

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.130 OF 2016
ALONG WITH
CIVIL APPLICATION NO.177 OF 2016**

**Mr. Ivan Lawrence Martis : Appellant/Applicant.
Versus
M/s. Lashkaria Construction Pvt. Ltd. & anr. : Respondents.**

**Mr. A M Saraogi for the Appellant/Applicant.
Mr. M S Adenwala i/by Mr. A N Shaikh for the Respondents.**

**CORAM : R. M. SAVANT, J.
DATE : 06th June 2016**

P.C.

1 The order dated 13th/14th August 2015 passed by the Trial Court i.e. the learned Judge of the City Civil Court, Dindoshi (Borivali Division), Mumbai is taken exception to by way of the above Appeal from Order. By the said order the Notice of Motion filed by the Appellant herein being No.2711 of 2015 came to be dismissed.

2 The Appellant herein is the original Plaintiff who has filed the suit in question being S.C. Suit No.3028 of 2013. The principal relief sought in the suit is by way of permanent order and injunction restraining the Defendant No.1 i.e. the Respondent No.1 herein from in any manner changing the parking slot of the Plaintiff and/or restraining it from in any manner recommending the Defendant No.2 and/or preventing the Plaintiff from parking his vehicle on

the parking slot No.66 as identified in the Map appearing at Exhibit-B to the Plaint. The correspondence annexed to the above Appeal from Order discloses that the Respondent No.1 herein vide its letter dated 21/09/2005 addressed to the Appellant/Plaintiff thanked him for booking a 2BHK Flat No.1204 in its project "Green Towers", Wing-A, situated at Plot No.216, Gilbert Hill Lane, Near Andheri Recreation Club, Bhavan's College, Andheri (West), Mumbai – 400 053. By the said letter the Respondent No.1 herein also informed the Appellant/Plaintiff that it was pleased to allot him a Car Park No.66 on the Stilth of the said Green Towers. After the said letter dated 21/09/2005, the Respondent No.1 herein addressed a letter dated 01/07/2008 informing the members of the said Green Towers about the reshuffled parking slots and new parking allotments issued. By further letter dated 29/07/2008 addressed specifically to the Appellant/Plaintiff, the Respondent No.1 once again thanked the Appellant/Plaintiff for booking a 2 BHK Flat No.1204 in their project "Green Towers", A-Wing and also informed him that it was pleased to allot him a Car Park No.13 on the Stilth of Green Towers. At the foot of the said letter dated 29/07/2008 it was clarified that old parking stands cancelled against the said letter. It seems that the Respondent No.2-Society herein, which a Society of the flat purchasers of the said Green Towers, came to be registered in the year 2008. The instant suit, as indicated above, has been filed in the year 2013 and is founded on the change of allotment of parking slot to the Appellant herein.

3 In so far as the case of the Appellant is concerned, it is his case that the said parking was sold to him by the Respondent No.1. It is further his case that after the society was formed, assuming that it is not a sale but an allotment by the Respondent No.1 Developer, the Society would go by the allotment made by the Defendant No.1. The Appellant therefore filed the instant Notice of Motion so as to restrain the Defendant No.1 from changing the parking slot of the Appellant from Car Park No.66 to Car Park No.13 and to restrain the Defendant No.1 i.e. the Respondent No.1 herein from preventing the Plaintiff from parking his vehicle on the Parking Slot No.66.

4 In so far as provisions of the Maharashtra Ownership of Flats Act are concerned, it is trite that the parking slot cannot be sold by the builder and once the Society is constituted and established for the flat purchasers, then it is the society which is to regularize the parking in the property of the society. In the instant case, as indicated above, the Defendant No.1 i.e. the Respondent No.1 herein has changed the parking slot vide letter dated 29/07/2008 thereby changing the parking slot of the Appellant herein i.e. the original Plaintiff from 66 to 13. The Trial Court therefore on the basis that though the change in the parking slot was made in the year 2008, the suit was filed only in the year 2013, has refused to grant the relief by way of temporary injunction to the Plaintiff and has accordingly dismissed the Notice of Motion.

5 Since the allotment of parking by the Respondent No.1 Developer could only be subject to the regulation of parking by the Defendant No.2 Society, in my view, no case for interference with the impugned order dated 13th/14th August 2015 is made out. It would always be open for the Appellant to bring forth before the Society the original allotment of the 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 the aforesaid observation, the Appeal from Order is dismissed. In view of the dismissal of the Appeal from Order, Civil Application No.177 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]