself acknowledges the fact that the appellant's licensee is therefore entitled to park her car in the society compound. The Trial Court did not take into consideration that term of leave and license agreement is for 2 years and refusal of interim relief pending hearing and final disposal of the dispute would make main matter infructuous as nothing would survive in the matter by then. The Trial Court incorrectly observed that the society's parking policy is based on "First Come First Serve basis" as neither policy nor relevant minutes of AGM referred to the said principle. With these grounds the appellant submitted that the order passed by the Trial Court is not legal and correct and interference is warranted.

9] Considering the rival contentions, material placed on record, observations of the Ld Trial Court, arguments advanced by the LdCounsels, following points arise for my consideration and I record my findings to those points for the reasons assigned there under:

POINTS

FINDINGS

1] Whether the appellant/disputant has made out a case that his tenant is entitled to enjoy the car parking facility allotted to him?

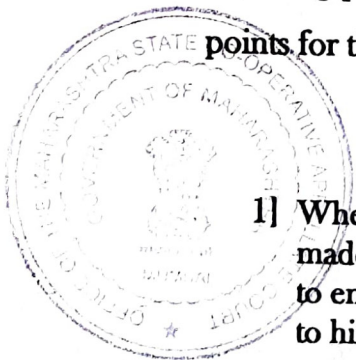
... Yes.

2] Whether the right to park the car was part of the disputant's tenancy of flat No.12-B?

... Yes.

3] Whether the Ld Trial Court was justified in rejecting the application at Exh.5?

... No.



- 4] Whether the order impugned order requires interference? ... Yes.
- 5] What order and relief? As per final order.

10] Heard :- Mr. PrathameshBhosle, LdCounsel for the appellant and AAK Legal, Advocates and Solicitor, LdCounsel for the respondent.

11] List of Citations:-

Following case laws relied by the appellant/disputant;

- 1] Ivan Lawrence MartisVs M/s Lashkaria Construction Pvt. Ltd. 2016 SCC Online Bom 5857
- 2] Bento de Souza EgypsyVsYvetterAlvaresColaco 2006 SCC Online Bom 144
- 3] Dinesh Mhatre Vs. Collector 2018 SCC Online Bom 17332.
- 4] PalaniveluVsOusepMathai AIR 1973 Mad 309.
- 5] Sicom Limited Vs Union of India 2008 SCC Online Bom 193.
- 6] DeorajVs State of Maharashtra (2004) 4 SCC 697.
- 7] AtchutUpendraRaikarVs Surya UpendraRaikar 2006 SCC online Bom 149.
- 8] Jyoti Ramesh AgrawalVs Silver Ridhi CHS Maharashtra Dispute Redressal Commission.
- 9] Sukhadeo K. MahamuniVs Lotus Logistics & Developers Pvt. Ltd.

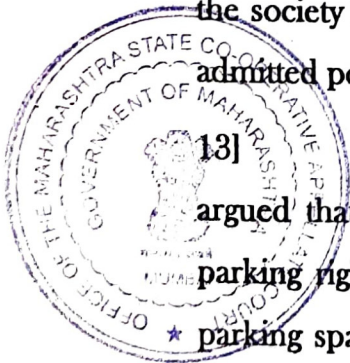
Following case law relied by the respondent;

Royal Manor CHS Ltd. VsAngana (2019 (1) Mah. L. J) 890.

REASONSPoint Nos. 1 to 5:-

12] Disputant/appellant is a member and owner of flat No.12-B in the society. He purchased the said flat in 2006. Society has allotted him open to sky car parking in the society. Since 2006 till 2014 the said flat was let out on leave and license basis and the licensee of the said flat was being used/enjoyed car parking space allotted to the disputant. In 2014, the said flat was occupied by the daughter of the disputant for two years. She was also used/enjoyed the car parking space allotted to the disputant. Thereafter the disputant was residing in the suit flat and was enjoying the parking space allotted to him. In 2020 again the disputant has decided to let out the said flat on leave and license basis and accordingly let out the said flat by executing a registered leave and license agreement dtd. 29/09/2020. Society issued bill for the period from Oct. to Dec. 2020 and charged non-occupancy as well as parking charges to the disputant. The licensee inducted as per leave and license agreement dtd. 29/09/2020 is enjoying the car parking allotted to the disputant and the society has charged the parking charges on daily basis and issued a bill to that effect to the disputant for the period 01/01/2021 to 31/03/2021(in advance). In 2014 the society has adopted the parking policy in the AGM. These are the factual admitted position on record.

