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

Date of Decision: 24th March, 2025

+ **W.P.(C) 15862/2022 & CM APPLs. 49338/2022 & 49340/2022**

SURJE RAM KATARIA

.....Petitioner

Through: Mr. G. S Chaturvedi and Mr. Virat
Vibhav Singh and Mr. Praveen
Mohan Agrawal, Advocates along
with the Petitioner, Mob-
9811092221.

versus

K K MISHRA & ANR.

.....Respondents

Through: Dr. (Maj) JC Vashista, Advocate for
R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition is filed by the Petitioner- Surje Ram Kataria under Article 226 read with Article 227 challenging the impugned judgment dated 22nd September, 2022 passed by the Id. Delhi Cooperative Tribunal.
3. It is an unfortunate case where so much judicial time is spent on one car parking issue for so many years. A brief background of the case is that the Petitioner is the present owner of flat no. 37 in plot no. 13-B, Sector-6, Dwarka, New Delhi-110075 in Subh Laxmi C.G.H Society Ltd. He had a dispute with the occupant of flat no. 35 relating to the parking lot assigned to



him. It is his case that he had purchased the apartment from the previous owner along with the parking lot and the Respondent No.1 has taken illegal possession of the parking lot.

4. The Respondent No.1-K.K. Mishra who is the owner of flat no. 35 states that the previous owner of the flat no. 37 had mutually exchanged his parking lot with that of flat no. 35 as he was not staying in the said premises. The Respondent relies on the handwritten resolution passed by the Managing Committee on 4th July 2009. The relevant clause of the said resolution reads as under:

“3. The parking for Flat No.37 has been allotted in the basement. As MC feels that earlier/original parking allotted to Flat No.37 has been clubbed with Flat No.35 parking and two vehicles (4 wheelers) can't park in the allotted parking because of presence of hydrant near the parking and it is not possible to be relocate the hydrant.

4. The membership requested by Flat No.35 by Mr. Mishra has been approved by the house.”

5. The dispute relating to the parking slot was placed before the Registrar of Co-operative Societies and he referred the matter to the Arbitrator *vide* order dated 17th January, 2018. The Id. Arbitrator upon hearing the parties, passed the award in September, 2018 which reads as under:

“AWARD

I have heard the views and contention of both the parties and found that mutual consent by the original member of flat no 37 and Sh. K.K Mishra flat no 35, has been obtained after the sale of flat no. 37 to Sh. Surje Ram Kataria, by putting pressure on the original seller of the owner of flat no 37. It cannot be considered as a valid consent as it was given after the sale of



aforesaid flat.

The photograph submitted by the Petitioner clearly shows that parking space occupied by Sh. K.K Mishra, actually belongs to the present owner of Flat No 37 i.e. Sh.Surje Ram Kataria. It is clear that the Managing Committee of the society is giving favour to Sh. K.K Mishra, who is office bearer of the society at present.

1, therefore order the Managing Committee of society as well as Sh. K.K Mishra to vacate the parking space and handover the possession to the Petitioner. Sh. K.K Mishra should also be given the possession of parking space of flat no 35, which is at present occupied by owner of flat no 37, Petitioner, with immediate effect.”

6. This award was challenged by the Respondent-Mr. K.K. Mishra, before the Delhi Cooperative Tribunal where the Id. Arbitrator’s order was set aside vide the impugned judgment dated 22nd September, 2022. The observations are as under:

“8. In the impugned award, the Ld. Arbitrator has based his view upon copies of emails exchanged between the original owners Sh. Sanjay Kharbanda and Sh. Arvind Saini on 05.06.2017 confirming that they had mutually exchanged the parking slots. He has held that the said confirmation being after the sale of Flat no. 37 to the Respondent No. 1, was not reliable.

9. However, the passing of the resolution dated 04.07.2009 has not been denied by Respondent No. 1 either before the Arbitrator or in this appeal. It has also not been contested that the decision taken vide the resolution was communicated to the original owner of the Flat vide a letter dated 06.07.2009. The Respondent No. 3 society has further confirmed the passing of the resolutions and the fact that the parking spaces were re-allotted as per the resolution in 2009 itself. It has also been proved that the repainting of the parking slot numbers was undertaken by the society in the year 2011 as per the documents



of painting bills etc, placed by the Appellant on record.

10. In view of the above, we do not agree with the Ld. Arbitrator that the confirmation emails being obtained much later, has any effect on the actual exchange as has been in operation since the year 2009. Further, the above fact shows that the repainting of the parking slot numbers was done on the basis of the resolution of the society and cannot be said to be clandestine or mischievous in any manner as alleged by the Respondent No. 1. The respondent having purchased the Flat No. 37 in the year 2016, obviously had to do with the parking slot marked for the said flat at that time. The said parking slot admittedly had been in possession and use of the Appellant since 2009 and the said arrangement could not been disturbed by the Ld. Arbitrator on such a flimsy ground.

11. As a result, we find the impugned award totally unsustainable and the same is therefore set aside. The appeal is allowed. The parties shall however, bear their own cost.”

7. It is this order which is under challenge in this petition.

8. The entire matter is in respect of one car parking. The Petitioner himself is present in Court and has placed on record a photograph wherein the designated parking slot for flat no. 35 and flat no. 37 is clearly mentioned in the stilt area of the society. The said image is extracted herein below:



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9. Ld. Counsel for the Respondent has been queried as to whether this is the position on ground as on today. There is no objection expressed by the Respondent to the above status as it exists on date.

10. Ld. Counsel for the Petitioner is willing that this position continues and that he is able to park his car at the slot allotted to Flat no.37 as is visible in the image above.

11. After perusing the above photograph, this Court is of the opinion that neither of the parties can have any objection in occupying their respective parking slots in the stilt area as shown in the image above. The parties shall continue to use their respective parking slots in terms of the image extracted



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above.

12. No further orders are called for. The impugned order shall stand modified to this extent.

13. The appeal is disposed of in the above terms. All pending applications, if any, stands disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MARCH 24, 2025/da/Ar.