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

% Date of order : January 31, 2007.

\+ W.P.(C) 1470 of 1990 & CMs No 2272/1990, 1020/1991

\# H.K. JOSAN & ORS ..... Petitioners.
! Through None.

versus

$ DELHI DEVELOPMENT AUTHORITY ..... Respondent.
^ Through None.

**CORAM :-**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

**ORDER**

**S.MURALIDHAR, J. (ORAL)**

1. This petition filed in the year 1990 sought the quashing of the draw of lots and the allotment of common covered and open car parking spaces made by the Respondent Delhi Development Authority (DDA) in respect of sixty six car parking spaces in Kailash Towers I, II & III, East of Kailash, New Delhi. It also sought the quashing of the demand of Rs.15,275/- made by respondents for such allotment on the

ground that the demand was violative of rules, regulations and terms and conditions of allotment.

2. Although notices were directed to issue to the respondents on 21.5.1990, no interim relief was granted by this Court. On 6.2.1992, Rule was issued and it was directed as under:

> "Neither the petitioner nor any other person who have been allotted parking space for car will put any chain in that area or raise a wall or construction or put obstruction for the others to pass through that area except the parking space would be used for parking cars by those who have been allotted."

3. None appeared on behalf of the parties when the matter was listed for final hearing on 10.1.2007. In the interests of justice, no adverse order was passed and the matter was directed to be kept on Board.

4. Today also none appears for the parties. Since this writ petition has been pending for over sixteen years, the Court is proceeding to dispose of the petition on the basis of the pleadings and documents on record.

5. A perusal of the petition shows that the principal ground on which the demand has been questioned is that the common areas and facilities vest in the association of flat owners and these cannot be allotted by the respondent DDA to individual owners. It is contended that the DDA had in fact assured the flat owners that being a Self Financing Scheme, the cost of the flat included the cost of the car parking space. Secondly, it is contended that the entire exercise of allotment of parking spaces has been done without notice to the flat owners and in an arbitrary manner. Thirdly, the basis of the determination of the demand of Rs.15,275 has been questioned on the ground that details of the costs of construction and the formula arriving at such a demand have not been disclosed.

6. The Reply of the DDA as filed on 12.12.1991 shows that the original price of the flat did not include the car parking space and at no point of time was it ever represented to the petitioners that the price of the flat would include car parking space. It is stated that there was a computerized draw of lots on the basis of which the allotment of cars parking space was made and since the allotment was made separately, the demand was also raised separately. As regards the cost, the explanation offered in the amended reply affidavit is as under:

> "It was however not feasible to calculate different costs for each allottee. That is why, a lumpsum amount was fixed by the Finance Wing of the DDA towards the cost of the car parking spaces, keeping in mind and maintaining an average balance between the slight difference is sizes and costs of the car parking spaces.
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> However, it is very important to note that whatever expenditure has been incurred for parking has been charged only to those allottees who have been allotted parking spaces and not to anyone else. It is also worth mentioning that nothing has been included in the cost of car parking spaces towards the land component since the total areas of the scheme of multi-storeyed flats stands accounted for by the flats. Only the cost incurred for building the car parking spaces, including the cost of building the main buildings on stilts, and the roads etc. was taken into account and accordingly was divided between the successful allottees."

7. It may be mentioned that DDA was permitted to file the amended reply vide order dated 12.12.1991 reserving liberty to the petitioner to say that the amended pleadings were wrong and

contrary to the records.

8. In their rejoinder, the petitioners contend that the DDA has taken a contradictory stand. It is pointed out that in its unamended counter affidavit the DDA had said that the applications for allotment of car parking space had been invited from the apartment owners. In the amended counter affidavit it was said that the names of all the allottees of flats were sent to the computerized cell for draw of lots and the computerized draw was held on 23.3.1998. It is contended that this renders the entire procedure arbitrary. It is also contended by the petitioners that no publicity was given about this computerized draw and that allotment of parking space exclusively to some of the apartment owners is not in consonance with the spirit of community living.

9. A perusal of the pleadings and documents indicates that the common areas could not have been sufficient for the parking of all the cars of the flat owners. There is also nothing to indicate that the statement of the DDA in its counter affidavit, based on the records of the case, that the original price of the flats did not include the cost of car parking space, is incorrect. Apart from their averment, the petitioners have produced no document to evidence DDA holding out

such an assurance. Also, there is no document produced to substantiate the claim that the parking lots have been carved out from the common areas that vested with the residents' association

10. Further, merely because all the names of the allottees were sent to a computer and a computerized draw was held for allotment for car parking spaces, it cannot be said that the procedure was arbitrary or unreasonable. In most colonies in Delhi there is a tremendous shortage of space for car parking and some reasonable basis would have to be devised to provide for parking space especially when the demand far exceeds the supply. Viewed from this angle, the procedure adopted cannot be said to be arbitrary or unreasonable. Unless there is some regulation of car parking space within a residential colony, it leads invariably to chaos and confrontation among neighbours. For a peaceful coexistence within the colony, it would be important for residents to have earmarked car parking spaces for exclusive use. No doubt that some residents may be left out in the process, but the benefit of some regulation and orderliness that this brings to the use of the colony roads and pavements far outweighs the constant friction and tension that ensues between neighbours in the absence of such regulation.

11. Also there is no merit in the challenge to the amount demanded for the parking lot that has been allotted. Given the prevalent prices in Delhi, particularly in the area with which this petition is concerned (Kailash Towers), it can be hardly said that a sum of Rs. 15,275 for a parking lot, even in 1990, was arbitrary or unreasonable. In any event, the aspect of costing on the basis of which the demand for car parking spaces has been computed is not amenable to be tested on 'judicially manageable standards' for the purposes of judicial review under Article 226 of the Constitution. These are matters of details and, on the facts of the present case, there is nothing patently arbitrary or unreasonable in the computation of the cost that warrants interference by the Court.

12. For all the above reasons, there is no merit in the writ petition and it is dismissed as such. The applications are disposed of. No order as to costs.

Sd/-
**S. MURALIDHAR, J**

**JANUARY 31, 2007**
**raj**