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

\+ **W.P.(C) 8219/2015 & CM No.17255/2015**

Judgment reserved on : 21st December, 2015
Date of decision : 27th January, 2016

ANUP MITTAL (HUF) ..... Petitioner
Through: Mr. Raminder Singh Sahota, Adv.

versus

M/S. KANUNGO CO-OPERATIVE GROUP HOUSING SOCIETY LTD AND ORS ..... Respondent
Through: Ms. Meera Mathur, Adv. for respondent nos.1 to 4.
Mr. Naushad Ahmad Khan, Addl. Standing Counsel for the RCS- respondent no.5

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

GITA MITTAL, J.

1. Perceptions that a person's prosperity are relateable to his address and the vehicle he drives, has led to this paradox of people effecting property and vehicle acquisitions way beyond their real needs. The instant case manifests the mindless assertion of non-existent entitlements to accommodate such acquisitions despite the same being contrary to law, it adversely impacting constitutional rights of others, and resulting in environmental degradation. Perhaps illustrating the words of Mahatma Gandhi when he said :

> *"Earth provides enough to satisfy every man's need, but not every man's greed."*

2. The petitioner challenges the order dated 20th April, 2015 passed by the Delhi Cooperative Tribunal in Appeal No. 72/2014/DCT. By this order, the Tribunal set aside the Award dated 4th March, 2014 passed by the Arbitrator under Section 71 of the Delhi Cooperative Societies Act, 2003 (the 'Act' hereafter) whereby the claim of the petitioner herein had been upheld.

3. There is no dispute so far as the relevant facts are concerned and we briefly set out the same hereafter. A plot of land measuring 3.483 acres, bearing no.71, I.P. Extension, Patparganj, Delhi was allotted in the year 1990 to the Kanungo Cooperative Group Housing Society ('Society' hereafter) for construction of six residential blocks of 209 flats in eight storeys each. The plan of the Society was sanctioned by the Delhi Development Authority permitting the construction and prescribing peripheral roads ranging from 6.5 meters to 7.5-8 meters width to enable circulation for the residents, their vehicles as well as emergency vehicles including fire tenders, police vehicles and ambulance.

4. The sanctioned building plans postulated parking in the basement. Originally, the plan permitted parking space for 115 cars and an equal numbers of scooters. The revised building plan, permitting parking of 209 cars in the basement of the society, was sanctioned on 14th April, 1999 by the Delhi Development Authority after a careful scrutiny in accordance with the building bye-laws framed under the Master Plan.

5. After completion of construction, allotment of flats to its member was effected by the society. The allotment letter contained the following clause :

> "3. That subject to the covenants contained herein, to be strictly observed on the part of the member, the Society shall permit the member to use and occupy in its property one of the flats along with ***one car parking*** on the lease basis as a ***licensee simplicitor*** and shall not sell

> or lease or transfer or assign or part with possession of the said car park."

Thus, each allottee was permitted only one car parking as a license and nothing beyond. This too was in the basement as per the sanctioned plan.

6. On 14th August, 2000, the petitioner came to occupy the flat no. 364 in the society as a tenant. He subsequently shifted tenancy to the flat no. 274.

7. On the 4th January, 2006, the petitioner purchased the flat no. 561 in the society on the terms and conditions set out in the allotment letter including the clause 3 aforenoticed. The society has placed before us a copy of the sale deed dated 4th January, 2006 executed by Shri Mahavir Prasad Aggarwal in favour of the petitioner with regard to the said flat "*along with one underground car parking space in basement*" situated in the layout plan of the society. Thus, the petitioner was fully aware right from the beginning that so far as car parking in the society was concerned, he had a bare license to use only one parking space in the basement of the building and no other right at all.

8. It appears that with the passage of time, after allotment, members of the society started acquiring additional cars, which they parked on peripheral roads causing inconvenience to other occupants. Some residents started permitting even non-residents/relatives to park cars in the society, a gated complex. This caused such a nuisance and obstruction that on an occasion of a mishap when there was a fire in one of the flats, the fire tenders could not reach the fire because of such parking of vehicles in the circulation.

9. Compelled by protests and quarrels over such illegal parking, the General Body of the society considered measures to discourage such parking of extra cars. The first minutes in this regard came to be recorded in the

Annual General Meeting on 14th August, 2005 wherein, with the majority approval, inter alia, the following resolution came to be passed :-

> "*12 The House further discuss the following with the permission of the chair*
>
> *Parking Charges;- The* ***House approved charges for extra car of the residents*** *parked inside the society premises. House approved that second of the resident/members will be charged Rs.100/- per month and third car will be Rs.300/- per month with effect from September, 2005 Charges will be reviewed in next AGM.*"

10. As the problem could not still be controlled, in the Annual General Meeting of the Society on 24th September, 2006, members resolved that the car parking penalty should be enhanced. For the first extra car, the member was required to pay Rs.100/- as penalty; for the second extra car Rs.300/- and for the third extra car Rs.700/- with effect from 1st October, 2006. Members willingly agreed to assist the Committee in removing cars and scooters which were not in use and had unnecessarily been parked in the society. Additionally, the Committee resolved to commence an entry token system for safeguarding vehicles.

11. In the next Annual General Meeting held on 30th September, 2007, the same rate was continued. However, in the Annual General Meeting on 9th November, 2008, another proposal for enhancement of the parking and entry fee was approved and the following resolution came to be passed :-

> "*8. There was a thorough discussion about upward revision of parking/entry charges for extra cars. Members suggested that each car should have car sticker and members should cooperate in getting the stickers affixed on their cars. At the end it was unanimously decided that the entry for first car should be free as at present, the entry charges for the second car should be raised from Rs.100.00 at present to Rs.200.00, and for the third car these should be raised from Rs.300.00 at present to Rs.500.00. Fourth car should not be allowed*

at all. Entry charges for cars of guests will be levied @Rs.50/- per night per car."

