IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 14463 of 2015

Dakshini Apartment Owners Association & Anr.
-Versus-
Kolkata Metropolitan Development Authority & Ors.

For the Petitioners	**:**	**Mr. Subhabrata Datta** **Mr. Debasish Sarkar** **Mr. Jatindra Barik.**
For the Respondent No. 4.	**:** :	**Mr. Anindya Lahiri, Sr. Adv.** **Mr. Anish Chakraborty.**
For the KMDA	**:**	**Mr. Debanik Banerjee,**
Heard on	**:**	**17.11.2026**
Judgment on	**:**	**17.11.2026**

Partha Sarathi Sen, J.:-

1. The subject matter of the instant writ petition is the possession certificate dated 06.04.2015 as issued by the Executive Engineer of the KMDA Authority, whereby and whereunder an open car parking space no. 23 in Dakshini Phase-I Housing Complex ("the said Housing

Complex" in short) at Plot No. 87/1, Block-D, Baishnabghata Patuli Township, was delivered to the private respondent no. 4.

2. At the time of hearing, Mr. Dutta, learned advocate appearing on behalf of the writ petitioner, in course of his argument, at the very outset, draws attention of this Court to page nos. 13 to 41 of the affidavit-in-opposition as used by the KMDA, being a copy of the brochure as published by the KMDA Authority in respect of the said Housing Complex.

3. Drawing attention to various clauses of the said brochure, it has been submitted by Mr. Dutta that as per the said brochure, the KMDA Authority decided to sell out 90 numbers of residential apartments in one G+10 tower and another 8 apartments in one G+4 tower with lift facility, along with 28 numbers of covered car parking spaces and 18 numbers of open car parking spaces in the said housing complex.

4. Drawing attention to page no. 21 of the affidavit-in-reply dated 25.07.2025 as filed by the writ petitioner, it is further argued by Mr. Dutta that by issuing a memo dated 09.04.2009, the KMDA Authority indicated that before parting with individual possession of the apartments, the building with common services and common areas in the said housing complex would be handed over to the designated person of the Co-operative Housing Society or Apartment Owners' Association thereof. Attention of this Court is also drawn to page no. 25 of the supplementary affidavit dated 16.09.2016, being a copy of the

possession certificate dated 02.06.2009. It is submitted by Mr. Dutta that on careful perusal of the said possession certificate dated 02.06.2009, it would reveal that in terms of the promise made by the KMDA Authority, the possession of the common areas and common services of the said Housing Complex was handed over to the Chairman or the Secretary of the writ petitioner No.1 Co-operative Society. It is further submitted by Mr. Dutta that along with the said possession certificate dated 02.06.2009, a sketch map was also annexed, wherefrom it would reveal that KMDA has subsequently decided to keep 22 numbers of open car parking spaces in the said housing complex.

5. At this juncture, Mr. Dutta took me to page no. 33 of the supplementary affidavit dated 18.09.2016, being a copy of another sketch map dated 22.04.2015, as prepared by the KMDA Authority in respect of the said housing complex. It is argued by Mr. Dutta that on comparative study of the sketch map dated 02.06.2009, as has been annexed with the aforementioned possession certificate dated 02.06.2009, and the subsequent sketch map dated 22.04.2015, it would reveal that the KMDA Authority most unilaterally indicated a space for proposed car parking space no. 23, which is the subject matter of the instant writ petition.

6. It is argued by Mr. Dutta, learned advocate for the writ petitioner Co-operative Society, that after handing over the possession of common services and common areas of the said housing complex, the KMDA

Authority has got no right and/or jurisdiction to create another open car parking space in a place which is earmarked as common area, since such demarcation of an open car parking space no. 23 in common area will diminish the extent of the common area affecting the proportionate right, title, and interest of the members of the Co-operative Society in the said housing complex, and the said action of the KMDA Authority tantamount to hamper the amenities attached with common services and common area as enjoyed by the members of the writ petitioner Co-operative Society.

7. Drawing attention to page numbers 34, 35, and onwards of the aforementioned supplementary affidavit dated 16.9.2026, it is further argued by Mr. Dutta that under cover of a forwarding letter dated 19.5.2011 / 6.6.2011, a model draft Deed of Conveyance was forwarded to the Secretary of the writ petitioner society, and on perusal of the recital clause of the said model Deed of Conveyance, it would reveal that the said recitals are in consonance with the criteria as mentioned in the brochure as published by the KMDA, over which the independent allottees, who are the members of the writ petitioner No.1 cooperative society made an applications for allotment, to which the respondent KMDA authority agreed and that is why the said letter dated 10.5.2010 was issued forwarding therewith the said model Deed of Conveyance.

