

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4985/2010 and CM 16563/2011**

Decided on: 22.03.2012

IN THE MATTER OF
KUMAR GAURAV

..... Petitioner

Through: Mr. R.K. Saini, Advocate with
Mr. Vikram Saini, Advocate

versus

DDA AND ANR.

.... Respondents

Through: Mr. Pawan Mathur, Advocate for R-1 and
R-2/DDA.

Mr. Sunil Jain, Advocate for the applicant/RWA in
CM 16563/2011.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. This petition is filed by the petitioner praying *inter alia* for directions to the respondents/DDA to construct a proper garage over the parking space given to him, and further, to restrain it from demolishing the iron fence/gate and one wall affixed by him in the parking space, for the safety of his car.

2. Briefly stated, the facts of the case are that in August 2008, the respondents/DDA had announced a scheme called 'DDA Housing Scheme, 2008', offering allotment of flats to the public by holding a draw of lots. The petitioner got registered under the aforesaid Scheme for

allotment of an HIG flat. On 23.11.2009, the petitioner was allotted an HIG flat bearing No.501 (5th Floor), Block A-1(M), Pitampura and he was issued a demand-cum-allotment letter dated 23.11.2009 pursuant to a draw of lots held on 16.12.2008. At the time when he submitted an application for the allotment of a flat, the petitioner had separately applied for allotment of a garage under the Scheme floated by the respondents/DDA. Pursuant to a draw of lots held on 05.11.2009, a separate demand-cum-allotment letter was issued by the respondents/DDA in respect of garage No.A-1/5, Pitampura vide letter dated 23.11.2009. Apart from a sum of ₹44,53,412/- demanded by the respondents/DDA towards the disposal cost of the flat, a sum of ₹9,66,726.09 was demanded towards the disposal costs of the garage.

3. On 15.04.2010, the petitioner was issued a composite possession letter by the respondents/DDA, allotting him the subject HIG flat and the garage under the DDA Housing Scheme, 2008. On 28.05.2010, a composite conveyance deed of the flat and the garage was executed by the respondents/DDA in favour of the petitioner and his wife. On 23.04.2010, possession of the flat and the garage were handed over to the petitioner. It is claimed by the petitioner that the garage allotted to him by the respondent/DDA turned out to be a common parking space instead of being an enclosed area for parking the car as is existing in many other housing pockets. It is the apprehension of the petitioner that

the aforesaid garage does not address security issues with regard to the safety of the vehicle parked therein. As a result, sometime in July 2010, the petitioner proceeded to enclose the earmarked parking space on his own by fixing an iron fencing on one side and building a wall on the other side. The present petition was occasioned on account of the purported threat faced by the petitioner from the respondent/DDA threatening him that the enclosure of the parking space would be demolished.

4. Notice was issued on the present petition on 27.07.2010, whereafter a counter affidavit was filed by the respondents/DDA on 14.09.2010. It is averred in the counter affidavit that 216 flats were constructed by the respondents/DDA in the subject housing complex and there were only 72 reserved parking spaces available in the complex, that were reserved exclusively for the successful allottees of the flats. The building in the complex was constructed on stilts so as to provide parking space and circulation area under the stilts. As per the building plan, parking for the occupants of the flats is provided in the open to sky space as also under the stilted area of the building. The successful allottees were allotted garage/parking space under the stilted area by way of a draw of lots. Upon allotment of the garage/parking space, the said spaces were numbered and dedicated to the allottees for exclusively parking their vehicles therein.

5. It is the stand of the respondents/DDA that the petitioner was allotted a parking space under the stilted area of the building and the allotment of the flat as also the garage was on an "as is where is" basis as specified in the brochure of the respondents/DDA pertaining to the Scheme in question. It is submitted that the building has been sanctioned and constructed on stilts and if the allottees are permitted to cover the reserved parking space under the stilts, as has been done by the petitioner, it would result in violation of the sanction plan and would adversely affect the light, air and ventilation of the flats. That apart, the same would restrict free movement in case of any calamity/disaster and adversely impact the security and rescue operation in case of an emergency. Additionally, any such permission to the allottees to enclose the car parking space from all four sides would encourage misuse of the space.