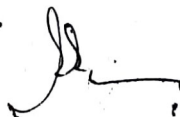
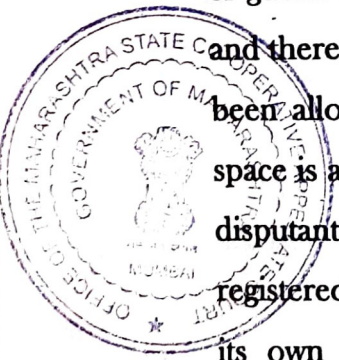
13] In order to substantiate the grounds, Counsel for the disputant argued that eligibility of parking is qua membership and cannot transfer the parking right in favour of the licensee. The right is given only to enjoy the parking space for a temporary period i.e. license period. Society has charged non-occupancy as well as the parking charges from the disputant for the period October to December, 2020. The society has also charged non-occupancy as well as parking charges under the head of "Extra Daily Parking Charges" for the period 01/01/2021 to 31/03/2021(in advance) to the disputant. He therefore submitted that the society has allowed the licensee of the disputant to park her vehicle in the compound of the society by charging extra daily parking



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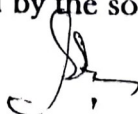
charges. The bills on which he has relied upon has issued after adopting the car parking policy in the year 2014. The Trial Court failed to consider this aspect and rejected the application which is not legal and correct and hence the order impugned is liable to be set aside. According to him Vehicle Parking Policy adopted by the society is contrary to the provisions of bye-laws. He invited my attention to the order impugned and submitted that the Trial Court has considered the old bye-laws which are amended/repealed as per amendment in 2014 and therefore the order impugned passed by the Trial Court on the face of it is illegal.

14] Per contra, Ld. Counsel for the respondent argued that as per clause 'O' of the Parking policy adopted by the society, priority for allotting parking space is given by three preference, first preference is given to those members who have not allotted a single parking place. Second preference is given to the members who have owned second vehicle and who have already been allotted one parking and third preference is given for temporary parking of guests and/or the tenant or licensee (provided only if the space is available) and therefore he submitted that as per third preference, temporary parking has been allotted to the guest/tenant/licensee provided space is available but no space is available in the society to give temporary parking to the licensee of the disputant. It is argued that the leave and license came to be executed and registered only two days prior to the date of first hearing and the disputant on its own accord has allotted the car parking space to his tenant without consultation of the society. It is argued that the disputant sought mandatory injunction against the society, its agent, servant etc. from not obstructing only the disputant but also his prospective licensee from using and utilizing parking space allotted to the disputant. The Co-operative Court has no jurisdiction to grant such mandatory injunction. He scanned the order passed by the Trial Court and submitted that the order is perfectly legal and correct and no interference is warranted. He relied on the ratio laid down in Royal Manor CHS Ltd Vs Angana Bharali Das.

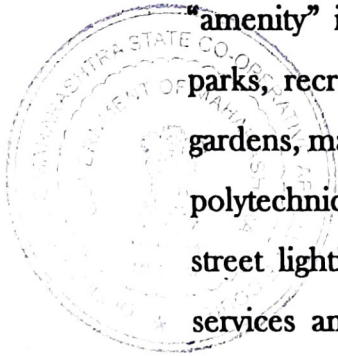



15] Having heard both Ld. Counsel and after carefully gone through the material produced on record, I find the only question that arise for my consideration is "whether the licensee can enjoy the parking space which is allotted to the disputant, the member of the society?" As per Development Control Rules framed under the MRTP, Act 1966 the tenant cannot be denied parking. A car parking space allotted to the owner, can be used by the tenant as he has full rights over it. Society should not discriminate, as the parking rules are governed by the D C Rules and if the owner is eligible to get parking space then the tenant should also get the benefit of that space. In the present case the society has allotted car parking to the disputant is undisputed fact. It is also not in dispute that the parking space allotted to the disputant is not only enjoyed by the licensee of the disputant since from 2006 till 2014 but also enjoyed by his daughter for two years after 2014 and the disputant himself till the flat is let out on leave and license basis. The society admitted the fact that the licensee of the disputant was allowed to enjoy the parking space allotted to him till 2014. However, according to the society after 2014 since the society has adopted parking policy, the society has allowed the licensee to enjoy the parking space allotted to the disputant on charging parking charges on daily basis and issued bill to that effect for the period 01/01/2021 to 31/03/2021 (in advance).