12. This very issue underwent extensive discussion in the Annual General Meeting on 24th October, 2010 when it was decided that no cars should be parked in the driveway and that parking should be effected so that cars of others are not obstructed. Possibility of increasing parking space in one of the blocks was to be explored and it was decided that cars without proper stickers would not be allowed to be parked in the basement. So far as the quantum of upward revision in the car parking charges and all matters relating to the car parking were concerned, it was referred to a sub-committee of six members including the Honorary President, Honorary Secretary as well as the petitioner herein.

13. On 7th October, 2012, an Annual General Meeting was held and in this meeting, the matter of the increasing number of cars and the shrinking parking space was discussed in great detail. It is pertinent to note that this AGM was attended by the petitioner as well. The president placed the complete data with regard to the number of cars being parked in the society as well as the details of the cars being owned by different members. Proposal for increasing the charges from Rs.5,000/- to Rs.10,000/- per month on the 3rd and 4th car was explored. It was noted that sub-committees, when appointed, did not submit reports. Finally, compelled by the extreme situation created in the society, the following increase in charges was approved by overwhelming majority with not a single member (including the petitioner) expressing a dissenting view :-

"*For resident Members :*
(a) 1st Car free as at present, i.e. no charge.
(b) 2nd Car charges to be increased from Rs.200/- to Rs.300/- per month.
(c) 3rd Car charges to be increased from Rs.700/- to Rs.2,500/- per month.

(d) 4th Car charges to be increased from Rs.1,500/- to Rs.5,000/- per month.
(e) 5th Car not allowed at any cost – if 5th Car is found in Society Complex, a penalty of Rs.200/- per day/night should be charged."

14. Both sides have drawn our attention to the above measures, taken by the society ostensibly to discourage provision of parking of cars beyond a single one in the society, keeping in view the sanctioned building plan and the limited area prescribed for the purpose.

15. The matter was reviewed in the Annual General Meeting on 8th September, 2013 when it was noted that as a result of the increase in the charges, some members have disposed off or sold their extra cars and the situation had eased on the ground. However, at night the situation was extremely difficult when it was impossible to find any parking space in the peripheral of the society. After a prolonged and lengthy discussion, the following changes in the charges were unanimously agreed :-

"(a) 1st Car free as at present, i.e. no charge.
(b) 2nd Car charges Rs.300/- per month as at present, i.e. no change.
(c) 3rd Car charges to be decreased from Rs.2,500/- per month to Rs.1700/- per month.
(d) 4th Car charges to be decreased from Rs.4,000/- per month to Rs.3,000/- per month, i.e. a person having four cars will have to pay only Rs.5,000/- per month as against Rs.6,800/- per month, a reduction of Rs.1,800/- per month.
(e) 5th Car not allowed at any cost- if 5th car is found in Society Complex, a penalty of Rs.200/- per day/night should be charged."

16. The meetings of the society held on 14th September, 2014 and 6th September, 2015 maintained the same charges.

17. So far as the petitioner is concerned, it appears that he has, without any protest, paid all charges including the extra car parking charges noted

above till 19th October, 2012. All other charges including maintenance, electricity and water charges had been duly paid by the petitioner till 19th October, 2012, whereafter he stopped paying the car parking charges as well as the maintenance, electricity and water charges. With effect from September, 2014, the petitioner and his family stopped residing in the society. Therefore, no extra car parking charges are being levied upon him. Thereafter, the petitioner did not pay the fixed charges being demanded from him.

18. Only in the year 2013, the petitioner raised a dispute under Section 70 of the Delhi Cooperative Societies Act, 2003 which was referred to arbitration with regard to the car parking charges contending that the General Body of the Society was bound by the provisions of the Delhi Cooperative Societies Act, 2003 and the Delhi Cooperative Societies Rules thereunder as well as the bye-laws of the Society and that it had no authority to impose the car parking charges.

19. The petitioner states that he is utilising the basement space for parking one of his cars. However all his remaining cars are parked in the open area of the society. He asserts a legal right to do so and challenges the measures taken and the resolutions of the General Body of the society to discourage parking of extra cars in the common areas of the society by its General Body and enforced by the managing committee.

20. This dispute was referred to arbitration and by the Award dated 4th March, 2014, the Arbitrator held in favour of the claimant/petitioner for the following reasons :

(i) the Society was required to confine itself to sub-paras (vi) and (vii) of the main objects of the Society which did not provide for car parking charges.

(ii) the Society can claim only common maintenance and facility charges

for which they were required to estimate the expense in the budget and approve in the General Body Meeting. Under Rule 89(7) of the DCS Rules, 2007, cost of maintenance, repair and replenishment in the common areas and facilities alone could be only apportioned amongst members, power of attorney holders and holders of conveyance deed i.e. whoever may be having occupancy rights of the plot or flat or the garage.

(iii) reliance was placed on Rule 106 of the DCS Rules holding that the maintenance charges was one fund and that the work of the employees or security guards could not be divided.

(iv) the Society could not file details of the amount collected from members as against expenses effected on the extra car parking penalty.

(v) the charge of common parking and garage is included in the maintenance charges under Clause (xx) of Rule 106 (5) of the DCS Rules, 2007.

(vi) the Society is a Cooperative Group Housing Society and cannot generate income or make profits.

Resultantly, the Arbitrator held the car parking charges imposed by the Society were illegal and directed the same to be refunded to the claimant within 30 days with interest @ 9% thereon or adjusted in the future demands of the Society.

21. The Society's challenge to this Award by way of Appeal No. 72/2014/DCT before the Delhi Cooperative Tribunal succeeded and by the order dated 20th April, 2015, it was held that the General Body of the Society was supreme having the power to review, revise or pass the resolutions (Ref.: ***100(2002) Delhi Law Times 428 (DB) Manav CGHS v. PO, DCT***); that parking space was limited and that the General Body was

required to take all measures to regulate the limited space for the welfare of the members of the society. The Tribunal was of the view that all bonafide measures taken for the benefit of the society were required to be sustained. The Tribunal notes the inability of the petitioner to explain how parking of more than one car per member could be regularised and held that the Arbitrator had usurped the power of the General Body, the exercise of which power was not malafide. The Award of the Arbitrator was consequently set aside.