8. It is further argued by Mr. Dutta that with the execution of the Deed of Conveyances in favour of the allottees of the different apartment owners,

who are the members of the writ petitioner No.1 cooperative society, the allottees of the apartment, as well as the cooperative society as made by them, got their proportionate right, title, and interest over the common areas and common facilities of the said housing complex, which cannot be put to prejudice by the KMDA authority by issuing the impugned possession certificate, thereby allotting open car parking space number 23 in favour of the private respondent number 4.

9. Drawing attention to paragraph number 4 of the affidavit-in-opposition dated 27.11.2015, as filed by the respondent numbers 1, 2, and 3, that is, the KMDA and its instrumentalities, it is further argued by Mr. Dutta that in its affidavit-in-opposition, the KMDA had taken a stand that it has the sole authority to take decisions regarding such allotment, in which the housing society cannot indulge in.

10. Mr. Dutta contended that such a stand of the KMDA authority has got no legal basis, inasmuch as after handing over the possession of the common areas and common facilities to the writ petitioner society in the said housing complex, the KMDA authority is debarred from taking any decision with regard to the common areas and common facilities, since such common areas and common facilities, according to Mr. Dutta, come under the purview of the amenities attached thereto as enjoyed by the individual members of the cooperative society, who are the owners of the various apartments in the said housing complex.

11. In course of his argument, Mr. Dutta also took me to page numbers 57 and 58 of the instant writ petition. It is argued that on conjoint perusal of the said two pages, it would reveal that on an earlier occasion, that is, in the year 2012, the KMDA authority did not entertain a similar application of one Anup Kanti Dey on the ground that in the said housing complex no other car parking space is available. It is argued by Mr. Dutta that in the event the KMDA has taken a stand in the year 2012 that in the said housing complex no car parking space is available, the self-same KMDA authority cannot take a contrary stand while issuing impugned possession certificate in respect of car parking space number 23 in favour of the private respondent number 4. It is thus argued by Mr. Dutta that the KMDA authority, being an authority within the meaning of Article 12 of the Constitution, is duty-bound to act in terms of the Constitution of India, and the Act and Rules governing the functioning of the said Authority and therefore, in terms of the constitutional provision, the subsequent allotment of the open car parking space number 23 in favour of the private respondent number 4 tantamount to violation of Article 14 of the Constitution of India.

12. In his next fold of submission, Mr. Dutta took me to Section 2, Section 3(d) and Section 5 of the West Bengal Apartment Ownership Act, 1972 (the said Act of 1972 in short). It is submitted by Mr. Dutta that since the said housing complex consists of various residential units, the said Act of 1972 is very much applicable in the facts and circumstances of

the present case, and therefore, the definition of common areas and facilities as embodied in Section 3(d) of the said Act of 1972 shall have due application in the instant writ petition.

13. It is further submitted by Mr. Dutta that on perusal of Section 2(d) and Section 5 of the said Act of 1972, it would reveal that it is the legislative mandate that every apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. It is submitted by Mr. Dutta that in view of such legal provision, there cannot be any hesitation to hold that in respect of the common areas and facilities of the said housing complex, which was handed over to the writ petitioner No.1 society by executing a certificate of possession dated 2.6.2009, the members of the said cooperative society, who are the owners of the apartments in the said society, got their undivided interest in common areas and facilities, and such common interest has been hampered by the action of the KMDA, which is under challenge in the instant writ petition.

14. To substantiate his contention, Mr. Dutta places his reliance upon a judgment dated 31.08.2010 as passed by the Hon'ble Supreme Court in connection with Civil Appeal No. 2544 of 2010 (*Nahalchand Laloochand Private Limited versus Panchali Co-operative Housing Society Limited*). It is submitted by Mr. Dutta that in the case of **Nahalchand** (supra), the Hon'ble Supreme Court, while dealing with a similar situation, came to a finding that a stilt parking space comes under the purview of common

areas and facilities of a housing complex to which each flat purchaser, in proportion to the carpet area of the flat, has proportionate right, title and interest.

15. To substantiate that the said Act of 1972 has got equal manner of application in the instant lis, Mr. Dutta also places his reliance upon the judgment of a Coordinate Bench of this Court in the case of ***Basana Dutta and Others versus State of West Bengal and Others***, reported ***in 2004 SCC OnLine Cal 856 : (2005) 109 CWN 1056.***

16. It is thus argued by Mr. Dutta that it is a fit case for quashing of the allotment of open car parking space no. 23 in favour of the private respondent no. 4 in the said housing complex, and thus appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.