16] As per the third preference as define in clause 'O' of the 'Parking Policy' adopted by the society, the society can allow temporary parking for the guests and/or the tenant or the licensee only if the space is available in the society. It is pertinent to note that the disputant is neither claiming separate allotment of parking space for his licensee nor requesting to transfer his rights of the parking space allotted to him, to the licensee. The disputant is seeking only the relief not to prevent his licensee from enjoying the parking space allotted to him. The enjoyment of the car parking space by the licensee is for temporary period i.e. upto the license period and hence the question of non-availability of the space as alleged by the society does not arise. The society has



contended that if the flat in the society is vacant for 180 days then the member of the said flat become disqualify for allotment of the car parking space. As per clause I of the 'vehicle parking policy' adopted by the society in 2014, the managing committee has to take decision whether a member/occupant is regularly residing in the society or not and that decision shall be final and binding on the member/occupant. Thus the managing committee is duty bound to take the decision whether the suit flat is vacant for long duration of 180 days. However, the society prima facie failed to bring on record any whisper to show that the suit flat was vacant for a long time of 180 days. Clause No.(1) of the leave and licence agreement dtd. 28/09/2020 executed between the appellant with the licensee, clearly mentioned that the licensee shall granted to have the use of flat No. 12-B admeasuring 935 sq. ft. comprising 2 bed rooms, hall and kitchen along with one open sky car parking space for 24 months. Under Maharashtra Regional and Town Planning Act, 1966 the word "amenity" is defined under clause 1(2) it means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences] So parking is a facility attached to the flat and therefore a tenant is eligible for all the benefits to which the owner is eligible for. So the person who is residing in the flat in a society is entitled to enjoy all the amenities attached to the flat. It has come on record that as per clause (1) of the leave and license agreement the licensee of the disputant can enjoy the said amenities/facilities attached to the flat. As per averments of para 8 (f) the w s the society has taken interview of the licensee of the disputant before rented the premises. Prima facie it has also come on record that after letting out the premises on leave and licensee basis, the licensee used to parked her vehicle in the parking space allotted to the disputant and the society has charged parking charges to the disputant on daily basis as per the bill issued for the period from 01/01/2021 to 31/03/2021 (in advance). Charging of parking charges on daily

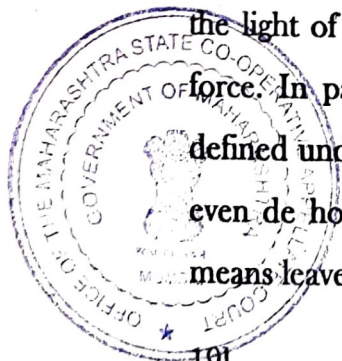


basis whether is legal or not required adjudication on merit. Hence the submission of the Ld. Counsel for the society to that effect has no substance.

17] The Ld. Counsel for the appellant/disputant has place reliance on the ratio laid down in Mr. Ivan Lawrence Martis Vs M/s Lashkaria Construction Pvt. Ltd. 2016 SCC On Line Bom 5857, in short the case was that the defendant/respondent has changed the parking slot thereby changing the parking slot of the appellant/plaintiff. The Trial Court has refused to grant the relief by way of temporary injunction and dismissed the Notice of Motion. The matter went before the Higher Court. The Hon'ble High Court has held that 'since the allotment of parking by respondent No.1 developer could only be subject to the regulation of parking by the society. It would always be open for the appellant to bring forth before the society the original allotment of parking slot made to the appellant and it is for the society to take an appropriate decision thereon whilst regulating the parking in the compound of the society.' With these observations the appeal from order came to be dismissed.

18] In Bento de Souza Egypsy Vs Yvetter Alvares Colaco alias Marai Emila Yvette Godinho Alvares Colaco (2006)2 Bom CR 465 where in aquestion was for consideration that whether the agreement between the parties styled as deed of leave and license had necessarily to be construed as a lease in the light of the provision of Article 3 of the Law of Lease namely decree in force. In para 15 of the judgment it is held that the concept of a 'license' defined under sec. 52 of the Easement Act, 1882 has always been understood even de hors the Indian Easement Act 1882. "License in ordinary parlance means leave, permission" Hence license is not a transfer.

19] In the case of Deoraj Vs State of Maharashtra reported in (2004)4 SCC 697 where in Hon'ble Bombay High Court in para 12 it is held that "Situations emerge where granting of an interim relief would tantamount to granting the final relief itself. Withholding of an interim relief would tantamount to dismissal of the main relief for by the main matter comes up for

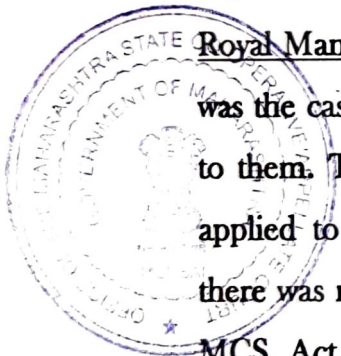


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hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour.”