22. The petitioner has assailed the order passed by the Tribunal on all grounds which were placed by him before the Arbitrator as noted above.

23. On 31st August, 2015, noting that, though the writ petition reflected the Society's address as the petitioner's residence, it was informed by Mr. Raminder Singh Sahota, learned counsel for the petitioner that he was not residing in the Society since the last 6/7 months. We had required the petitioner to file an affidavit disclosing his current address as well as the details of his family and dependents cohabiting with him; the number and makes of the cars owned by him as well as the respective dates of acquisition of these cars.

24. The petitioner has consequently, filed an affidavit dated 11th September, 2015 disclosing that he holds the degrees of B.E.(Electronics); MBA(B & I); L.LB. and was doing business in the field of Industrial Automation & Robotics. His wife is a post graduate who helps him in his business and that he was a social worker/major donor and holding several other positions as a District Director, District Chairman, Club President etc in the Rotary International. His family included two sons, the elder was also pursuing his Chartered Accountants course while the younger one was school going. His parents reside in Ajmer who lived with the petitioner when in Delhi.

25. So far as the number and details of cars owned by him are concerned, the petitioner disclosed the following information :-

"S.No.	Make of Car	Car No.	Date of acquisition
1.	HONDA CITY	DL7CC-8673	29/09/2003
2.	TATA INDICA	DL3CW-8916	02/08/2006
3.	TOYOTA INNOVA	DL7CG-4161	08/08/2008
4.	HONDA CITY	DL7CF-9789	28/07/2011"

26. It is submitted that due to the embarrassment being faced by the petitioner and his family on account of the litigation relating to the car parking, he was residing in Defence Colony since September, 2014 and that the extra cars were being parked at these premises, and not in the society, since that date.

27. We have heard learned counsel for the parties and scrutinised the record.

Whether the petitioner has an enforceable legal right to park, multiple cars within the boundary of a cooperative society?

28. Right at the outset, we had posed a primary question to learned counsel for the petitioner as to wherefrom did any member of the society derive the right to park cars within the boundary of the society and what was its nature?

29. It is trite that a person must establish a legal enforceable right when he seeks adjudication before a court or legal forum to maintain a lis. For the purposes of maintaining the present challenge, the petitioner therefore, must first and foremost establish a legal right to park cars within the precincts of the cooperative society. The occasion for the society to take any measures to discourage parking of the cars would then not arise. There would be no

occasion to impose the measures which have been decided by the General Body of the Society in the General Body meetings on 14th August, 2005; 9th November, 2008; 7th October, 2012; and 8th September, 2013.

Whether the claimed parking is legally permissible?

30. The society has shown that the members of the society were permitted a bare licence (as a licensee simplicitor) to park a single vehicle in the basement, which licence is attached to the allotted flat. The petitioner has not placed anything to the contrary before us. Clearly, the petitioner was not authorised by the society to park multiple cars within the boundary of the society.

31. Urban planning at any point is a difficult matter. The Master Plan of Delhi is a statutory document notified under the provisions of Section 7 read with Section 12 of the Delhi Development Act, 1957. Zonal development plans framed thereunder are also statutory. The final planning at the micro level is effected by the lay out plans sanctioned by the competent authorities. The Building Bye Laws have been notified keeping in view the Master Plan stipulations regarding density, requirements of open spaces, provision of essential services etc. The requirements under the Delhi Fire Service Act and Rules thereunder have also been carefully considered and provided for in these bye laws. The area which may be built up, the space which has to be kept open and the circulation which has to be provided by the societies is also a result of careful calculations stipulated in the bye laws in accordance with the Master Plan of Delhi. Building plans are submitted by the societies in consonance thereof and are approved by the competent authorities after due scrutiny.

32. The building plans of a cooperative group housing society thus draw a fine balance between the space essentially required to be constructed upon,

the open areas and the circulation keeping the population density, services required and plot size in view. This ratio may not be exact in as much as projections based on norms, may vary keeping the typical joint and extended family residing together. As a result, a single flat may be home to multiple families.

33. Playground areas, roads, ground areas etc have been clearly earmarked on the sanctioned building plan. The society has no authority at all to effect any changes in the sanctioned building plan or permit change of user of any portion of the plot especially the circulation and the open areas which would tantamount to variation of the building bye-laws. (Ref: ***(1995) 5 SCC 762 Dr. G.N. Khajuria & Ors. v. Delhi Development Authority & Ors.)***

34. Keeping in view the nature of the issues raised in the present case and their impact for effecting adjudication of the dispute, we had impleaded the Registrar of Cooperative Societies as a proper party who has been represented by Mr. Naushad Ahmed Khan, learned Additional Standing Counsel before us. Mr. Khan has submitted that this court has not been informed as to whether only the circulation area or the other open areas including grounds of the society have been utilised for parking by the occupants. Mr. Naushad Ahmed Khan has drawn our attention to the counter affidavit filed by the Society as well as the minutes of the Annual General Meeting which have noted that at night it is impossible to enter the society. Such difficulty must be faced by the members who may not have access to their allotted single parking in the basement as well.

35. Rights and privileges of members on allotment of a dwelling unit in a cooperative group housing society have also been carefully considered by the legislature and statutorily prescribed. Section 76 of the Delhi Cooperative Societies Act, 2003 is relevant in this behalf and reads as

follows :-

> **"76.** ***Rights and privileges of members on allotment of plot or dwelling unit in a co-operative housing society.***
> (1) Every member of a co-operative housing society, whether registered before or after the commencement of this Act, to whom plots of land or dwelling units have been allotted, shall be issued certificate of allotment by the co-operative housing society under its seal and signature in such form as may be prescribed.
> (2) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or the Registration Act, 1908 (16 of 1908), any allotment (including reallotment) of a plot of land or dwelling unit in a building of a co-operative housing society to its member as per terms of allotment shall entitle such member to hold such plot of land or dwelling unit with such title or interest.
> (3) A member of a co-operative housing society shall not be entitled to any title or interest in any plot of land or dwelling unit in a building of the co-operative society until he has made such payment as may be specified by the co-operative housing society towards the cost of such plot of land or construction of such dwelling unit, as the case may be, to the co-operative housing society.
> (4) The right, title and interest in a plot of land or dwelling unit in a building of the co-operative housing society (including the undivided interest in common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force :
> Provided that notwithstanding anything contained in any other law for the time being in force, such land or building shall not be partitioned for any purpose whatsoever.
> (5) Every member of a co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or dwelling unit allotted to him, which shall be described in the certificate of allotment as provided in sub-section (1).
> (6) ***Every member*** of a co-operative housing society in whose favour a plot of land or a dwelling unit has been allotted shall have the right ***to use the common areas and***