17. Per contra, Mr. Banerjee, learned advocate appearing on behalf of the respondent nos. 1 to 3 / KMDA and its instrumentalities, also draws attention of this Court to the copy of the brochure as has been annexed with the affidavit-in-opposition as filed by the KMDA.

18. It is argued by Mr. Banerjee that on careful perusal of the aforementioned various clauses of the brochure as published by the KMDA authority, it would reveal that the KMDA authority categorically indicated in the said brochure that the said authority reserves its right to allot all or any of the apartments, including surplus apartments, by any mode as would be considered necessary by the KMDA in exigency of

the circumstances, and in that regard, the decision of the KMDA authority is final.

19. Mr. Banerjee further contended that in the said brochure (page number 25 of the affidavit-in-opposition), it was also indicated that the terms and conditions for documentation and transfer of apartments are subject to changes as would be decided by the KMDA from time to time. Drawing attention to page number 41 of the affidavit-in-opposition of the KMDA, being a copy of the proceedings of lottery dated 24.02.2012, it is argued by Mr. Banerjee that in the year 2012, the KMDA held a lottery for allotment of open garage number 22 and covered garage number 26, which were also allotted to the apartment owners who are also the members of the cooperative society, to which the writ petitioner never raised any objection. It is argued by Mr. Banerjee that the respondent KMDA authority had taken a consistent stand while allotting the open garage space number 23 in favour of the private respondent number 4, as has been taken while allotting open garage number 22 and covered garage number 26, and thus, by no stretch of imagination can it be said that the respondent KMDA authority had acted in a partial manner, and thus the instant writ petition is liable to be dismissed.

20. Mr. Lahiri, learned Senior Advocate appearing on behalf of the private respondent, in course of his submission at the very outset, challenges the maintainability of the instant writ petition. It is strongly argued by

Mr. Lahiri that on careful perusal of the entire materials as placed before this Court, more specifically the annexures to the affidavit-in-opposition as have been used by the private respondent number 4, it would reveal that the subject matter of the instant lis is basically an inter-se dispute between the private respondent number 4 and the other members of the cooperative society, which comes within the periphery of the definition of "dispute" within the meaning of Section 4(25) of the West Bengal Cooperative Societies Act, 2006 ("the said Act of 2006" in short), and the said dispute is to be filed before the Registrar under Section 102 of the said Act of 2006.

21. It is further argued by Mr. Lahiri that the instant writ petition is equally not maintainable on the ground that on account of the allotment of open car parking space number 23 in favour of the private respondent number 4, the writ petitioner number 1 cooperative society has not suffered any legal injury and/or no legal right of the writ petitioner number 1 cooperative society was infringed, and on this ground also, the instant writ petition is not maintainable. To substantiate his contention, Mr. Lahiri places his reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Mani Subrat Jain and Ors. vs. State of Haryana and Ors.***, reported in ***(1977) 1 SCC 486***.

22. It is further argued by Mr. Lahiri that the inter-se dispute between the private respondent No. 4 and the other members of the Co-operative society has become very prominent inasmuch as from the materials placed

before this Court, it would reveal that the writ petitioner number 1/Co-operative Society; more specifically some of its members are interested to challenge the allotment of the car parking space No. 23 in favour of the private respondent No. 4 only, however, they made no endeavour to challenge the allotment of open car parking space Nos. 19 to 22, though in the brochure of the KMDA authority, there was clear indication that only 18 members of open car parking space would be allotted. It is further submitted by Mr. Lahiri that for the best reason best known to the writ petitioners, they have made no prayer for setting aside of the said allotment of the open car parking space from 19 to 22 with some oblique motive. Drawing attention to page Nos. 29 to 39 of the affidavit-in-opposition as filed by the private respondent, it is further argued by Mr. Lahiri that malice against the private respondent No. 4 of some of the members of the writ petitioner No. 1/Co-operative society is very much prominent inasmuch as the writ petitioner No.1/society for the reason best known to it made an endeavour to interfere with the allotment of the open car parking space No. 23 by the KMDA authority. It is further submitted by Mr. Lahiri that the said Act of 1972 has got no manner of application inasmuch as no material is forthcoming before this Court that the writ petitioner No.1/Co-operative society has complied with the provision of Section 10 of the said Act of 1972 by submitting declaration before the appropriate authority in the manner prescribed therein. Mr.

