

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9475 OF 2014**

Ajiaz Abdul Kader Perfumewala

..Petitioner

Vs.

Kausar Ahmed Sorathia & Ors.

..Respondents

Mr. Sandesh Patil a/w Mr. Pavan Patil for the Petitioner

Mr. N. A. Ghatte for the Respondent No.1

Mr. S. R. Soudagar for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 15th July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 23-9-2014 passed by the President, Maharashtra State Co-operative Appellate Court, by which order, the Appeal filed by the Respondent No.1 herein came to be allowed and resultantly the order dated 21-2-2013 passed by the Trial Court rejecting the application Exhibit -5 came to be set aside and the application Exhibit 5 came to be allowed.

2 The dispute in question has been filed by the Respondent No.1 herein and the subject matter of the dispute is the parking space G-6 in the compound of the society. The Respondent No.1 would be referred to as the Disputant. The substantive relief sought in the dispute is a declaration that the Disputant is legally entitled for allotment, use and enjoyment of the disputed

car parking space G-6, Ground floor, Fortune Tower, Byculla, Mumbai, for a direction that the Opponent No.1 i.e. the Petitioner herein be directed by a mandatory injunction and order to restore the possession of the disputed car parking space G-6 to the Disputant. The said dispute is founded on the fact that the Petitioner was earlier a purchaser of Flat No.701 in the said society and in fact had started residing in the said Flat but pursuant to the action taken by the BMC holding that the flat is illegal that the developer had offered her flat No.601 which was immediately below the said flat No.701 and which stood in the name of one Shaukat Patel. The Petitioner's flat No.701 was allotted parking space G-14, however after the change of the said flat, it is the case of the Disputant that the parking space G-6 which was in possession of the said Shaukat Patel would come to the Petitioner along with the said flat No.601. It is the case of the Disputant that the Petitioner herein unauthorisedly took possession of the said parking space when the Disputant was not in the country and started parking his car in the said parking space. The Disputant in the said dispute filed an application for interim and mandatory injunction. The mandatory injunction was that the Petitioner herein i.e. the Opponent No.1 be directed to hand over possession of the said parking space G-6. The said application for temporary injunction was replied to on behalf of the Petitioner herein. The Petitioner disputed the case of the Disputant that the said parking space G-6 was an adjunct of flat No.601 and was therefore to go alongwith Flat No.601 as and when the said flat was sold. The Petitioner herein therefore

questioned the Disputant's entitlement to the said parking space G-6.

3 It appears that after the controversy in respect of the said parking space G-6 arose, the society took up the matter in respect of the said dispute between the Petitioner and the Disputant. However, unfortunately the same could not be resolved. It seems that the said society had passed a resolution accepting the fact that the parking space G-6 is of the Petitioner wherein he is parking his vehicle. The Trial Court considered the said application and by its order dated 21-12-2013, rejected the said application. The Trial Court held that the Disputant had not produced any document to show that the said car parking space G-6 was allotted to her and that the issues that arise in the dispute would require a trial and until then no relief can be granted to the Disputant. The Trial Court as indicated above accordingly rejected the said application by its order dated 21-12-2013.

4 The Disputant aggrieved by the said order challenged the same by filing an Appeal before the Co-operative Appellate Court. The Co-operative Appellate Court on a reconsideration of the material on record came to a conclusion that since Flat No.601 was of the ownership of Shaukat Patel and since the said parking space would necessarily be of the Disputant. The Lower Appellate Court has accordingly deemed it appropriate to upset the order passed by the Trial Court and granted the mandatory relief which is sought by

the Disputant and has thereby directed the Petitioner herein to hand over the possession of the said parking space G-6. The Lower Appellate Court has observed that the Petitioner here in has another parking space B-11 in the society compound and therefore no prejudice would be caused to the Petitioner.

5 The Learned Counsel appearing on behalf of the Petitioner would question the grant of mandatory order of the nature granted by the Lower Appellate and would contend that such a relief could not be granted at the interim stage, especially when the Trial Court has observed that the issues would require a trial.

6 In my view, having regard to the reasons mentioned by the Trial Court and having regard to the fact that there is an allotment letter which was issued in favour of the said Shaukat Patel by the developer allotting the said parking space G-6 to the said Shaukat Patel and the said Shaukat Patel was undisputedly the owner of the flat No.601. Prima facie it appears that on the sale of the flat No.601 the parking space G-6 has to come to the Disputant. The Lower Appellate Court has also directed the society to frame rules and regulations to regulate the parking in the compound. As from the facts which are disclosed during the hearing of the above Petition, it appears that the allotment of parking space is lop sided as some people seem to have more than

one parking space whereas the others do not have parking space.

7 Be that as it may, having regard to the nature of the controversy involved, no useful purpose would be served if the parking space is to be kept vacant pending the dispute. It is made clear that though by the mandatory order the Disputant would be entitled to the parking space G-6, the same would be subject to the result of the dispute. The Disputant would accordingly park his vehicle in terms of the order passed by the Lower Appellate Court. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

8 At this stage, the Learned Counsel for the Petitioner applies for continuation of the ad-interim relief. In the facts and circumstances of the case the said prayer is rejected. However the hearing of the dispute is expedited and needless to state that the same would be tried on its own merits and in accordance with law uninfluenced by the impugned order or the instant order.

[R.M.SAVANT, J]