20] In Atchut Upendra Raikar Vs Surya Upendra Raikar (since deceased through LRs.) 2006 SCC On Line Bom 149 Hon'ble High Court in para 11 of the judgment has held that “the decision cited cannot be brushed aside by merely observing that the same does not apply to the facts of the case. It is necessary for the lower Court to analyse the facts of the facts before the Court or if there is any other reason for distinguishing the said decision and only thereupon the lower Court can say that the decision is not applicable to the facts of the case. It is always to be remembered that decision of this Court is binding on all the lower Courts.”

21] The respondent has placed reliance on the ratio laid down in Royal Manor CHS Vs. Angana reported in [2019(1) Mh. L. J] 890 in short it was the case that the original member did not have any parking space allotted to them. The said flat was purchased by the respondent Nos. 1 & 2. They applied to the society for allotment of permanent car parking space. Since there was no response from the society they filed dispute under sec. 91 of the MCS, Act 1960 along with interim relief application for declaration that they are entitled to park one car in the compound of the society, also filed interim application before the Co-operative Court for declaration that they were entitled to park one car in the compound of the society and the society be ordered to allot one of the parking space from the second parking in possession of the opponent Nos. 2 & 3. The jurisdiction of the co-operative Court came to be challenged. The co-operative Court held it has jurisdiction to entertain the dispute and granted mandatory injunction against the opponents and directed to permit the disputants/respondent Nos. 1 & 2 to allot car parking on temporary basis. The order of jurisdiction passed by the co-operative Court came to be challenged before Co-operative Appellate Court by filing revision and the order passed below interim application came to be challenged by filing appeal. Revision came to be dismissed against which writ petition came to be



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filed before the High Court. During the course of argument the disputants/respondent Nos. 1 & 2 give up the prayer clause (C) and accordingly the said prayer came to be deleted. Hon'ble Bombay High Court in para 52 of the judgment has held that "the various reasons recorded by the Co-operative Court and Co-operative Appellate Court while passing of mandatory interim injunction thereby creating an additional car parking space for the respondent Nos. 1 & 2 is contrary to the principles of law laid down by the Supreme Court in cases of Samir Narayan Bhojwani (supra) and Dorab Warden (supra) and therefore held that no case is made out by the respondent Nos. 1 & 2 for grant of mandatory injunction and therefore the interim order passed Co-operative Court and Co-operative Appellate Court is dismissed." The Ld. Counsel for the respondent submitted that the appellant/disputant has prayed the mandatory injunction against the respondent, its committee, members etc. the co-operative Court does not have jurisdiction to grant such relief.

22] With due respect to the ratio as referred above according to me in the present case the disputant sought the relief that not to prevent his licensee from enjoying the parking space allotted to him and not prayed separate allotment of parking space and hence the ratios relied upon by the appellant is perfectly made applicable to the case in hand, while the ratio laid down in the case law relied upon by the respondent is based on different facts and on different situation therefore perfectly not made applicable to the case in hand.

23] So far as the implementation of the buy-law Nos. 79 to 84 and the penalty levied by the society are concerned, the disputant by way of principle relief in the dispute has sought direction to the society to follow and to implement byelaw Nos.79 to 84. The disputant has also sought the relief restraining the society from levying any penalty other than appropriate car parking charges. Whether the society is following the buy-law No. 79 to 84 or not? Whether the action of the society levying penalty charges other than appropriate parking charges is legal or not and/or the same is contrary to the



provisions of bye-law? etc. These issues are trial able issues and required adjudication on merit before coming to any conclusion.

24] The disputant has stated that he want inspection of records pertaining to allotment of car parking space to its members and also to provide certified copies thereof to the disputant. He also seek direction to the society to disclose on the affidavit details of flats with two or more car parking slots with their date of allotment as well as direction to the society to disclose on affidavit details of garage owning members who have car parking slots. The disputant being a member of the society has every right to take inspection of record of the society free of costs as prescribed in section 32 of the MCS, Act 1960 and as per the procedure laid down in the said section. As per sec. 32 (2) of the Act, the society shall furnish to a member, on request in writing and on payment of such fees as may be prescribed therefor, a copy of any of the documents mentioned in the foregoing sub-section within one month from the date of payment of such fees. So sec. 32 of the MCS, Act itself has given statutory right to the member of the society to take inspection and for certified copy of the record and the disputant can approach to the society for inspection and certified copy of the record within the frame work of the procedure laid down in that section. Hence the disputant is expected to exercise his statutory right and without exercising his right he cannot seek direction to the society as prayed for. Hence the request of the disputant to direct the society to disclose on the affidavit details of flats with two or more car parking slots with their date of allotment and to disclose on affidavit details of garage owning members who have car parking slots is contrary to the scope of sec. 32 of the MCS, Act 1960 hence cannot be granted.

