

OD-4

ORDER SHEET

APOT/109/2024
WITH
EOS/32/1987

IA No.GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

AARCEE BUILDERS PRIVATE LIMITED
VERSUS
SMT. ARATI ADDY AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : 24th April, 2025.

Appearance:
Mr. Soumen Das, Adv.
..for the appellant

Mr. Sourojit Dasgupta, Adv.
Mr. Vishwarup Acharyya, Adv.
..for the respondent nos.10, 10A and 10B

Mr. Arindam Paul, Adv.
..for the respondent nos.3(i) and 3(iii)

The Court: By consent of the parties, the appeal and the connected application are taken up together for hearing.

Leave is granted to learned advocate for the appellant to correct prayer (d) of the Notice of Motion by substituting defendant nos.10, 10A and 10B in the place and stead of respondent nos.62, 63 and 64.

Under challenge in this appeal at the instance of the developer is a portion of an order dated February 2, 2024 passed in GA/150/2023.

It appears that the members of the Addy family of Chetla are entitled to various shares in the Addy Estate. Various litigations have been initiated. The matter also reached the Hon'ble Supreme Court.

Presently, we are concerned with allotment of a car parking space in favour of defendant nos.10, 10A and 10B. They had approached the learned Single Judge for a direction on the developer being the present appellant to allot a car parking space in their favour. They argued that the scheme framed by the Hon'ble Supreme Court directed the developer to allot a car parking space to every co-owner having 3% or more share in the property of Addy Estate, either independently or in a group. The learned Judge noticed a letter dated June 20, 2017 written by the developer wherein it was admitted that the defendant nos.10, 10A and 10B are entitled to 3.4077% undivided share in the estate. Further, noting the submission made on behalf of the developer that no more car parking space is available since all had been sold off, the learned Judge directed the developer to pay to the defendant nos.10, 10A and 10B proportionately, the price of the car parking space or alternative similar car parking space. Being aggrieved, the developer has come up by way of this appeal.

Firstly, we note that in the letter dated June 20, 2017 written by the developer to the defendant nos.10, 10A and 10B, the admission of the said defendants being jointly owners of more than 3% undivided share in the concerned estate was not unconditional. The wording was as follows:

“You are jointly entitled to 3.4077% undivided share, subject to your getting pro rata share of Estate of N.N.Addy as claimed by you, in the properties of Addy Estate under development agreement as mentioned above consisting of 1176 Sq.ft of Super Builtup area.”

Secondly, we note that by a letter dated August 29, 2018, the defendant nos.10, 10A and 10B withdrew their claim for an open car parking space at the concerned premises. It appears that this letter was not drawn to the notice of the learned Single Judge. At least, the order under challenge does not refer to this letter.

Hence, we are of the view that ends of justice will be served if we remand this matter to the learned Single Judge to be decided afresh upon consideration of all relevant documents.

Excepting noting the aforesaid letter, we have not addressed the merits of the disputes including whether or not otherwise the defendant nos.10, 10A and 10B are entitled to a car parking space. All questions are left open for the learned Judge to decide afresh.

The order under appeal is thus set aside.

The learned Single Judge is requested to decide the matter afresh without being influenced by any observation in this order.

The appeal and the connected application are disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)