

Residents cannot park in common areas of societies

Apartment owners cannot park cars in common areas or in spots not designated for parking in housing societies

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Shortage of parking space is a common problem in metropolitan cities, especially Delhi. Often, the number of cars is more than the number of available car parking slots in a housing society. Such problems exist in Delhi. In such a case, it becomes important for the society to regularise the limited spaces for the welfare of all members. The question that needs to be answered is: can societies regularise such parking.

The Delhi High Court recently dealt with this issue in the case of Anup Mittal vs M/s Kanungo Co-operative Group Housing Society Ltd, decided on January 27, 2016.

In this case, a plot of land was allotted to the Kanungo Cooperative Group Housing Society in 1990 for construction of six residential blocks. As per

the building plans, the society was permitted parking of 209 cars in the society's basement. After construction work was completed, the society started allotting flats by issuing allotment letters. One clause in the letter stated that the society will permit members to occupy one apartment along with one car parking on licence basis.

Thus, each allottee was permitted only one car parking on licence along with an apartment. Car parking space was also provided in the basement as per sanctioned plans. However, after allotment, some residents started parking additional cars in the open areas of the society. This resulted in protests by other occupants.

In order to discourage residents from parking extra cars, the general body of the society resolved to levy a car parking penalty for extra cars and therefore passed a resolution to this effect in its annual general meeting. The petitioner/claimant in this case had been living in the society since 2000 and owned four cars.

Out of the four cars, he would park one car in the allotted park-

ing space in the basement and the other three in the open area of the society. In 2012, the petitioner stopped paying car parking charges payable to the society. In 2013, the petitioner raised a dispute against the society. He claimed that he has a legal right to park his extra three cars in the open area without paying the car parking charges and thereby challenged the society's jurisdiction to do the same.

This dispute was referred to arbitration. The arbitrator passed an award in favour of the petitioner/claimant by holding that the car park charges imposed by the society were illegal and directed the same to be refunded to the claimant with interest at 9% per annum or adjustment in the future demands of the society.

This award was challenged by the society before the Delhi Cooperative Tribunal. The tribunal set aside the award and held that parking space was limited and the society's general body was required to take all measures to regulate the limited space for the welfare of members.

The petitioner, aggrieved by



■ Circulation space including pathways in a society should be kept free at all times, says a recent Delhi High Court judgment. HT PHOTO

the tribunal's order, filed a writ petition before the Delhi High Court.

The main issue that came up before the court was whether the petitioner had an enforceable legal right to park multiple cars within the boundary of a cooperative society.

The court observed that the common areas of the society were meant for use by all members of the society and could not be appropriated, even temporarily, by any person for the purpose of parking their additional vehicles. The court also observed that circulation space including pathways in the society had to be kept free and vacant at all times for security reasons and to ensure access to

emergency vehicles including fire tenders, ambulances and police vehicles. Therefore, the court held that the petitioner had no right to park any vehicle in the common areas. The court also observed that the petitioner, having acquired vehicles that he did not need was asserting a right to space over which he had no exclusive right and was thereby encroaching on the rights of others to use and enjoy the benefits.

With respect to the issue regarding jurisdiction of the society to levy extra parking charges, the court observed that the general body was empowered to approve welfare schemes, which were for the benefit of its members and their families.

Based on the above observations, the court dismissed the petition and directed the petitioner to pay costs. This judgment passed by the Delhi High Court clarifies that members in a society cannot park their cars at unauthorised places or common areas. The members can park their cars only at the parking place designated by the society.

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