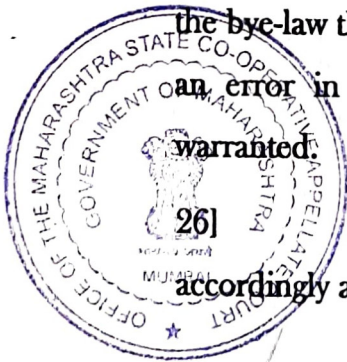
25] In the light of the aforementioned discussion I am of the considered opinion that the Trial Court failed to consider that the request of the disputant is only to allow to enjoy the parking facility to his licensee which is already allotted to the disputant. The Trial Court failed to considered that even after the parking policy adopted by the society in the year 2014, the

society has allowed the licensee of the disputant inducted by way of leave and license agreement executed on 28/09/2020, to park her vehicle in the suit parking place on payment on daily charges without raising the issue of non-availability of the parking space to the members in the society and the members of the society face inconvenience due to enjoy the parking place allotted to the disputant by his licensee. The Trial Court mis-construed that the disputant is transferring his right in the parking space allotted to him to his licensee. The Trial Court failed to consider that the licensee has right to enjoy the facilities and amenities attach to the flat which he/she has taken on license basis till the license period is over. The Trial Court failed to consider as per the terms No.(1) of the license agreement dtd. 28/09/2020 executed between the disputant and the licensee is entitled to enjoy the parking space allotted to the disputant. The society has not taken any objection to the said condition. On the contrary the licensee is residing the suit premises as per the said agreement and is enjoying all the facility provided to the said flat. The Trial Court failed to consider the scope of sec. 32 of the MCS, Act 1960 and observed that the relief of inspection of record and availability of details of garage owner are premature and separate procedure is laid down in the act and the bye-law therefore cannot be granted. Hence the Trial Court has committed an error in rejecting the application in its entirety. Hence interference is warranted.

In the light of the above discussion I answer the points accordingly and pass the following order.

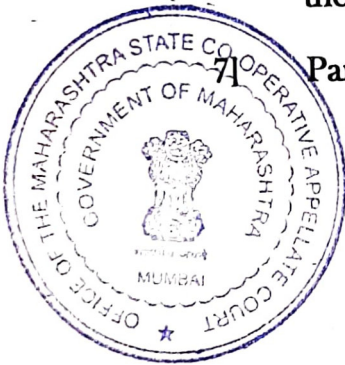
ORDER

- 1] A.O. No. 9/2020 is allowed on the following terms.
- 2] Order dtd. Passed on Exh 5 by the Ld. Judge Co-operative Court No.2 Mumbai in dispute No.123/2020 is set aside.
- 3] Interim application at Exh 5 filed in dispute No. is partly allowed on the following terms;

- 4) Opponent/respondent here in, its servants, agents, or persons claiming through the society is hereby temporarily restrained from preventing the disputant and his licensee to use and to enjoy the parking space allotted to the disputant till final decision of the dispute.
- 5) The society shall give inspection of the record of the society to the disputant as per sec. 32 of the MCS, Act. The society shall furnish certified copy of the document demanded by the disputant as per the guidelines provided under sec. 32 (2) of the MCS, Act.
- 6) The Trial Court shall expedited the dispute and decide the same as early as possible preferably within a period of 8 months from the receipt of this order.

Parties to bear their own cost.



S.S. Kakade
9.2.2021

(Smt. S.S. Kakade)

Member,

Mah. State Co-operative Appellate Court,
Mumbai.

Mumbai.
09/02/2021

Dictated and pronounced in the open Court.

Order Dictated on :-09/02/2021.

Copy ready on :-10/02/2021.

Application made on 9-2-2021
Copy ready on 10-2-2021
Copy delivered on 12-2-2021
Compared by.....
Typed by.....
Copying Charges RS 4718 = 71
Postage Charge.....

TRUE COPY
A. M. M. S.
12.2.2021
Registrar
Maharashtra State Co-operative
Appellate Court, Mumbai

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