

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : January 18, 2016*

+ **FAO(OS) 419/2015**

MOUNT KAILASH RESIDENTS ASSOCIATION Appellant

Represented by: Mr.Rajinder Mathur,
Mr.S.R.Sharma, Advs.

versus

MOUNT KAILASH TOWER III

AVASIYA WELFARE COMMITTEE & ORS Respondent

Represented by: Ms.Pragya Nalwa, Adv. for
R-3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

1. Heard learned counsel for the parties. Record of the suit has been perused.
2. The grievance of the appellant is to the order dated April 28, 2015 disposing of OA 100/2015 filed by the appellant.
3. The inchoately worded order which terminates by observing that the appeal is disposed of in the above terms needs to be understood with reference to the contents of the impugned order.
4. Challenge in OA 100/2014 was to an order dated May 29, 2014 passed by the learned Joint Registrar disposing of IA No.11451/2013 filed by Kailash Tower Welfare Association (Tower – I), East of Kailash praying therein to be impleaded as a defendant in a suit filed by Mount Kailash Resident Association, Pocket-A, Flat No. 61 to 120.

5. Pleading in the suit that the residents of Flat No. 61 to 120 in Pocket-A, Mount Kailash, New Delhi had approached DDA for allotment of parking in the parking space at a Convenient Shopping Centre nearby; pleading further and that an in-principle decision has been taken by DDA to allocate the parking space for the residents of Flat No. 60 to 120 in Pocket-A, DDA Flats in Mount Kailash, prayer made was to restrain the members of Mount Kailash Tower-III Welfare Committee to cause hindrance in the use of parking space by the members of the plaintiff association.

6. In the application seeking impleadment the applicant pleaded that even it had made a representation to DDA concerning the parking space. It pleaded that the parking space get clogged with sewage water. It pleaded that for the parking space a representation was made to convert it into a covered hall. It was pleaded that originally the space in question was a covered hall. A reference was made in the application to certain meetings held under the aegis of the Lt.Governor of Delhi.

7. Vide order dated May 29, 2014 the application for impleadment was allowed by the learned Joint Registrar.

8. Said order was challenged by chamber appeal registered as 100/2014. IA 11889/2014 was filed praying for stay of the order dated May 29, 2014.

9. Vide impugned order dated April 28, 2015, without deciding whether the impleadment should or should not have been allowed, the learned Single Judge has proceeded to decide an issue of an interim measure. The learned Single Judge has held that since the parking lot is in the basement of the local shopping centre which is adjacent and proximate to Tower-I, therefore logically its use would be to Tower-I. Under the circumstances the learned Single Judge has permitted residents of Tower-I to use the entire parking lot

for themselves subject to payment of such charges as would be payable to DDA.

10. Regretfully, the impugned order as noted hereinabove, overlooked the fact that the challenge in OA 100/2014 was to the order passed by the learned Joint Registrar impleading the applicant as a party in the suit.

11. It would be useless to set aside the impugned order and remand the matter to the learned Single Judge for the reason we have heard learned counsel for the parties and thus we take upon ourselves the obligation to decide whether the learned Joint Registrar was justified in impleading the applicants of IA 11451/2013 as a defendant in the suit.

12. From the facts noted hereinabove it is apparent that the parking space has been allocated by DDA to the plaintiff upon payment of certain charges. The plaintiff has not paid the charges. The reason being DDA not having calculated the charges.

13. At the same time, under the aegis of the Lt.Governor of Delhi, concerning same parking space, a decision has been taken which leads in the direction of a right being created in favour of the applicant.

14. Under the circumstances the applicant would certainly be a necessary party in the suit filed by the plaintiff.

15. To this extent the reasoning of the learned Joint Registrar is correct.

16. As regards the interim measure, the arguments of learned counsel for the appellant is correct. The learned Single Judge was dealing with the chamber appeal and IA 11889/2014 wherein stay of the order passed by the learned Joint Registrar impleading applicant of IA 11451/2013 was sought for. The learned Single Judge ought to have granted an opportunity to the parties to present their case and thereafter decide the issue.

17. Relevant for an interim measure would be the following facts:-
- a. At Mount Kailash there exists three Towers: (I) (II) & (III)
 - b. Each Tower has 62 Flats. DDA has provided for 69, 70 and 69 parking space respectively in the three Towers.
 - c. Adjoining the three Towers are the Self Financing Flats having four storeys constructed by DDA in Block-A. Parking available in Pocket-A is not disclosed in the pleadings of the parties. However we have a relevant fact. For Flat No.61 to 120 in Pocket-A, Flats being 60 only 45 parking spaces have been allotted.
18. The shortfall therefore prima-facie would be for the residents of Pocket-A.
19. A parking space is an asset which requires to be equally and equitably distributed is the contention of the plaintiff. The contention of the defendants could possibly be apart, from proximity to their Towers, the sewage water collection; the decision to have the covered area converted as a community hall.
20. Another relevant fact would be a hiatus between the decision taken by the Lt.Governor of Delhi where representatives of the applicant of IA No.11451/2013 were present and the decision taken by the DDA to allocate the parking space to the plaintiff.
21. In our opinion concerning parking the only way forward has to be a direction that under the aegis of the Lt.Governor, who is the Chairman of the Delhi Development Authority in terms of Section 33 of the Delhi Development Act, 1957, a final decision be taken after hearing the representatives of the plaintiff and the applicant of IA 11451/2013.
22. The appeal is accordingly disposed of setting aside the impugned

order dated April 28, 2015, which as noted above did not decide the issue which was before the Single Judge and has decided an issue which was not even before the learned Single Judge.

23. However it is observed that the applicant of IA 11451/2013 were rightly impleaded as defendant in the suit by the learned Joint Registrar.

24. Copy of this order be sent to the office of the Lt.Governor of Delhi. Representatives of the parties may get in touch with the office and complete such procedural formalities as would be required to enable the Lt.Governor of Delhi to convene a meeting and take the necessary decision.

25. No cost.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 18, 2016
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