6. Counsel for the respondents/DDA states that the action of the petitioner in unauthorizedly enclosing the car parking space has already resulted in complaints being lodged by the Residents Welfare Association (RWA) of the complex including a letter dated 21.06.2010 addressed by the RWA to the respondents/DDA, complaining *inter alia* that the garage space allotted on the ground floor is being converted into offices/shops etc. by constructing walls on either side(Annexure R-2). He states that upon receiving such complaints, the officers of the respondents/DDA had

inspected the complex and issued a notice to the petitioner on 10.08.2010, informing him that the wall he had constructed in the car parking area was liable to be demolished.

7. Apart from the aforesaid counter affidavit, the respondents/DDA has also filed an additional affidavit pursuant to the order dated 10.03.2011, whereunder it was directed to re-examine the matter. In the additional affidavit, it was submitted on behalf of the respondents/DDA that any kind of barricading of the parking space in any manner would adversely affect free movement in case of a fire or any other natural disaster and would adversely affect security and rescue operations in case of any emergency. In support of the said submission, it is specifically pointed out that water pipelines with gate-valves are going through the parking space and any obstruction to the same would retard the fire-fighting exercise in case of a fire, apart from hindering free movement of fire fighting personnel and fire fighting equipments. Further, the rescue operation would also be adversely affected. The service cables are also stated to be passing through the parking space and in case they are required to be accessed, it would be difficult to do so, if the parking space is permitted to be enclosed.

8. It is averred in the additional affidavit filed by the respondent/DDA that there is an entrance to each tower in the building complex of 4¼ feet through the staircase and the opening is situated

under the stilted area of about 2.15 meters on both sides of the lobby and any such enclosure to the parking space would be contrary to the floor plan of the HIG houses and would result in the violation of the FAR of the Housing Pocket. Alongwith the additional affidavit, photographs of the parking spaces in the area including the parking space enclosed by the petitioner, site plan of the area and the floor plan of the HIG houses have been enclosed by the respondent/DDA.

9. Appearance is also entered on behalf of the counsel for the RWA, who supports the submission made by the respondents/DDA and states that for a NOC to be granted by the Delhi Fire Service, Govt. of NCT of Delhi, the stilted area is required to be kept open from the point of view of fire safety and as a means of escape in case of an emergency. He states that the document enclosed as Annexure R-6 to the additional affidavit filed by the respondents/DDA, is a letter dated 07.02.2008 addressed by the Delhi Fire Service, Govt. of NCT of Delhi to the Superintending Engineer, DDA, enclosing therewith, the safety recommendations to be adhered to for providing down comer system instead of wet riser system in case of a fire hazard. One of the guidelines laid down by the Fire Department is that access way of 6 meters clear width all around each building block with 9 meters turning circle shall be provided and it should be capable to bear 45 tons load and this 6 meters wide access road shall always be kept free from every hindrance for free

movement and positioning of fire vehicles and any *chhajja*, balcony or other canopy of the building structure shall not be constructed over the access way to avoid obstruction in the systematic working of the emergency vehicles. Further, the exit and means of escape stipulated in the guidelines specifies that the means of escape/exit shall be a continuous unobstructed way of exit/travel from any point in the building to the public way and all exit door ways shall open towards the means of escape which is away from but shall not obstruct the travel along any exit and that no door when opened shall reduce the required width of staircase/corridor/passage way.

10. Learned counsel for the petitioner responds by submitting that the term "garage" with reference to a residential house has been defined in dictionaries as a building for housing a motor vehicle or vehicles and as such it is clear that the garage to be allotted with the flat had to be a constructed unit and not a parking space as allotted by the respondent/DDA. He submits that the allotment letter issued to the petitioner itself indicates that the disposal cost of the parking space includes the land cost and construction cost, which is over and above the land cost of the flat and, therefore, the garage allotted to the petitioner ought to be an enclosed area.

11. This Court has heard the counsels for the petitioner and the respondents/DDA as also the learned counsel for the applicant/RWA in CM

16563/2011 and has perused the documents on record including the photographs and site plans filed by the respondent/DDA and the petitioner.

12. It is an admitted position that the flat in question was allotted to the petitioner under the DDA Housing Scheme, 2008. However, as per the petitioner, the garage in question was allotted to him under a separate scheme. A perusal of the records reveals that the petitioner has placed on record the Brochure of the Housing Scheme, 2008 but not the Garage Scheme. Reliance placed by the counsel for the petitioner on a copy of the Garage Scheme annexed to the writ petition as Annexure P-9B, however, pertains to allotment of garages to the allottees of SFS flats in Dwarka in the year 2003, whereas the garage, subject matter of allotment to the petitioner herein is under a Scheme of the year 2008, which for reasons best known to the petitioner, he has failed to place on record.

