

**WITNESS PRESENT AND DULY SWORN ON 04.09.2024:**

**CROSS EXAMINATION BY SRI. K. L. C., ADVOCATE FOR DEFENDANT:**

It is true to suggest that the plaintiff Association has bylaws. Since from 2011 onwards, I was working as Estate Manager in Classic Orchids Property. I am aware of the bylaws of the property owner's Association. It is true to suggest that in bylaw there is no provision in the bylaw holding the post of Estate Manager. The legal proceedings is to be managed by the Management committee consisting of four officer bearers and eight members, they will take the decision. It is true to suggest that there is a post of Secretary in the Management Committee. It is true to suggest that the Secretary is competent person to initiate the legal proceedings. Witness voluntarily states that the Secretary has authorized me to initiate the legal proceedings.

2. It is true to suggest that in Ex.P.1 the case number is not mentioned, but the name of the person and flat number against whom the case is to be initiated is mentioned. It was issued to me on 28.12.2023. It is true to suggest that in the Ex.P.1 there is no reference about the Committee resolution. Witness says that it is not necessary. The plaint is signed by K.R. Sudharshan as a Secretary of the property owner's association. It is true to suggest that there is no hindrance for the Secretary to appear and give evidence, but due to work, business, etc., they authorized Estate Manager i.e., me to conduct the case. There is no any clause in the bylaw to sub-delegate the power of Secretary, but he has to look after the entire affairs of the Association.

3. The Layout was formed approximately in the year-2000. Association was formed on 14.02.2001. It is true to suggest that earlier the Layout was comes under the limits of Kothanur village Panchayath. I am not aware of the fact

that in the year-2007 the layout comes under the BBMP limits. It is true to suggest that now it comes under the BBMP limits. It is true to suggest that after the layout comes under the BBMP limits the flat owners have paid betterment charges and taxes to the BBMP. Since recently BBMP has tarred the road and prior to it the Association uses to maintain the internal roads on its own. Approximately 4 years back, the road was tarred by the BBMP. The developer has executed Relinquishment Deed in favour of BBMP only in respect of road, but not the common areas. The Relinquishment Deed was executed in the year-2013. We have maintained the document in our office and I can produce the copy of the document. It is true to suggest that the roads are used by the public at large. It is false to suggest that the Association has also executed Relinquishment Deed in favour of BWSSB. It is false to suggest that BWSSB provides water, UGD and other works. Witness says that BWSSB provides only water services to

the Association. I know about the Writ petitions Nos.43877-43880/2015 before Hon'ble High Court of Karnataka. These Writ petitions are filed by the Association seeking direction to BBMP and Developer to cancel the Relinquishment Deed and hand over the roads and common amenities to the Association for maintenance. It is true to suggest that the Writ petitions are dismissed.

4. It is true to suggest that BBMP has removed the gate installed in front of the Layout. It is true to suggest that BBMP has allowed the general public to access the road. Witness says that this permission was given to use the road without causing any hindrance to the Layout residents. It is true to suggest that the Writ Appeals are also dismissed. It is false to suggest that Hon'ble High Court of Karnataka has allowed general public and residents of layout to use the common areas and roads. It is true to suggest that the Revision Petition No.496/2016 was also dismissed. We have filed S.L.P. before Hon'ble Supreme Court of India. The

Hon'ble Supreme Court of India has superseded all the orders passed by Hon'ble High Court of Karnataka. We have filed another W.P. before Hon'ble High Court of Karnataka. Wherein, Hon'ble High Court of Karnataka has suggested to enter into compromise with the builder. Therefore, we entered compromise with the builder and builder handed over common areas to Association. It is true to suggest that the BBMP or BDA not parties to the compromise. It is false to suggest that the Association or builder have no independent right to enter into compromise in respect of civic amenities or roads.

5. In W.P.9703/2018 the Hon'ble High Court of Karnataka has directed us to enter into compromise. The Association is the petitioner and the developer was the respondent. It is true to suggest that BBMP was not party to the proceedings.

6. It is true to suggest that the Association used to collect one time amount from the flat owners at the time of

registration of flats. That amount was kept in fixed deposits. It is true to suggest that out of the interest derived from the fixed deposit of the all the owners, the maintenance was made. Approximately 4-5 crores are deposited as FDs by the Flat owners. We have certified copies of orders passed in the legal proceedings mentioned above. It is true to suggest that I have not referred these proceedings in the plaint, because it is a recovery proceedings. We are charging 75 paise per sq. ft. per month from residents of flat towards monthly maintenance charges. It also includes the maintenance of roads. It does not include the water supply. It includes the maintenance of park area. It includes the maintenance of sewerage. There is no any services rendered by the BBMP to our association. Only the dry waste is collected by the BBMP. There is wet waste Management by our Association. It is false to suggest that BBMP is also maintaining the road. We have not maintained any documents to show that roads are maintained by us.

(Further cross examination is deferred on request of Advocate for defendant.)

(Typed to my dictation in open court.)

R.O.I. & A. C.

(J. V. KULKARNI)  
XXXV Addl.City Civil & Sessions Judge,  
Bengaluru.