

KABC010338752023



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.

DATED: THIS THE 10TH DAY OF JULY, 2024.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru

O.S.NO.8290/2023

PLAINTIFFS : 1. Mr.Amar V M
S/o Mr.Vishwathasa,
Age: 46
R/At Flat No.B108 Lillium Gardenia,
2nd Cross Bds Layout, Hegdenagar,
Bengaluru

2: Suman B K
A/a 45 yrs,
W/o Mr.Prakash R.M.
R/at Flat No.C 218 Lilium Gardenia,
2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

3: Mr.Vikram B K
A/a 43 yrs,
S/o Mr.Kalakappa Bhanapur,
Flat No.C 219 Lilium Gardenia 2nd Cross
Bds Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar

Bengaluru Rep By POA Holder
Prakash R M

4: Lingaraj S Koshti
Age: 41 yrs,
S/o Mr.S.L.Koshti,
R/At Maheshwaram Plot No.9 And 10
Nrupathunga Park Layout Shakthi
Colony Hubli

5: Vinay A P
A/a 39 yrs,
Flat No.C 108 Liliun Gardenia
2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru Rep By POA
Parameswarappa A N

6: Jyoti Peddi
Age:
Occupation :
Flat No.C 106 Liliun Gardenia 2nd Cross
Bds Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

7: Pavan Kumar Bhat
Age: 39 yrs,
Flat No.A302 Liliun Gardenia 2nd Cross
Bds Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

8: Dhanya Swamy
Age: 36 yrs,

Flat No.C 308 Liliun Gardenia 2nd Cross
Bds Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

9: Sumanth L Soratur
Age: 40 yrs
Flat No.A 308 Liliun Gardenia 2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

10: Hari Prasad A
Age:42 yrs,
Flat No.C 007 Liliun Gardenia
2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

11: Hemant Kumar S
Age: 42 yrs,
Flat No.602 Shankar Vikas Chs
13th Road
Off Central Avenue Road
Chembur
Mumbai
Rep By Poa Lalitha

And Others

(By Sri.S.V.,Advocate)

V/S

- DEFENDANTS** : 1. M/S Dammanagi Developers Pvt Ltd,
A Company incorporated under
Companies Act, 1965/2013 Having its
registered office at No.29/4,
5th Floor, Trade Centre, Above
Sugama Travels, Race Course
Road, Bengaluru Rep By Its CMD
Mr. Babu A Dhammanagi
2. Liliun Gardenia Apartment Owners
Association, Having its office at Liliun
Gardenia, 2nd cross, BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru Rep By Its President
Mahantesh Narwade
3. Mr. Mahantesh Narwade
President,
Liliun Gardenia Apartment
Office At Liliun Gardenia 2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru
- 4:Abhishek Hiremath
Secretary
Liliun Gardenia Apartment
Office At Liliun Gardenia 2nd Cross
BDS Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru
- 5:Vithyabathi R
Treasurer
Liliun Gardenia Apartment
Office At Liliun Gardenia 2nd Cross

Bds Layout
Dr Shivaram Karanth Nagar Post
R K Hegde Nagar
Bengaluru

(By Sri.DMN., Adv., for D1, D2
to 5 Sri.T.S., Advocate)

**ORDER ON INTERLOCUTORY APPLICATION No.6 FILED
BY THE PLAINTIFFS UNDER ORDER XXXIX, RULE 1 AND
2 R/W/S.151 OF CODE OF CIVIL PROCEDURE:**

I.A.No.5 is filed by the plaintiffs under Order XXXIX Rule 1 & 2 R/W/S 151 of C.P.C. seeking an order of temporary injunction restraining the defendant No.2 and all its office bearers including but not limited to defendant No.3 to 5 from demanding/calculating any fees monetary charges, either in the form of maintenance or otherwise, from the plaintiffs herein, pending disposal of the suit.