> ***facilities as prescribed by the co-operative housing society and in case of any violation by a member, the committee shall be competent to recover it at the cost of the encroacher*** which also be applicable with regard to the common areas under the control of the co-operative housing society.
> (7) The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the building rules of the concerned civic authorities, or other competent authority, as the case may be, and the costs thereof shall be apportioned amongst the members of the co-operative housing society in such manner as may be determined and notified by the committee from time to time."

36. Mr. Sahota has drawn our attention to Rule 89 of the Delhi Cooperative Society Rules, 2007 to assert his entitlement to park as many cars as the petitioner may wish. The reference to "parking areas" in the definition of "*common areas and facilities*" in the explanation to Rule 89 clearly refers to the area sanctioned as a parking area in the building plans of the society.

37. In the case in hand, the Delhi Development Authority has permitted parking space of only 209 cars in the basement. Merely because the petitioner, and others like him, may insist on parking in the common area, would not convert such areas into parking areas. Such circulation and common areas are meant for the utilisation by all and cannot be appropriated, even temporarily by any person for the purposes of parking their vehicles.

38. It has also been urged at some length by Mr. Sahota, learned counsel for the petitioner that a person who parks a car is not encroaching or trespassing on the land in as much as the same is transitory. This submission is completely bereft of any merit.

39. The petitioner has been unable to dispute that several extra cars have remained permanently parked in the society. Looking at the size of the petitioner's family and their occupations, it is obvious that the petitioner is the only person who is regularly moving outside the society. Thus, out of the four cars with regard to which the petitioner is claiming parking space entitlement, only one car, being used by the petitioner would be moved. Three of the petitioner's cars also would obviously remain parked in the society at all points of time.

40. The Society has complained that unused cars and scooters are lying parked in the common areas of the society whereby the members have converted the valuable open space into permanent parking of their vehicles which are in disuse. So long as a vehicle is parked on the open area, no one else can use it for any purpose. Therefore even transient parking of any open areas beyond the basement is certainly encroachment, albeit temporary, and cannot be treated as anything else.

41. For the same reasons, the submission of learned counsel for the petitioner, that the petitioner is a co-owner of the common area has not constructed thereon and has, therefore, not effected encroachment is also completely misconceived.

42. The petitioner before us claims an exclusive right to park multiple cars in the common areas of the society which he clearly does not have. By virtue of sub-section 6 of Section 76 of the enactment, common areas are intended for common use only.

43. We therefore find substance in the submission of Mr. Naushad Ahmed Khan, learned counsel appearing for the Registrar of Cooperative Societies that every occupant in a society is entitled to all facilities including the open area which has been assessed for him under the Master Plan, duly recognized under the sanctioned building plans. The common areas are

meant for the utilisation by all members and no one member can appropriate the same to his personal use, even temporarily as for the purposes of parking of additional cars.

44. The petitioner does not challenge the allotment of the single parking space by the society, and rightly so. He challenges only the levy of the parking charges so far as additional cars are concerned.

45. It is an admitted position that the building plans of the society, sanctioned by the Delhi Development Authority, permitted parking of 209 cars in the basement where only they must be parked. Admittedly extra cars are being parked in the common areas including the peripheral circulation which is neither permitted under the sanctioned building plan nor has been authorised by the Society. Clearly, no member of the society has any right at all to bring extra cars into the society or to park them in the common areas, even temporarily, beyond those specifically provided for in the sanctioned building plan and permitted by the society.

Adverse impacts of excess parking in open areas meant for specified usage

46. Let us look at the issue raised by the petitioner from the perspective of certain non-negotiable imperatives.

Emergencies give no warning, have no time table. First and foremost, such parking in the common areas, which includes the path ways, as is being insisted upon by the petitioner, has a direct impact of obstructing free movement of vehicles including emergency, which could thus imperil the lives of all occupants in the society including those of the petitioner and his family. Six multi-storeyed buildings, as have been constructed in the society, can brook no compromise at all with the circulation.

47. In a judgment reported at ***(2012) SCC OnLine Del 6416, Kumar Gaurav v. DDA [W.P.(C)No.4985/2010*** decided on ***22nd March, 2012],*** the

petitioner had prayed for directions to the DDA to construct a proper garage over the parking space given to him, in a stilt parking attached to the HIG flat allotted to him under the 'DDA Housing Scheme - 2008'. The petitioner had made a complaint that instead of an enclosed area for parking his car, common parking space was allotted raising issues with regard to the safety of his vehicle and that he was entitled to enclose the earmarked parking space, which was not being permitted. The DDA had taken a stand that a parking space was allotted under the stilt area of the building on an "*as is where* is" basis as specified in the scheme brochure; that covering the parking space under the stilts was violative of the sanctioned plan; and would inter alia adversely affect the light, air and ventilation of other flats apart from restricting free movement in case of calamity/disaster and adversely impacts the security and rescue operations in case of emergency in the nature of fire and natural disasters.

48. In para 9, the court had noted the guidelines of the fire department requiring access by way of 6 meters clear width all around each building block with 9 meters turning circle which was capable of bearing 45 tons load and that this 6 meter wide access road was required to be free from every hindrance for free movement and positioning of fire vehicles. It was further noted that exit and means of escape stipulated in the guidelines specified that the means of escape/exit shall be continuous unobstructed way of exit/travel from any point in the building to the public way.