13. Coming to the claim of the petitioner that the area earmarked as a garage ought to be enclosed with walls or fencing so as to ensure the safety of his vehicle parked therein, the said stand has to be examined in the light of the parking spaces allotted in the building plan of the complex. A perusal of the building plan enclosed as Annexure R-1 to the counter affidavit filed by the respondents/DDA shows that there are two kinds of parking spaces that exist in the complex. One set of parking

space that exists within the complex, is open to sky and is meant for free parking not dedicated to any particular allottee, whereas the second set of parking space is under the stilted area with a number assigned to each such parking space and the same are dedicated for the use of particular allottees.

14. The stilted area in the complex not only includes the parking space but also includes the common utility area meant for the use of all the allottees. The said utility area gives access to the main building, constructed portion of which is built from above the stilted area. The entrance of each block is about 4¼ feet through the staircase and the lift banks are also accessible through the stilted complex. The service cables as also the filtered and unfiltered water supply lines have been laid through the stilted area and as a result, the stilted area has been turned into a multipurpose area, which cannot be permitted to be obstructed in the manner as proposed by the petitioner.

15. Of significance is the security aspect of the complex and not just of the vehicles parked in the stilted area. In other words, the lives of the residents of the complex ought to be given primacy over the safety of the vehicles. Therefore, the stilted area can be permitted to be put to use only in such a manner that in the event of an emergency/disaster whether, manmade or natural, the same does not adversely affect the security of the residents. Any obstruction to the free ingress/egress of

vehicles, particularly, the vehicles of the Fire Department meant to undertake rescue operation in case of any emergency, is thus impermissible. Having regard to the fact that the water pipelines with necessary gate-valves go through the parking space, any obstruction of the said space would be disastrous as the same would delay access to the water pipelines and thus adversely affect the fire fighting operation to be undertaken in case of an emergency. Similarly, other rescue operations would also be hindered if the stilted area is permitted to be enclosed.

16. Another relevant factor is that the housing complex has been built on the basis of a particular architectural plan, that has been sanctioned with the stilted area under the building in the complex shown as open area in the plan. If the stilted area is permitted to be covered in the manner proposed by the petitioner, it would enhance the existing FAR beyond the permissible FAR and thus result in violating the FAR of the housing complex, which is again impermissible. The petitioner is not differently placed from the other residents of the complex where, there are 72 car parking spaces and as per the respondents/DDA and the counsel for the RWA, it is only the petitioner herein who has covered the parking space in the manner noted above. The security issues of the residents have obviously been taken care of by the RWA as except for the petitioner herein, no such grievance has been raised by any of the other residents of the complex pertaining to the safety of their vehicles parked

in the stilted area under the building. This fact has been reiterated by the counsel for the RWA who states that no grievance has been raised by any of the allottees of the car parking spaces with regard to security issues relating to their vehicles parked in the stilted area. Additionally, it is stated by the learned counsel for the RWA that private security has been engaged by the RWA to ensure the security of the residents, for which purpose, monthly maintenance is being charged and recovered from the allottees/residents.

17. In view of the aforesaid facts and circumstances, the grievance of the petitioner for adequate security of the vehicle parked in the garage space allotted to him stands sufficiently addressed. That the petitioner should be assured of the exclusive use of the garage at all times, is a matter that is internal to the petitioner and the RWA and does not relate to the respondents/DDA as the said authority has already allotted the flats and the parking spaces to the individuals, it is for them to manage the common space and the allotted space in the complex as best as is possible. Further, the petitioner ought to be mindful of the fact that when he decided to reside in a gated residential Complex, he ought to have realized that there would be various issues that may be raised by the residents, and their concerns would need to be resolved by the RWA with the mutual cooperation of the residents and to the mutual satisfaction of the entire community in the complex and in some cases,

the interest of the community would be given primacy over the interest of an individual resident. The petitioner must therefore understand that he would be expected to adjust with the other residents of the complex for the sake of maintaining peace and harmony. To that extent, misuse by other residents of the parking space allotted exclusively for the use of the petitioner would alone not be a ground for him to claim a licence to enclose the parking space with walls/fencing from all sides for the sake of securing his vehicle parked there, when it is contrary to the very terms of allotment.

18. In view of the above, the present petition is dismissed as being devoid of merits, while leaving the parties to bear their own cost.

MARCH 22, 2012
rkb/sk

(HIMA KOHLI)
JUDGE