Lahiri thus submits that this is a fit case for dismissal of the instant writ petition.

23. This Court has meticulously perused the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

24. Since in course of his argument, Mr. Lahiri has raised the point of maintainability of the instant writ petition, this Court proposes to deal with the said point of maintainability at the very first instance. In doing so, this Court proposes to look to Section 17 of the said Act of 2006, which reads as under :

> *"17. Co-operative society to be body corporate.-(1) The registration of a co-operative society shall render it a body corporate by the name under which it is registered, having a perpetual succession and a common seal and the co-operative society shall be entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings, and to do all other things necessary to achieve its objectives.*
>
> *(2) All transactions entered into in good faith prior to registration of the purposes of the co-operative, shall be deemed to be transactions of the co-operative society after registration."*

25. On careful perusal of the provision of Section 17 of the said Act of 2006, it appears to this Court that it is the legislative mandate that the registration of a co-operative society shall render it a body corporate by the name

under which it was registered, having a perpetual succession and a common seal and it can sue or be sued to achieve its objectives.

26. Keeping in mind the aforementioned provision of law if I look to the cause-title of the instant writ petition, it appears to this Court that the writ petitioner No. 1/Co-operative society described itself as a registered association and therefore there cannot be any difficulty to hold that it is a body corporate having a perpetual succession and a common seal. Such being the position, this Court is constrained to hold that the writ petitioner No.1/society, being a body corporate represents its members and in the event common right, title and interest of its members in respect of the said housing complex is hampered at the instance of any third party and/or at the instance of any of its individual member, the writ petitioner No.1/society being a body corporate having perpetual succession and a common seal can very well ventilate its grievance by filing a suit and/or by defending a suit or any other legal proceeding. It thus appears to this Court that the reported decision in the case of **Mani Subrat(supra)** as cited on behalf of the private respondent No.4 is actually helpful for the writ petitioner in as much as it is specific case of the writ petitioner No.1 society that by the alleged action of the respondent/ KMDA authority, the right of its members is going to be hampered.

27. On careful perusal of the entire pleadings of the writ petition, it appears to this Court that it is the primary grievance of the writ petitioner No. 1/society that though it was in the charge of maintenance of the common

areas and common facilities of the said housing complex after its handing over in the year 2009, the respondent/KMDA authority made an endeavour to interfere with the common right, title and interest as well as amenities attached thereto as enjoyed by its members, who are the owners of the apartment of the said housing complex and accordingly, the writ petitioner No. 1/society approached this Court by filing the instant writ petition. It thus appears to this Court that from the periphery of the instant writ petition, it does not transpire to this Court that the instant *lis* arose out of an inter se dispute between the members of the Co-operative society, rather the writ petitioner No. 1/Co-operative society being a body corporate having perpetual succession and having authority to institute a suit or other legal proceeding under Section 17 of the Act of 2006, has filed the instant writ petition challenging the action of the KMDA authority in this writ petition. In view of the discussion made hereinabove this Court is constrained to hold that the instant writ petition is very much maintainable.

28. At this juncture, the moot question arose for consideration is as to whether by issuing the impugned possession certificate dated 06.04.2015 in favour of the private respondent No. 4 thereby allotment of car parking space No. 23 in the said housing complex, the respondent/KMDA authority has exceeded its limit and/or has done an act in contravention of the law.

29. At this juncture, if I look to the copy of the brochure as has been annexed with the affidavit-in-opposition of the KMDA authority, it reveals that initially the KMDA authority decided to dispose of certain numbers of apartments including 28 numbers of covered car parking spaces and 18 numbers of open car parking spaces.

30. On careful perusal of page No. 21 of the affidavit-in-reply as filed by the writ petitioner on 25.07.2025 against the affidavit-in-opposition of the private respondent No. 4, it appears that by issuing a memo dated 09.04.2009, it was decided by the KMDA authority that before parting with the individual possession of the respective apartment in the said housing complex, the building with all common services and common areas would be handed over to the designated person of the said co-operative society. Pursuant to such decision, the respondent / KMDA authority by issuing a possession certificate dated 02.06.2009 as has been annexed at page No. 23 of the supplementary affidavit of the writ petitioner has handed over the common services and common areas of the building at the said housing complex. Along with the said possession certificate, a sketch map dated 02.06.2009 bearing the signature of the Executive Engineer of the KMDA authority was also annexed, wherefrom undisputedly existence of additional 4 car parking spaces were there. As rightly pointed out by Mr. Lahiri that the writ petitioner no.1/society did not object to such allotment of additional 4 open car parking spaces while

obtaining the possession of the common services and common areas of said housing complex or soon thereafter for the reason best known to it.