49. We note hereunder the observations of the court with regard to the parking space; common utility area; sanctioned building plan as well as impact on safety and other concerns of well being of all occupants in the complex in paras 14 to 17 of this pronouncement which read as follows:

> "14. The stilted area in the complex not only includes the parking space but also includes the common utility area meant for the use of all the allottees. The said utility area gives access to the main

building, constructed portion of which is built from above the stilted area. The entrance of each block is about 4¼ feet through the staircase and the lift banks are also accessible through the stilted complex. The service cables as also the filtered and unfiltered water supply lines have been laid through the stilted area and as a result, the stilted area has been turned into a multipurpose area, which cannot be permitted to be obstructed in the manner as proposed by the petitioner.

15. Of significance is the security aspect of the complex and not just of the vehicles parked in the stilted area. In other words, the lives of the residents of the complex ought to be given primacy over the safety of the vehicles. Therefore, the stilted area can be permitted to be put to use only in such a manner that in the event of an emergency/disaster whether, manmade or natural, the same does not adversely affect the security of the residents. Any obstruction to the free ingress/egress of vehicles, particularly, the vehicles of the Fire Department meant to undertake rescue operation in case of any emergency, is thus impermissible. Having regard to the fact that the water pipelines with necessary gate-valves go through the parking space, any obstruction of the said space would be disastrous as the same would delay access to the water pipelines and thus adversely affect the fire fighting operation to be undertaken in case of an emergency. Similarly, other rescue operations would also be hindered if the stilted area is permitted to be enclosed.

16. Another relevant factor is that the housing complex has been built on the basis of a particular architectural plan, that has been sanctioned with the stilted area under the building in the complex shown as open area in the plan. If the stilted area is permitted to be covered in the manner proposed by the petitioner, it would enhance the existing FAR beyond the permissible FAR and thus result in violating the FAR of the housing complex, which is again impermissible. The petitioner is not differently placed from the other residents of the complex where, there are 72 car parking spaces and as per the respondents/DDA and the counsel for the RWA, it is only the petitioner herein who has covered the parking space in the manner noted above. .....

17. xxx xxx Further, the petitioner ought to be mindful of the fact that when he decided to reside in a gated residential

> Complex, he ought to have realized that there would be various issues that may be raised by the residents, and their concerns would need to be resolved by the RWA with the mutual cooperation of the residents and to the mutual satisfaction of the entire community in the complex and in some cases, the interest of the community would be given primacy over the interest of an individual resident. The petitioner must therefore understand that he would be expected to adjust with the other residents of the complex for the sake of maintaining peace and harmony. To that extent, misuse by other residents of the parking space allotted exclusively for the use of the petitioner would alone not be a ground for him to claim a licence to enclose the parking space with walls/fencing from all sides for the sake of securing his vehicle parked there, when it is contrary to the very terms of allotment."
>
> (Underlining by us)

50. That obstruction by parking in a common space could have disastrous consequences, is best illustrated by the Uphaar tragedy. This is noted by the Supreme Court in its pronouncement reported at ***(2011) 14 SCC 481, Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors.*** We find that the Supreme Court has made a categorical observation that if the passage had been kept clear as per the sanctioned plan, the entire Uphaar tragedy could have been averted in the following terms :

> **"14.3.** *Illegal parking in stilt floor*: The stilt floor where the three electrical rooms (generator room, HT room and LT room) were situated, had an earmarked parking space for 15 cars. The sanctioned plan clearly contemplated a passageway for movement of cars of a width of about 16 ft. The sanctioned plan required that the area in front of the three electrical rooms should be left free as a part of that passageway and no parking was contemplated in front of the said three rooms. However, the licensee was permitting the patrons to park their cars in a haphazard manner, particularly in the central passage. Instead of restricting the cars to be parked in that floor to 15 and leaving the central passage, in particular the passage in front of the three electrical rooms free for manoeuvring the cars, the owner

> permitted the entire passage to be used for parking the vehicles, thereby increasing the parking capacity from 15 to 35. This made exiting of vehicles difficult and until and unless the vehicles in the passage were removed, other parked vehicles could not get out. It also made it difficult for any patron to use the said area as an exit in an emergency. Parking of vehicles in front of the three electrical rooms increased the fire hazard. If the passageway between two parked row of cars in the stilt floor had been kept free of parking as per the sanctioned plan and consequently if no cars had been parked in front of the transformer room, the fire in the transformer room would not have spread to the cars and the entire calamity could have been avoided. On that day, a Contessa car parked next to the transformer room in the passageway first caught fire. Though the sanctioned parking plan showed that the stilt floor was to be used for parking only fifteen cars with a middle passageway of fifteen feet width left free for movement of cars, the parking area was used for parking as many as 35 cars. As the parking area was overcrowded with haphazardly parked cars, the entire passageway meant for movement of cars was blocked. Not following the provisions of the Electricity Act and the Electricity Rules in regard to the construction of the transformer room with required safeguard and permitting haphazard parking of large number of vehicles, particularly near the transformer room started the fire and spread it."
>
> (Underlining by us)

51. It is thus essential to ensure that the circulation space, in the nature of path ways in the society is kept free and vacant at all point of time for the security of the members of the society to ensure access to emergency vehicles including fire tenders, ambulances and police vehicles at all points of time.

The petitioner has no right to park any vehicle or cause any obstruction in the common areas for this reason as well. The measures taken by the society to discourage this practice cannot be faulted.

Impact of vehicles on the environment & on traffic conditions

52. It is contended by Mr. Naushad Ahmed Khan, Additional Standing Counsel that there is direct and irreversible degradation of the environment of the society by cars more than those permitted by the sanctioned building plan, being parked in the society. Looked at from any angle, occupants who do not own a vehicle or only a single car have been compelled to suffer the discomfort of vehicular crowding and environmental degradation by such acts. It is well settled that every citizen is entitled to equal protection of the environment and decent quality of life, a constitutional guarantee as part of the right to life under Article 21 of the Constitutional of India, violation whereof ought not to be permitted.

