

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5449 of 2016

Roshni Kirankumar Davey,
Represented by General Power of Attorney
Kirankumar Davey

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Registration Department,
Fort St.George, Chennai, Tamil Nadu-600 009.

2. The Registrar of Societies,
E.V.R.Periyar High Road,
Kilpauk, Chennai, Tamil Nadu-600 010.

3. Ankur Grand Owners' Association,
a registered Society (Sl.No.232 of 2009),
represented by its President

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first and second respondents to consider the petitioner's representation, dated 16.12.2015.

For Petitioner : Mr.D.Gopal

For Respondents : Mr.M.Dig Vijay Pandian,
Addl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first and second respondents to consider the petitioner's representation, dated 16.12.2015.

2. In the affidavit filed by the petitioner's father, who is her General Power Agent, it is stated that his daughter purchased from one Mrs.S.Indu Bala, a pre-owned apartment in Flat No.33, which had earlier been constructed, owned and possessed by the said Mrs.S.Indu Bala and situated in the third floor of 'Ankur Grand', which includes the plinth area and common area, and the area is of an extent of 1445 Sq.Ft. together with 563.5 Sq.Ft. of undivided share in the said land, in and by the sale deed, dated 04.04.2013, registered as Doc.No.1381 of 2013 before the Sub-Registrar, for a total sale consideration of Rs.1,49,50,000/-. The Corporation of Chennai duly assessed the said apartment to property tax in the name of the petitioner and the petitioner is periodically paying the same. It is further stated by the petitioner that the third respondent-Association is governed by the provisions of the Tamil Nadu Apartment Ownership Act and the said Association is registered under the provisions of the Tamil Nadu Societies Registration Act. It is the grievance of the petitioner that under the guise of creating Corpus Fund, levy of transfer fee by the third respondent-Association on the purchasers of pre-owned residential flats like the petitioner, by or under the Bye-laws, is in derogation of the object of the said Apartment Ownership Act and the same is inconsistent with the said Apartment Ownership Act and hence, the so-called levy of transfer fee is illegal. It is the further case of the petitioner that the purchaser of a pre-owned flat is not a member of the Association till after he/she has registered the sale deed executed by his/her vendor in his/her favour and becomes a member of the Association and hence, there is no privity of contract between the purchaser and the third respondent-Association. The third respondent-Association has a statutory right only for recovery of unpaid common expenses and no amount could be levied towards Corpus Fund from the purchasers. Therefore, the petitioner gave a representation, dated 16.12.2015 to the respondents 1 and 2, which is still pending. Hence, she has filed this Writ Petition for the above relief.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who took notice for the respondents 1 and 2.

4. Considering the limited scope of the prayer made in the Writ Petition, without going into the merits of the case, this Writ Petition is disposed of, with a direction to the respondents 1 and 2 to consider the said representation, dated 16.12.2015 of the petitioner and after giving an opportunity of hearing to the petitioner and necessary parties, including the third respondent, dispose of the said representation, on merits

and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Copy to

1. The Secretary,
Registration Department,
Fort St.George, Chennai, Tamil Nadu-600 009.
 2. The Registrar of Societies,
E.V.R.Periyar High Road,
Kilpauk, Chennai, Tamil Nadu-600 010.
- + 1 cc to Mr.D.Gopal, Advocate Sr 9731
+ 1 cc to The Govt.Pleader, Sr 9660

KR/24/2/16

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सत्यमेव जयते
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