31. It is undisputed that soon thereafter the apartments of the said housing complex were subsequently registered in favour of the apartment owners of the said housing complex. In course of his argument, Mr. Datta also draws attention of this Court to the model deed of conveyance as has been forwarded by the KMDA authority in favour of the writ petitioner No. 1/society.

32. On conjoint perusal of the said possession certificate dated 02.06.2009, the recital of the model deed of conveyance as has been executed by the KMDA authority to the different members of the writ petitioner No.1/society vis-à-vis the brochure as published by the KMDA authority, a copy of which has been annexed to the affidavit-in-opposition of the KMDA authority, there cannot be any doubt to hold that the common services and common areas of the said housing complex forms part and parcel of the amenities attached to the said housing complex, which is being enjoyed by the members of the writ petitioner No. 1/society in common and in the event any hindrance is caused to such common services and common areas, the writ petitioner No. 1/society which is a body corporate having perpetual succession and common seal and which represents the common interest of its members can very well sue the person who is obstructing such common amenities.

33. The next question arises for consideration before this Court is as to whether creation of an interest in favour of the private respondent No. 4 by allotting open car parking space No. 23 really hinderances the common right, title and interest and the amenities attached thereto to the members of the writ petitioner No. 1/society. At this juncture if I compare the sketch map as has been annexed with the possession certificate dated 02.06.2009 as issued by the KMDA authority and the sketch map dated 22.04.2015 as has also been issued by the respondent/ KMDA authority, it appears to this Court that an endeavour has been made on behalf of the KMDA authority to allocate a portion of the common area and common facility as proposed open car parking space No. 23. It is to be kept into mind that such an endeavour was made by the KMDA authority in the year 2015 especially when the KMDA authority loses its right over the common services and common areas, since the said authority itself executed a possession certificate in favour of the writ petitioner No. 1/society prior to the execution of the registered deed of conveyance in favour of the independent apartment owners.

34. In considered view of this Court, the action of the respondent/KMDA authority thereby earmarking a proposed open car parking space No. 23 over the common area and common facility of the aforementioned housing complex, is a direct attempt to interfere with the common/proportionate common right, title and interest of each and every individual apartment owners who are the members of the writ petitioner No. 1/Co-operative

society and such action tantamount to hampering and/or interfering with the amenities attached to such common facilities as supposed to be enjoyed by the members of the writ petitioner No. 1/Society uninterruptedly.

35. Though in course of his argument, Mr. Lahiri contended that the action of the writ petitioner No. 1/society is partial inasmuch as they took no action against the allotment of the open car parking space Nos. 19 to 21, in considered view of this Court, such argument is not at all relevant in deciding the instant writ petition, since the subject matter of the instant writ petition is restricted only to the action of the KMDA authority while allotting open car parking space No. 23 in favour of the respondent No. 4.

36. This Court has already held that the aforementioned action of the KMDA tantamount to interference with the common/proportionate right, title and interest of the individual members of the writ petitioner No. 1/society which is also interference with the amenities as supposed to be enjoyed by the said members and therefore this Court holds that the instant writ petition must succeed.

37. Consequently, **WPA 14463 of 2015** is hereby **allowed**.

38. Consequently, the impugned possession certificate dated 06.04.2015 in connection with open car parking space No. 23 in Dakshini Phase-I Housing Complex at Plot No. 87/1, Block-D, Baishnabghata Patuli Township shall stands hereby quashed.

39. The respondent/KMDA authority is directed to refund the entire consideration money after deducting Rs.3000/- per month towards occupational charge from the date of handover of the possession of the said open car parking space No. 23 in favour of the private respondent No.4 till the actual date of issuance of letter of cancellation along with 6.7% interest per anum to the private respondent No. 4, positively within sixty working days from the date of passing of this order. The occupational charges as would be deducted by the KMDA authority thereafter shall have to be deposited in the account of the writ petitioner No.1/society within fifteen working days from the date of making refund to the private respondent No. 4.

40. The time limits as fixed by this Court are peremptory and mandatory.

41. In view of passing of this order, the private respondent No. 4 loses his right to use the said open car parking space No. 23 and in view of such, the private respondent No. 4 is permanently injuncted with effect from December 1, 2026 from using the said open space for parking of his car at the aforementioned housing complex and the said open car parking space shall have to be treated as common area of the said housing complex henceforth.

42. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

[Sws.M[AR(c)/Susanta(AR(c)]