53. Judicial notice can be taken of the disturbing levels of air pollution in the National Capital Territory of Delhi. Data on Ambient Air Pollution (AAP) released by the World Health Organisation (WHO) in May 2014 places New Delhi at the top of a list of cities ranked in terms of poor air quality. Certain studies, including estimates from the Delhi Pollution Control Committee (DPCC), show that the percentage contribution of vehicular pollution towards air pollution in the National Capital Region is significant.

54. Not only the pollution from the exhausts of cars, the movement of vehicles certainly would cause dust to rise into the atmosphere adding to the particulate pollution in the atmosphere in the society.

55. The Delhi Government has envisaged certain schemes such as *Odd/Even* (plying odd numbered cars on odd dates, and even numbered cars on even dates), and *Car Free Days* (wherein on the 22nd of each calendar month, cars are not allowed to ply on certain stretches in Delhi), in an attempt to bring the pollution levels down. The implementation of these schemes has been tried in Delhi.

56. In pursuance of the recommendations of the *Bhure Lal Committee*, the Supreme Court has issued certain directions as back as in the year 1998 to restrict the plying of certain classes of vehicle in an order reported at ***(1998) 6 SCC 63 M.C. Mehta v. Union of India:***

> **"1.** Realising the urgency and importance of protection and improvement of the environment, this Court has given directions from time to time and impressed upon the authorities to take urgent steps to tackle the acute problem of vehicular pollution in Delhi…."
> **2.** We find from the report submitted by the Authority appointed vide Gazette Notification dated 29-1-1998 that none of the major actions, as proposed, has been implemented. The Authority headed by Shri Bhure Lal has also proposed certain measures for immediate improvement of air quality and has given a time-frame but for the time being, we are not engaging our attention to that time-frame. We are, however, of the view that to arrest the growing pollution of air, certain steps need to be taken immediately. We, therefore, direct:
> *1*. Implementation of directions to restrict plying of commercial vehicles including taxis, which are 15 years' old, by *2nd October, 1998*.
> *2*. Restriction on plying of goods vehicles during the daytime shall be strictly enforced by *15th* August, *1998*.
> *3*. Expansion of premixed oil dispensers (petrol and 2T oil) shall be undertaken by*31st December, 1998*.
> *4*. Ban on supply of loose 2T oils at petrol stations and service garages shall be enforced by *31st December, 1998*."
>
> (Underlining by us)

57. The significance of this issue is so critical that the matter is being argued before the Supreme Court, till date. Clearly, the spirit, intendment and purpose of the directions is to curb vehicular pollution and to ease traffic congestion. In fact, most recently, in yet another order in ***M.C. Mehta,*** reported at ***2015 (13) SCALE 736***, the Apex Court has taken notice of the fact that the city of Delhi has earned the *"dubious reputation of being the*

most polluted city in the world". It was suggested therein, by Mr. Harish Salve, learned Amicus Curiae, that fresh registrations of diesel vehicles, being the most polluting class of vehicles, should be banned altogether. In pursuance of the suggestion, the Supreme Court has directed a ban on the registration of SUV's & private cars of the capacity of 2000cc and above, till 31st March, 2016.

58. Air pollution is not the only environmental impact that the vehicles would cause. Parking of the excess cars, especially permanent, in open areas, reduces available open space underneath them for rain water harvesting which enables charging of ground water aquifers - another adverse impact on environment, to which the petitioner could be a contributory.

59. The present case illustrates what a problem acquisition of vehicles, not guided by need, can create. Just because the petitioner could afford four cars, he has acquired them, unmindful of whether he has the place to park them or not. Having acquired such vehicles, which he does not need, the petitioner is asserting a right over spaces to which he has no exclusive right and thereby encroaching on the rights of others to use and enjoy the benefits therefrom, a claim in deliberate violation of constitutional rights of other occupants of the society and the community at large.

60. Allowing the writ petitioner to claim more than one parking space as a matter of right would infact, undermine the fundamental right of equality and life, qua the other residents in the society, as envisaged under Article 21 of the Constitution of India. It cannot be countenanced under any circumstance.

Jurisdiction of the Society to levy the charges

61. The petitioner disputes the jurisdiction of the society to levy the extra

parking charges. In this regard, Ms. Meera Mathur, learned counsel appearing for the Society draws our attention to Section 30 of the Delhi Cooperative Societies Act, 2003 which reads as follows :-

> **"30. Final authority in a co-operative society**
> (1) The final authority in a co-operative society shall vest in the general body of members :
> Provided that where the bye-laws of a co-operative society provide for the constitution of a smaller body consisting of delegates of members of the cooperative society elected or selected in accordance with such bye-laws, the smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the co-operative society.
> (2) Notwithstanding anything contained in sub-section (2) of section 26 each delegate shall have one vote in the affairs of the federal co-operative society".

Therefore, so far as the cooperative society is concerned, the final authority to levy any charges is the General Body.

62. Mr. Raminder Singh Sahota, learned counsel for the petitioner has submitted that the General Body has no power at all to levy the extra car parking penalty in as much as Rule 49 of the Delhi Cooperative Societies Rules, 2007 does not permit so. Examination of the Rule 49 would show that it stipulates the powers of the General Body. For the sake of convenience, we set down hereunder Rule 49 which reads as follows :-

> **"49. Powers of General Body Meeting** Without prejudice to the provisions of section 31 and other provisions of the Act, the general body shall alone have the power to transact
> the following business, namely:-
> (a) Fixing the maximum credit limit of the co-operative society as well as members;
> (b) Fixing the rate of interest including penal interest on loan advance to its members;
> ***(c) Approval of the various welfare schemes for the benefits of the members and their family;***

(d) Prepare education and training programme for its members;
(e) Prepare business rules for the co-operative society;
(f) Any other matter referred by the committee;
(g) To write off debt of members/ deceased members out of bad debt fund maintained by the co-operative society;
(h) To frame code of conduct for its members and the committee;
Provided that in case of cooperative banks, all such power shall be exercised by the Board of Directors of the bank in accordance with their byelaws, directives and instructions of Reserve Bank India / National Bank for Agriculture and Rural Development."