2. In support of the application, plaintiff No.9 has sworn to an accompanying affidavit stating that, himself and other Plaintiffs have filed the present suit for declaration and other consequential reliefs. Himself and the other Plaintiffs herein are the owners of the apartment in the Apartment complex by name 'Lilium Gardenia'. The Defendant No. 1 developer, along

with few owners, have registered purported Deed of Declaration, thereby claiming to have formed Defendant No. 2 Association for the management of apartment complex. The Defendant No. 1, has not registered the purported deed of declaration in the mode and manner prescribed under Karnataka Apartment Ownership Act and its Rules. Apart from the same, the Defendant No.1 fraudulently registered the same by producing the Occupancy Certificate of the Apartment Complex, which is revoked as on date and by misrepresenting before the Sub-registrar that all the owners of the Apartments have consented for the same.

2(a). It is stated that the defendant No.1 and all other owners have failed to intimate the Registrar, Co-operative Society, with regard to submission of property under the KAO Act and registration of Deed of declaration. Further, none of the mandatory provisions of the KAO Act and Rules have been complied. In the light of the said fact, the very registration of deed of declaration and subsequent action of the formation of Association is illegal, perverse and non est in the eye of law. This being the scenario, the Defendant No. 2 Association and its self proclaimed office bearers, have been targeting the

owners in the apartment complex, who had opposed the formation of the Association under KAO Act and harassing them to give consent for the same by becoming a member. Further, the purported Association is demanding maintenance and unreasonable exorbitant money from the owners in the name of sinking fund, only with malafide intention of collecting the money in order to pay the penalty imposed by the Karnataka State Pollution Control Board as against the Defendant No. 1 for violation and mismanagement of Sewage Treatment Plant and diesel generator without obtaining necessary approval. The Plaintiffs herein, who questioned the legality of the purported Association, have been targeted and harassed by disconnection of the services such as trash management, security, uninterrupted access in and out of the complex and by not allowing the delivery personals inside the complex only with regard to owners who have not given consent to formation of Association under KAO Act. The Defendants herein, in a very cleaver manner, have been trying to cut-off every essential services that any owner is required in the apartment complex and thereby attempting us to budge to their unreasonable demands. I further state that all the services

which are very much essential for the day to day functioning such as food delivery, medicine delivery to the door step, proper waste management and uninterrupted water and electricity. Apart from the same, the Defendants are threatening to impose a penalty of Rs. 50,000/-for non payment of fees according to their whimsical demands. Himself along with other owners, have spent huge amount of money in order to purchase the respective properties only with an intention to lead a peaceful life. However, the Defendants are trying to use the same in order to extort money from the owners including me with an intention to make unlawful gains, when the registration of the deed of declaration on which the Association claims right has been done by fraud and contravention to the KAO Act, such Association is nothing but illegal, perverse and invalid. Despite of the same, the Association is threatening the original owners of the property by causing inconvenience and threat. If the Application is allowed as prayed for, then no hardship will be caused to the case of other side. On the contrary, myself and other plaintiffs will be put to great hardship and injustice which cannot be compensated in any manner. Hence, prayed to allow the application.

3. The defendant No.2 to 5 filed statement of objection and contending that, the application of plaintiff is not maintainable either on law or on facts, the plaintiffs have no right to seek relief, since they are not paying maintenance charges despite repeated reminders as having failed to pay maintenance they can not claim equitable remedy. If every resident fail to pay maintenance, it becomes very difficult to maintain the apartment. The plaintiffs should first pay maintenance first then they should seek relief of temporary injunction. So far plaintiffs are liable to pay, if they fail to pay maintenance, what right they have to seek remedy. At the cost of maintenance of other residents, plaintiff are enjoying all services and any continuation of interim order without paying maintenance, same will adversely affect the rights of other owners and other owners have to bear the burden without any justification. The apartment association has to meet various cost to maintain the apartment including making payment to water service which has become very costly affair due to non supply of water by the BWSSB. These day it has become costly affair to get water and nothing comes free, hence the

plaintiffs shall be directed to pay maintenance if they want to enjoy all services, failing which the interim order shall be vacated forth with . Further this defendant have filed an undertaking affidavit for providing essential services in the apartment ,which was submitted to the court and confirmed through the undertaking affidavit to the effect that this defendant association will not discontinue any services in the apartment including but not limited to uninterrupted water and electricity services and till now same is continued and at no pint of time it was stopped. The plaintiffs have suppressed the true facts. Hence prayed to dismiss the application.

