

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 13TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. Nos.684 and 685 of 2017

in

C.S. No.534 of 2017

Sree Venkatachala Flat Owners Association,
rep. by its Secretary Harish Mahbubani,
No.27, Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

... Applicant/Plaintiff

-Versus-

1. C.Surendra Kumar,
Owners of Flat No.A5/A6,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
2. K.Vijayanand,
Owner of Flat No.A7/A8,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
3. S.Chidambaram,
Flat No.A9,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
4. K.Kishore,
Flat No.A10,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

5. K.Venkatasubramanian,
Flat No.A11 & A24,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
6. N.Sumathi,
Flat Nos.A12, A14 & A15,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
7. M.Rajanayagam,
Owner of Flat No.A13,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
8. B.Muralikrishnan,
Owner of Flat No.A16,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
9. JE.N.Vijayashailu,
Flat No.A17,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
10. Suresh Babu,
Flat No.A18,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
11. K.Venkatasubramanian,
Flat No.A19,
Appaswamy Towers, 27,

Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

12. A.K.Venkataraman,
Flat No.A20,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

13. N.Muralidharan,
Flat No.A21,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

14. Govindammal,
rep. by Anto Joyson,
Owner of Flat No.A22,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

15. R.Bhaskar Rao,
Flat No.A23,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

16. N.Ravichandran,
Flat No.A25,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

17. S.Venkatasubramaniam,
Flat No.A26,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

18. Lalitha Prasad,
Flat No.A27 & A28,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

19. R.Sathisan,
Flat No.A31 & A32,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

20. M.Srinivasaprasad,
Flat No.A29 & A30,
Appaswamy Towers, 27,
Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

21. M/s.Raviram Builders,
rep. by A.Meenakshi,
having office at No.3,
Mangesh Street, T.Nagar,
Chennai-600 017.

... Respondents/Defendants

O.A.No.684 of 2017:

Original Application praying that this Hon'ble Court be pleased to grant order of interim injunction restraining the Respondents 1 to 20, their tenants, agents and servants, any person and every person claiming through them either directly or indirectly, from parking any car anywhere in the suit property, morefully described in the schedule hereunder including restraining the each of the Defendants 1-20 from parking more than one two-wheeler anywhere in the suit property morefully described in the schedule hereunder pending disposal of the above suit.

O.A.No.685 of 2017:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents/defendants 1 to 20, their tenants, agents and servants, any person and every person claiming through them either directly or indirectly, from indulging in acts of private nuisance such as unauthorisedly meddling with common pipelines, over-head tanks, electrical lines and fittings, lifts, security kiosks, security room door, terrace door, lift-room door, etc., in the suit property more fully described in the schedule hereunder including holding out threats of injury to persons or property of the office-bearers, security and maintenance staff of the Plaintiff Association, intimidating by words and gestures either before or after disconnection of the common amenities such as water, electricity, lifts, following the non-payment of maintenance and the prescribed other charges to the Plaintiff Association pending disposal of the above suit.

These Original Applications coming on this day before this court for hearing the court made the following order:

These applications have been filed by the Plaintiff in C.S. No.534 of 2017.

2. The suit has been filed by the Plaintiff, Sree Venkatachala Flat Owners Association, represented by its Secretary, Harish Mahbubani, against 21 Defendants, out of which, the Defendants 1 to 20 are owners of flats and the 21st Defendant is the Promoter.

The suit has been filed, seeking permanent injunction against the Defendants 1 to 20 from parking their cars in the suit property or each of the Defendants 1 to 20 from parking more than one two wheeler in the suit property and also for permanent injunction, against the Defendants 1 to 20, from indulging in acts of private nuisance, such as unauthorisedly meddling with common pipelines, over head tanks, electrical lines and fittings, lifts, security kiosks, security room door, terrace door, lift room door and other facilities.

3. According to the Plaintiff, the Plaintiff is the registered Association, registered on 15.7.1991. The building and premises is known as 'Appaswamy Towers', which was promoted by the 21th Defendant in 1986. There were two blocks, namely, A-Block and B-Block. The flats in A-Block measure 40 sq.m to less than 100 sq.m. and the flats in B-Block measure more than 100 sq.m. The 1st to 20th Defendants are residing in the A-Block. Since their flats measure smaller plinth area, according to the Plaintiff, they were entitled to only one two wheeler parking and they were not entitled to four wheeler parking. However, it has been stated that the Defendants have been utilising the vacant space meant for car parking to park their four wheelers. This was the primary cause for institution of

the suit. This also lead to various heated exchange of words and attacking of security guards by the Defendants. A separate Association was also formed by the A-Block owners. Subsequently, this also lead to filing of various suits in between the new Association and the Plaintiff Association. In view of these facts, the suit has been filed as stated above.

4. Along with the suit, Plaintiff has filed OA.Nos.684 of 685 of 2017. In O.A.No.684 of 2017, the Plaintiff has sought for interim injunction, restraining the Defendants 1 to 20 from parking any car in the suit property and that they can park only one two wheeler. In OA.No.685 of 2017, the Plaintiff has sought interim injunction against the 1st to 20th Defendants, restraining them either directly or indirectly indulging in acts of private nuisance, such as meddling with pipelines and other facilities.

5. These applications came up for consideration by this court and in OA.No.685 of 2017, this court had granted interim injunction, as follows on 14.7.2017:-

"4. In view of all the above, an interim injunction is granted to the extent that the Respondents 1 to 20 herein shall not indulge in acts of private nuisance such as unauthorisedly meddling with common pipelines, over head

tanks, electrical lines and fittings, lifts, security kiosks, security room door, terrace door, lift room door, including holding out threats of injury to persons or property of the office bearers, security and maintenance staff of the Plaintiff Association, intimidating by words and gestures either before or after disconnection of the common amenities such as water, electricity, lifts, following the non payment of maintenance and the prescribed other charges to the Plaintiff Association.

5. The learned counsel for the Plaintiff stated that there is a well and water from the well can be freely used by the Respondents/ Defendants. The said statement is recorded. Injunction is granted to the above extent. The Applicant/ Plaintiff shall comply with Order 39 Rule 3(a) of CPC.

6. Subsequently, the matter came up again for consideration before this court, since the Respondents/ Defendants had stated that repair works are necessary for the pipelines and on 22.9.2017, this court had passed the following orders:-

"4. Consequently, the Respondents/ Defendants are permitted to repair the pipeline and also produce a report, regarding the same not only with respect to the work done, but also with respect to expenses incurred."

7. In the meanwhile, it was also informed by both the parties that there were several litigations pending between them.

Consequently, the parties were called upon to give the list of litigations, which were pending and it was also furnished accordingly. A perusal of the same shows that 16 suits before the 5th Assistant City Civil Court, Chennai, 2 suits before the 4th Assistant City Civil Court and one suit before the IX Small Causes Court were pending. All these suits were filed by the Plaintiff herein against new flat owners in the A-Block.

8. A-Block owners, who had formed Appaswamy Towers, A-Block Welfare Association, had filed a suit against the Plaintiff in OS.No.3929 of 2013 before the 5th Assistant City Civil Court. In the said suit, the relief sought was for injunction against the stoppage of amenities being provided to A-Block and injunction from removing the cars of the A-Block members and also for a direction to give the A-Block members their share of the value of deposits in the Banks and for injunction from disturbing the functioning of the Association.

9. The affidavits filed in support of the present applications were in the same lines as that of the Plaintiff. Additional typed set of papers was also filed by the Plaintiff. The Respondents/ Defendants have filed a counter in the present applications. Documents were also filed by the Respondents/ Defendants.

10. In the counter, it was stated that it was false to

state that they could not park four wheelers within the car parking area and they had also purchased the properties for valuable consideration.

11. Extensive arguments were advanced with respect to Development Control Rules for Madras Metropolitan Area and also Tamil Nadu Town and Country Planning Act, 1971.

12. With respect to Development Control Rules for Madras Metropolitan Area, the learned counsel for the Plaintiff has relied on Annexure XIII, wherein it has been provided as follows:-

ANNEXURE-XIII								
Parking Standards								
(See Rule 20 of the Development Control Rules								
S.No	Building Use	No. of parking spaces						
1	Residential for building with dwelling unit or units of floor area exceeding 100 m2 each	One car space for every 100 square metre of floor area or part thereof excluding the first 100 square metre in the other words. Dwelling Area:- <table><tr><td>101-200 m2</td><td>1 Car space</td></tr><tr><td>201-300 m2</td><td>2 Car spaces</td></tr><tr><td>301-400 m2</td><td>3 Car spaces etc.</td></tr></table> Two Wheeler parking: One two wheeler parking space for every dwelling unit with floor area of 40 to 100 square metre. The dimension of two wheeler parking lot shall be minimum 1.5m x 2 metre with a drive way of width minimum 1.5 metres. Note: In such cases where the number of car parking space required does not exceed 2 or 3 in number, separate driveway need not be insisted.	101-200 m2	1 Car space	201-300 m2	2 Car spaces	301-400 m2	3 Car spaces etc.
101-200 m2	1 Car space							
201-300 m2	2 Car spaces							
301-400 m2	3 Car spaces etc.							

13. This has been contrasted by the learned counsel for the Respondents/ Defendants, who relied on Annexure-XVI of the Tamil Nadu Town and Country Planning Act, 1971, wherein it has been provided as follows:-

ANNEXURE-XVI Parking Requirements Parking and parking facilities:-			
(a) For the use of the occupants and of persons visiting the premises for the purposes of profession, trade, business, recreation or any other activity parking spaces and parking facilities shall be provided within the site to the satisfaction of the authority and conforming to the standards specified below.			
(b) The portion of the site affected by street alignment shall not be reserved for parking.			
Part-I			
(1) Residential:-			
(A) Corporation Limit, Municipalities, IT Corridor		(B) Panchayat Areas	
Dwelling Unit with	No. of parking spaces	Dwelling unit with	No. of parking spaces
Floor area up to 25 sq.m	Nil	Floor area up to 50 sq.m	Nil
Floor area above 25. sq.m and up to 50 sq.m	1 two wheeler space	Floor area above 50 sq.m and up to 75 sq.m	1 two wheeler space

14. With respect to O.A.No.685 of 2017, pursuant to the orders of this court, since it related to basic amenities of provision of water, no further orders are required and the parties are directed to approach the court as and when there is disturbance

in provision of basic amenities. I, therefore, close O.A.No.685 of 2017.

15. With respect to O.A.No.684 of 2017, which relates to car parking, the rules have to be followed by the parties, but both the parties have to mutually respect other persons' necessity. There appears to be differences between the provisions of the Development Control Rules For Madras Metropolitan Area and the Tamil Nadu Town and Country Planning Act. These are all the aspects, which have to be addressed only during the trial. At this stage of the proceedings, there cannot be any disturbance for car parking. The Plaintiff has not come forward with the details as to how many car parking areas are actually available and the actual type of vehicles each owner has. In the absence of these details, the Court is seriously handicapped. Passing an order based on the rules, which are conflicting in nature, would not be of any help to the parties. It would not resolve the issues. Consequently, this application has to be closed since no effective order can be passed in the absence of specific details regarding the area available for car parking and the vehicles to be parked.

16. However, both the Plaintiff and the Defendants are granted liberty to file necessary applications by giving the actual area available for car parking, number of vehicles that can be parked, number of vehicles possessed and the demarcated area for two wheelers parking and seek appropriate direction, so that one composite order can be passed. Merely seeking interim injunction would not be in the interest of both the parties. The number of litigations filed by other parties against each other, reflect that the litigations have become a habit and granting orders would not be of any help to both the parties. Consequently, this court is not inclined to draw any conclusion regarding this controversy surrounding the Plaintiff and the Defendants. Both the Plaintiff and the Defendants are to come up with a necessary application by giving the plan of the entire area, the number of cars that can be actually parked, number of actual flat owners, the number of vehicles they own to enable a comprehensive order to be passed.

17. With the above observations, both the applications are closed. No costs.

Sd./- C.V.K.J.

13.12.2017

//Certified to be true copy//

Dated at Madras this the th day of 2017.

COURT OFFICER (O.S.)

TPY/19.12.2017

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