(Emphasis by us)

63. It is apparent from the above that under sub-rule (c) of Rule 49, the General Body stands empowered to approve welfare schemes which are for the benefit of the members of the society as well as their families. The residuary powers conferred under sub-rule (f) enable the General Body to deal with any other matter referred by the Committee.

64. Ms. Meera Mathur, learned counsel for the respondent nos.1 to 4 Society before us, has relied on the judgment of the Division Bench of this court reported at ***100 (2002) DLT 184 (DB), Technology Co-operative Group Housing Society Ltd. v. Presiding Officer, Delhi Coop. Tribunal & Ors.*** wherein a challenge was laid to the levy of penal interest by the society upon the defaulting members who failed to pay the revised cost of the flats. There was no provision in the bye-laws of the society nor any specific provision for levy of the penalty under the statutory provisions. Yet the decision of the General Body to impose such a levy was upheld by the Division Bench. We are supported in the view we have taken, by the following observations of the Bench :

"**7**. Merely because there was no provision in the bye-laws of the society to charge penal interest does not mean

> that the society was not entitled to the same once the General Body had passed the resolution. May be this resolution was a measure to compel the members to make the payments regularly and avoid defaults in making the payments. The members who persistently defaulted in making the payments cannot be allowed to enjoy the same fruits as those who make the payments regularly. Such a provision is to curb the tendency of the members to make the payments of the instalments as they wished and not as per the requirement. It is due to the defaulted members that the construction of the flats delayed and the interest of those who are regular in making the payments are put in jeopardy. Thus there was nothing wrong in passing such a resolution and charging the penal interest....."
>
> (Underlining by us)

65. Our attention has been drawn to the pronouncement reported at ***100 (2002) DLT 428 Manav CGHS v. P.O., DCT*** on the aspect of supremacy of the General Body of a Cooperative Society. The Bench has held that the General Body of a Society was the best custodian of its interest and its resolution of the subject matter was binding on all members unless disputed by appropriate remedy under law.

66. A cooperative group housing building society has limited space within which, the concerned statutory authority - Delhi Development Authority in the instant case, has permitted construction to be raised clearly providing for the common areas, circulation, parking etc. Experts have applied their mind to ascertain as to the optimal open area and other facilities to be provided within the society.

As noted above, violation of the prescribed norms is not only illegal but has a direct impact on the welfare of the occupants of the society. Parking space for only 209 cars has been permitted. Vehicles in excess thereof being brought in and their parking in the common areas results in irreversible degradation in the environment thereby directly impacting the

health and welfare of the occupants. Therefore, any attempt by the society to ensure compliance with the sanctioned building bye laws; prevent violation of the constitutional rights of the habitants in the society; regulate the prescribed and optimal utilisation of the land of the society and to discourage entry of excessive vehicles or parking in the open areas of the society would be squarely covered under a "*welfare scheme*" which is for the benefit of the members and their families as postulated under sub-rule (c) of Rule 49 of the Delhi Cooperative Societies Rules, 2007.

67. All measures to ensure the entitlement of the members of the society and their family members to a healthy environment and benign ecosystem as well as equal benefit of all common spaces in the society are purely in their best interest. The sanctioned building plan permits only parking for one car per flat. It is also in the welfare of all occupants in the society that free access unobstructed by parked vehicles is available to emergency vehicles to their flats. The levy of penalty for bringing in extra vehicles has to be considered a welfare scheme for the benefit of the members of the society and their families and covered under the powers of the General Body within the stipulations contained in the statute and the Rules.

For this reason as well, the decisions of the General Body have to be implemented.

68. Mr. Sahota has also vehemently urged that the collection of these charges is not based on any objective evaluation and assessment and no provision thereof was prescribed in the budgets before the same was placed for consideration before the Annual General Meeting. It is contended that this provision was a mandatory requirement of the budget and the impugned resolutions are therefore illegal. This argument is premised on a complete misconception with regard to the nature of the levy. The submission on behalf of the petitioner pre-supposes that the society is seeking to levy the

charges as a determined source of income whereas the spirit, intendment and purpose of the levy is to deter members of the society and their families from bringing in more than a single car into the society. Furthermore, the charges recovered from the members would be transient in nature. It is certainly not possible to anticipate the number of cars which a person has, may acquire or dispose of, to enable an absolute projection in the budget. Given the purpose and the nature of the levy, there certainly cannot be any budgetary allocation for the same. This objection of Mr. Sahota is devoid of any merit.

69. We are also not persuaded to hold that by imposition of the charges, the society wanted to earn money. Every resolution has noted the anguish of the society with regard to the difficulties being faced with the open area being taken over for parking purposes. It needs no imagination to visualise the situation which must be subsisting. Limited area has been sanctioned to the society which, after occupation of the flats, must be thirsting, it seems for open area. No individual member has any right to take over any portion of the common space and appropriate the same for parking, howsoever temporary the same may be, unless the same is completely transitory, say for instance, for stopping to let passengers disembark from a vehicle.

70. It has been urged by Mr. Sahota that the levy of the penalty for the car parking tantamounts to a restrictive trade practice within the meaning of the expression in Section 2 of the Consumer Protection Act, 1986. It is further urged that the same is also an unfair trade practice as defined under sub-section (r) of Section 2 of the same enactment. This submission to say the least is completely misconceived in as much as the levy of the charges is not part of a "*trade*" which refers to sale or distribution of goods or services. A cooperative society is not positioned as a "*trader*" so far as common areas or parking spaces in a cooperative society is concerned. This ground of

challenge to the resolutions is also misconceived and rejected.

Conduct of the petitioner

71. The petitioner is an occupant in the society, firstly as a tenant since August, 2007 and later when he purchased the flat no. 516. The petitioner has attended six Annual General Meetings from 14th August, 2005 till 7th October, 2012 and has paid the demanded charges for the extra car parking for a long period of seven years. The petitioner has never objected or raised a dissent when the resolutions were passed. These charges were proposed and enforced to discourage excess vehicles being parked in the society. A dispute was raised for the first time by the petitioner only when he made a complaint to the office of the RCS on 16th August, 2013, which was referred for Arbitration.

72. Thereafter, the petitioner became a defaulter in the society as he stopped paying even regular maintenance and water charges after 12th August, 2012. Even the Tribunal has noted that a sum of Rs.4,42,357/- was due from the petitioner. It is only after our order that the petitioner deposited a sum of Rs. 1 lakh towards the arrears on 9th October, 2015. The petitioner has waived all objections to the decisions of the General Body of the society. In fact, he has ratified the decisions of levying car parking charges for additional cars by payment of the demanded charges for the period of seven years.

73. The petitioner does not dispute the extreme space crunch in Delhi. There is also no dispute to the mandate of the Master Plan requirements based on optimalisation of all facilities to cater to essential needs of the Delhi population. The petitioner cannot deny knowledge of the measures taken by the Delhi government to facilitate reduction in pollution levels and decongest the roads.

74. History is replete with instances of voluntary initiatives undertaken by citizens to address the concerns of environment and nation. During the World War II, when sugar rationing was imposed in the United Kingdom, its citizens voluntarily gave up consumption of sugar to make it available for the soldiers defending its frontiers.

75. In metros starved of parking spaces, say in New York City for instance, the residents only use public transport for commuting. These instances manifest voluntary personal sacrifices for the larger community good. Unlike the present lis where irrespective of the cost to community and environment, even though no legal right exists, a claim is being pressed.

76. Instead of rationalising his acquisition and possession of cars when he does not have the space to park it, by way of the instant petition the petitioner is asserting a legal right to park the same, wherever he chooses in the society, in blatant violation of every principle including those noted above. All needs and requirements including those of the petitioner could be rationalised if the persons as the petitioner living in gated communities with limited space, who had the means to do so, would maintain a single car and employed the services of a driver. Perhaps such persons could make a valuable contribution, not only to the space and environment, but provide livelihood source of employment thereby for so many unemployed in the city.

77. What is the response of this educated, legally trained, well-placed professional citizen of Delhi to the limited space in the society as well as the restrictions under the sanctioned plan? He insists on maintaining the four cars. As per the data furnished to us, the petitioner owns two Honda City vehicles, one Tata Indica and one Toyota Innova. Information in the public domain discloses the size of these cars as 81 square feet (81 square feet x 2 = 162 square feet), 69.5 square feet and 86.5 square feet respectively, thus

requiring a total area of about 318 square feet (~30 square metres). The cost of acquisition of 318 square feet of land in the East Delhi area (where the respondent society is located), would be in several lakhs of rupees, if not crores. Even the rental of such an area of land would not be less than several thousands per month. The opportunity cost of the land on which these cars would be parked is further mind boggling in terms of the man power utilisation for its acquisition; compensation paid by the Government towards its acquisition and the expenses of development of the land.

78. The pleadings of the petitioner exhibit yet another aspect which disentitles him completely to grant of any relief. The petitioner is guilty of concealment of material facts and documents. He has withheld both, the allotment letter of the flat as well as the sale deed. It is these two documents which show that the petitioner was granted a bare licence to park a single car in the basement. These are material facts and documents, which this educated and well placed citizen of Delhi has withheld and concealed from us. This conduct by itself disentitles the petitioner to grant of any relief in the present writ petition.

Conclusions

79. The petitioner is unable to point out authorisation by the society or legal right to park more than one car in the society. Even the single parking space permitted to him in the basement is on license and the petitioner does not have an ownership over any parking space. The above discussion establishes that the petitioner has no license even at all to park any vehicle beyond a single car within the boundary of the society. Such single car has also to be parked only in the basement.

80. The petitioner cannot block any of the peripheral roads or the roads within the society by parking vehicles. The same is in violation of the

sanctioned building plan.

81. Parking of the vehicles in the open spaces is in the nature of an encroachment thereon which has to be governed by the requirement of sub-section (6) of Section 76. The General Body of the society would be competent to recover cost of the encroachment by virtue of Section 30 of the Delhi Co-operation Societies Act, 2003 and Rule 49 of the Delhi Co-operation Societies Rules, 2007.

82. The petitioner does not point out any malafide in the decision making by the Annual General Meeting of the society. The petitioner, in fact, by his conduct would stand estopped from raising the objections, for the simple reason that he has been a part of such decision making and has ratified the imposition of the charges.

83. The petitioner has impleaded the Society as respondent no.1. There is no basis in the writ petition for the impleadment of private respondent nos. 2 to 4. We are of the view that their impleadment was completely unnecessary for the purposes of adjudication on the writ petition. The Government of NCT of Delhi has had to expend public resources in the defence of the present case. The society has also been called upon to squander funds, which it would have collected from its members, on contesting the litigation initiated by the petitioner firstly before the Arbitrator then before the Tribunal and now in the present writ petition.

84. In the prayer clause of the writ petition, the petitioner has had the temerity to make a prayer for a direction to the respondents to *'pay litigation (forced litigation) expenses of Rs.2,50,000/-'* to him whereas it is the respondents who have been subjected to the misconceived litigation at the hands of the writ petitioner. The petitioner claims to be a person of means and substance. The petitioner has quantified the expenses of litigation at Rs.2,50,000/-. We, however, propose to rationalise the costs which shall be

apportioned amongst the respondents.

85. The petitioner has wasted valuable judicial time on this completely unwarranted writ petition without any legal right or justification and must be burdened with costs.

Result

As a result of the above discussion :

(i) The writ petition is dismissed with costs quantified at Rs.1,00,000/-.

(ii) The costs shall be apportioned amongst each of the respondent nos. 1 to 4 and the Government of NCT of Delhi at the rate of Rs.20,000/- each.

(iii) The costs shall be paid within a period of four weeks from today.

(iv) CM No.17225/2015 does not survive for adjudication and is disposed of in the above terms.

GITA MITTAL, J

I.S.MEHTA, J

JANUARY 27, 2016