4. Heard arguments of learned counsel for the plaintiffs and defendants and perused the materials placed on record. The Points that arise for my consideration is as under.

1. Whether the plaintiffs have made out a prima-facie for grant of temporary injunction as prayed in the I.A.No.6.

2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the irreparable loss or injury caused to plaintiffs?

4. What order?

5. My answer to the above points are as under:

Point No.1 :- In the Negative,

Point No.2 :- In the Negative,

Point No.3 :- In the Negative,

Point No.4 :- As per final order,
for the following;

REASONS:

6. **POINT NO.1 TO 3:-** Since these points are inter related with each other and in order to avoid repetition of facts they are taken up together for common discussion.

The present suit is filed by the plaintiffs for declaration and such other consequential reliefs. The plaintiffs also filed this application under Order 39 rule 1 & 2 against the defendant No.2 and all its office bearers including but not limited to defendant No.3 to 5 from demanding/calculating any fees monetary charges, either in the form of maintenance or otherwise, from the plaintiffs herein, pending disposal of the suit. The defendants opposed the above said application by filing objections and submits that at the cost of maintenance of other residents, plaintiff are enjoying all services and any

continuation of interim order without paying maintenance, same will adversely affect the rights of other owners and other owners have to bear the burden without any justification.

7. In support of the case of plaintiffs, plaintiffs have produced some documents like; sale deeds executed in their favour, copy of registration certificate of LGRWA, copy of order of Karnataka State Pollution Control Board, copy of order passed by Commissioner, BBMP, Copy of Final order passed by Hon'ble High Court of Karnataka in W.P.No.293/22, copies of e-mails issued by plaintiff to defendant No.1, notices, photographs.

8. The Plaintiffs herein are the owners of the apartment in the Apartment complex by name 'Lilium Gardenia'. The contention of the plaintiffs is that the defendant No.2 Association and its self proclaimed office bearers, have been targeting the owners in the apartment complex, who are demanding maintenance and unreasonable exorbitant money from the plaintiffs.

9. On perusal of Bye-Laws of Lilium Gardennia Apartment Owners' Association condition(clause)3.15 reads thus.

3.15. *"MAINTENANCE CHARGES" means the charges payable quarterly/every year or at any interval as may be prescribed in respect of every apartment, which shall be utilized by the association for providing services such as elevators, round the clock security, cleaning and up-keep of common areas, providing water supply to individual Units, providing electricity in common areas, maintenance of plumbing, electrical and sanitary services, maintenance of other facilities in common areas building of infrastructure for common use etc., which shall be determined by the Board from time to time with the approval of the General Body.*

3.16. *"MEMBER" means the owner of an apartment, who by virtue of his/her ownership of one or more apartments in the Apartment complex, shall automatically become a member of the association by executing the Deed of Declaration and payment of fees and is enrolled as such by the association and includes Joint owner/s as mentioned in Clause 5.5".*

3.17. *"RESIDENT" means the owner or any person who belongs to the family of an owner or his/her tenant*

in occupation of an apartment by virtue of a legally valid document such as a lease/rental/leave & license agreement.

10. The plaintiff himself produced Deed of declaration, Bye-laws. In clause 3.17 defines resident in which plaintiff also comes under the ambit of residents. Clause 3.15 is regarding maintenance charges. As it is Deed of Declaration plaintiffs themselves agreed for payment of maintenance charges. Now he is disputing the charges of the defendant No.2's apartment association. This will be decided after full fledged trial. At this stage it cannot be decided. Hence, as per deed of declaration/bye-law the plaintiffs are liable to pay maintenance charges. Hence I answer this points in **Negative**.

11. **POINT NO.4.** For the foregoing reasons, I proceed to pass the following -

ORDER

I.A. No.6 filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/W/S 151 of CPC is hereby dismissed.

(Dictated to the Steno Gr.II directly on computer, after correction pronounced by me in open Court on this day 10th day of July, 2024).

(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU

