

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12th DAY OF JANUARY 2018

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

A. No.7658 to 7661 of 2017
and
O.A. Nos.1038 to 1043 of 2017
in
C.S. No.795 of 2017

M/s.Sterling Garden & Foundations
Apartment Owner's Association,
Reg. No.426/2017 dated 15/09/2017
rep. by its Secretary, Mr.Muthukumar,
having its Registered office
No.20/1, Sterling Promoters,
Karunanidhi 3rd Street,
Kotturpuram, Chennai-600 085. ... Applicant/Plaintiff
(in O.A. Nos.1038 to 1043 of 2017)

-Versus-

1. Hyder Ali,
S/o.Late S.S.Khaja Mohideen,
No.4/15, Pooram Prakasam Road,
Balaji Nagar, Royapettah,
Chennai-600 014.
2. Sadiq Ali,
S/o.Md. Ismail,
No.14-C, 6th Main Road,
Kasthuri Bai Nagar,
Adayar, Chennai-20.
3. Pyareylal Sethiya,
4. Shanthi Devi Sethiya,
5. P.Rajendra Kumar Sethiya,
6. P.Anil Kumar Sethiya,
3 to 6 are residing at
No.14, Karunanidhi Street,
Kotturpuram, Chennai-600 085.

7. P.Pankaj Kumar Sethiya,
Flat No.10, Harinath Apts.,
No.8/15, Srinivasa Reddy Street,
T.Nagar, Chennai-17.
8. The Sub-Registrar,
Adayar, Chennai-20.
9. The Collector,
Chennai District,
Singaravelar Maligai,
Rajaji Salai, Chennai-1.
10. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai-3.
11. The Revenue Officer,
Greater Chennai Corporation,
Rippon Building, Chennai-3.
12. The Executive Engineer,
Greater Chennai Corporation,
Zone-13, Adyar, Chennai-20.
13. The Assistant Engineer,
Greater Chennai Corporation,
Division-172, Kotturpuram,
Chennai-600 085.
14. The Area Engineer,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.42, 1st Main Road, Indira Nagar,
Adayar, Chennai-20.
15. The Assistant Engineer,
TANGEDCO, No.24, Eri Karai Salai,
Kottur Garden, Chennai-85.
16. The Inspector of Police,
J4-Kotturpuram Police Station,
Kotturpuram, Chennai-600 085. ... Respondents/Defendants
(in O.A. Nos.1038 to 1043 of 2017)

O.A. No.1038 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the first respondent, his agents, men or any one claiming

under him from proceeding with any construction in suit schedule-B mentioned property hereunder pending disposal of the suit.

O.A. No.1039 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the first respondent, his agents, men or any one claiming under him from accessing schedule-B mentioned property through Karunanithi 3rd Street, Kottur, Chennai-600 085 pending disposal of the suit.

O.A. No.1040 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the fifteenth respondent, his officers, subordinates, or anyone claiming under him from granting permanent electricity connection to the Schedule-B mentioned property hereunder from Karunanithi 3rd Street, Kottur, Chennai-600085 pending disposal of the suit.

O.A. No.1041 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the fourteenth respondent, his officers, subordinates or any one claiming under him from granting Water and Drainage Connection to the Schedule-B mentioned property hereunder from Karunanithi 3rd Street, Kottur, Chennai-600085 pending disposal of the suit.

O.A. No.1042 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the tenth respondent, his officers, subordinates or any one claiming under him from issuing completion certificate to the schedule-B mentioned property pending disposal of the suit.

O.A. No.1043 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the first respondent, his agents, men or any one claiming under him from alienating the suit Schedule-B mentioned property or any part thereof to third parties pending disposal of the suit.

A. Nos.7658 to 7661 of 2017:-

Hyder Ali,
S/o.Late S.S.Khaja Mohideen,
No.4/15, Pooram Prakasam Road,
Balaji Nagar, Royapettah,
Chennai-600 014. ... Applicant/1st Respondent/1st defendant

-Versus-

1. M/s.Sterling Garden & Foundations
Apartment Owner's Association,
rep. by its Secretary, Mr.Muthukumar,
having its Registered office
No.20/1, Sterling Promoters,
Karunanidhi 3rd Street, Kotturpuram,
Chennai-600 085. ... Respondent/Applicant/Plaintiff
2. Sadiq Ali,
S/o.Md. Ismail,
No.14-C, 6th Main Road,
Kasthuri Bai Nagar,
Adayar, Chennai-20.

3. Pyareylal Sethiya,
4. Shanthi Devi Sethiya,
5. P.Rajendra Kumar Sethiya,
6. P.Anil Kumar Sethiya,
3 to 6 are residing at
No.14, Karunanidhi Street,
Kotturpuram, Chennai-600 085.
7. P.Pankaj Kumar Sethiya,
Flat No.10, Harinath Apts.,
No.8/15, Srinivasa Reddy Street,
T.Nagar, Chennai-17.
8. The Sub-Registrar,
Adayar, Chennai-20.
9. The Collector,
Chennai District,
Singaravelar Maligai,
Rajaji Salai, Chennai-1.
10. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai-3.
11. The Revenue Officer,
Greater Chennai Corporation,
Rippon Building, Chennai-3.
12. The Executive Engineer,
Greater Chennai Corporation,
Zone-13, Adyar, Chennai-20.
13. The Assistant Executive Engineer,
Greater Chennai Corporation,
Division-172, Kotturpuram,
Chennai-600 085.
14. The Area Engineer,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.42, 1st Main Road, Indira Nagar,
Adayar, Chennai-20.
15. The Assistant Engineer,
TANGEDCO, No.24, Eri Karai Salai,
Kottur Garden, Chennai-85.

16. The Inspector of Police,
J4-Kotturpuram Police Station,
Kotturpuram, Chennai-600 085. ... Respondents/
Respondents 2 to 16/Defendants 2 to 16

A. No.7658 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of 'Status Quo' dated 13.10.2017 passed in O.A. No.1041 of 2017.

A. No.7659 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of 'Status Quo' dated 13.10.2017 passed in O.A. No.1040 of 2017.

A. No.7660 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of ad-interim injunction dated 13.10.2017 passed in O.A. No.1039 of 2017.

A. No.7661 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order vacating the order of ad-interim injunction dated 13.10.2017 passed in O.A. No.1038 of 2017.

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

OA.Nos.1038 to 1043 of 2017 have been filed by the Plaintiff in CS.No.795 of 2017.

2. The Plaintiff, M/s.Sterling Garden and Foundations Apartment Owner's Association, represented by its Secretary, Muthukumar, has filed the suit against 16 Defendants, seeking the following reliefs:-

- a) permanent injunction, restraining the 1st Defendant from accessing the B-Schedule property from Karunanithi 3rd Street, Kottur, Chennai-85.
- b) declaration that the sale deed dated 30.10.2006, bearing Document No.2231 of 2006 of SRO, Adyar, showing address as Old Door No.27, New Door No.14, Varadhapuram 2nd Street, Kottur, Chennai-85 and more fully described in the B-Schedule is fraudulent, null, void and inoperative.
- c) declaration that the address of the B-Schedule property shown as Door No.1/B, Karunanithi 3rd Street, Kottur, Chennai-85 (previously Varadhapuram 2nd Street, Old Door No.27, New Door No.14) and the said portion of the sale deed dated 28.09.2011 bearing Document No.2024/2011 of SRO, Adyar is fraudulent, null and void and inoperative.
- d) declaration that the address of Schedule-B property shown as Door No.1/B, Karunanithi 3rd Street, Kottur, Chennai-85 (previously Varadhapuram 2nd Street, Old No.27, New Door No.14) and the said portion of the sale deed dated 3.2.2012, bearing Document No.206/2012 of SRO, Adyar is fraudulent, null, void and inoperative.
- e) mandatory injunction, directing the 9th Defendant to cancel the Town Survey Land Register entry issued in favour of the 1st Defendant bearing No.SD/28/08-09/TR, dated 27.6.2016, pertaining to Schedule B mentioned property.

- f) mandatory injunction, directing the 10th Defendant to cancel the building plan approval, bearing PPA/101609/2014, dated 27.06.2014, showing site address as Door No.14/27, Karunanithi 3rd Street, (formerly Varadhapuram 2nd Street) Kottur, Chennai-85, issued to the 1st Defendant and more fully described in the B-Schedule.
- g) mandatory injunction, directing the 11th Defendant to cancel the property tax assessment pertaining to Bill No.13-172-05442-000/09-138-0628-024, issued in favour of the 1st Defendant, showing the address as No.1B(1B), Karunanithi 3rd Street, Kottur, Chennai-85 and more fully described in the B-Schedule.
- h) mandatory injunction directing the 14th Defendant to cancel the water and sewerage connection bearing CMC.No.13/172/05442/000, issued in favour of the 1st Defendant, showing the address as 27, Varadhapuram 2nd Street, Kottur, Chennai-85 and more fully described in the Schedule-B.
- i) mandatory injunction, directing the 15th Defendant to cancel the electricity service connection in favour of the 1st Defendant for B-Schedule mentioned property showing its address as 1B or 27/14, Karunanithi 3rd Street, Kottur, Chennai-85.
- j) mandatory injunction, directing the 1st Defendant to restore the wall being the suit Schedule A and delineated in the sketch annexed herewith and reconstruct the same at his cost, failing which direct the 10th Defendant to restore the wall.

3. Even before going into the facts of the case in detail, A-Schedule and B-Schedule will have to be examined.

A-Schedule and B-Schedule are as follows:-

A-Schedule:-

"12 inches thick street boundary wall on the Northern end of Karunanithi 3rd Street, Chennai-85, having a height 7 feet running East to West

to an extent of 33 feet in length and bounded on the:

North by : B-Schedule mentioned property
 South by : Karunanithi 3rd Street
 East by : Door No.21/3, Karunanithi 3rd Street
 West by : Sterling Garden and Foundations
 Apartment Complex Door No.20/1,
 Karunanithi 3rd Street
 Kottur, Chennai-85

B-Schedule:-

All that piece and parcel of the land comprised in Old Door No.27, New Door No.14, Varadhapuram 2nd Street, Chennai-85 (shown as Door No.1/B, Karunanithi 3rd Street, Kottur, Chennai-85 in sale deeds bearing Nos.2024/2011 and 206/2012 of SRO, Adyar and also shown as 14/27, Karunanithi 3rd Street, formerly Varadhapuram 2nd Street, Kottur, Chennai-85.

4. The Plaintiff is M/s.Sterling Garden and Foundations Apartment Owner's Association, represented by its Secretary, Muthukumar. It has its registered Office at No.20/1, Sterling Promoters, Karunanithi 3rd Street, Kotturpuram, Chennai-85. It is claimed that the Plaintiff is an Association of owners of individual flats in the apartment complex known as 'Sterling Garden and Foundations' at door No.20/1, Karunanithi 3rd Street, Karunanithi Nagar, Kottur, Chennai-85. The apartment consists of 12 flats in two blocks of buildings. The construction was completed in the year 2000. It was occupied by the respective flat owners from the year 2001.

5. According to the Plaintiff, Karunanithi 3rd Street runs North to South and both the Northern and Southern ends

of the said street are dead ends. The Plaintiff's apartment is situated on the Northern end, facing East and the only access is through this street. According to the Plaintiff, the suit property, comprising the Plaintiff's apartment complex was originally part of a lay out made by M/s.V.K.Sounthara Nayaki Ammal, who plotted out a larger extent of land in Old S.No.1 as a lay out and sold the same to various persons. The 3rd street was then known as V.K.Ethirajulu Pillai Street. It included 12" thick boundary wall running along its periphery. It was stated that beyond the compound wall on the Northern end is located the Varadhapuram area consisting of Varadhapuram 1st and 2nd streets. Varadhapuram 2nd street starts from Pondicherry Road from East and runs initially to the West and then curves up to the North and ends into Lock Street.

6. It has been further stated that the premises at Old No.27, New No.14, Varadhapuram 2nd Street, which is the B-Schedule property, is presently occupied by the 1st Defendant, claiming title by way of a sale deed dated 3.2.2012, registered as Document No.206 of 2012. The 1st Defendant is Hyder Ali, son of S.S.Khaja Mohideen. It is to be pointed out that the other applications, which are now being determined, namely, A.Nos.7658, 7659, 7660 and 7661 of 2017 have been filed by said Hyder Ali, who is the 1st Defendant in the suit.

7. The B-Schedule property measures about 990 sq.ft. The predecessor in title are the 3rd to 7th Defendants and they are not directly connected with the litigation since they had sold the property to the 1st Defendant. They had in turn purchased the same by sale deed dated 28.9.2011 in Document No.2024 of 2011 from the 2nd Defendant. The 2nd Defendant had purchased the property by sale deed dated 30.10.2006, bearing Document No.2231 of 2006 from 18 persons, who have claimed joint title to the same, deriving title from Andavamurthy, son of Kanni, who had owned larger extent of land including the B-Schedule by Document No.183 of 2014 in the Office of the Sub Registrar, Saidapet. The predecessor in title of the 2nd Defendant has not been impleaded in the suit though there is a prayer that his title should also be declared as null and void, in so far as the addresses are concerned. According to the Plaintiff, the 1st Defendant, some time in December 2014, demolished the A-Schedule Northern end street boundary wall of Karunanithi 3rd Street all of a sudden without knowledge or consent of the Plaintiff's members or other property owners.

8. When the Plaintiff and others objected, the 1st Defendant stated that he is only having narrow entry of about 3 ft. in B-Schedule property from Varadhapuram 2nd Street and it was difficult for him to transport construction materials and he demolished A-Schedule boundary wall as an

interim measure, till he completes the construction. It was also held out that he would restore the boundary wall at his own cost. It was later found out that when the construction was in advanced stage, the 1st Defendant was attempting to have entry to the B-Schedule property and had closed down his original entry from Varadhapuram 2nd Street. According to the Plaintiff, the 1st Defendant had violated the building rules in putting up construction in the B-Schedule property. The Plaintiff has further stated that as the construction progressed, the 1st Defendant and his men began to park their vehicles on the Northern end of Karunanithi 3rd street and also started to dump construction materials thereby impeding the ingress and egress of the Plaintiff's members to the apartment complex.

9. It has been further stated that one of the members of the Plaintiff Association had given a complaint to the Kotturpuram Police Station, who is impleaded as the 16th Defendant, on 19.9.2016 about the nuisance created by the 1st Defendant. When the member went to the Police Station to enquire the status of the action taken on her complaint, she was shown a reply , wherein the address of the B-Schedule property was shown as No.1, Karunanithi 3rd Street, which is the same address as that of the Plaintiff's apartment complex. A copy of Corporation property tax paid receipt was also enclosed along with the reply of the 1st Defendant.

Another complaint was lodged against the 1st Defendant for forgery and cheating. It has been further stated that the Plaintiff examined the documents of title of the 1st to 7th Defendants and found that the purchaser in the sale deed in Document No.183 of 1914 in the Office of the Sub Registrar, Saidapet was one Arunachala Naicker and not Andavamurthy as stated in the sale document of the 2nd Defendant in Document No.2231 of 2006.

10. It has been stated that the 1st Defendant, who is presently in occupation of the B-Schedule property, has no valid title of the same. It was also found that the sewerage and water connections and electricity connection were all in the address as Varadhapuram 2nd Street and not Karunanithi 3rd street. The draft building plan issued by the Corporation shows the address as 14/27, Karunanithi 3rd Street (formerly Varadhapuram 2nd street), which according to the Plaintiff, is not correct. It has been stated that the 8th to 15th Defendants have issued various approvals, permits and assessment orders in a most casual manner. It has been further stated that the 8th Defendant, who is the Sub Registrar, had failed to conduct the full inspection. It has been further stated that the Tahsildar working under the 9th Defendant should have verified the bank records pertaining B-Schedule property before transferring patta for the same. It has been stated that the 11th Defendant, while transferring

the property tax assessment, had not caused proper inspection. It has been further stated that the 10th, 12th and 13th had failed to scrutinise and conduct proper field inspection before issuing planning permission to the 1st Defendant. It has been further stated that the 1st Defendant had applied to the 14th Defendant for sewerage and water service connection for the B-Schedule property through Karunanithi 3rd street. It has been stated that all these acts have caused grave and serious prejudice to the Plaintiff. It is under these circumstances that the suit has been filed, seeking the reliefs as stated above.

11. Along with the suit, the Plaintiff has filed OA.No.1038 of 2017, seeking interim injunction, restraining the 1st Respondent / 1st Defendant from proceeding with any construction in the B-Schedule property, OA.No.1039 of 2017, seeking interim injunction restraining the 1st Respondent/ Defendant from accessing B-Schedule property through Karunanithi 3rd street, pending disposal of the suit, OA.No.1040 of 2017, seeking interim injunction, restraining the 15th, namely, the Assistant Engineer (TANGEDCO), Kottur Garden, Chennai-85, from granting permanent electricity connection to the B-Schedule from Karunanithi 3rd Street, OA.No.1041 of 2017, seeking interim injunction restraining the 14th Respondent, Area Engineer, CMWSSB, Adyar, Chennai-20, from granting water and drainage connection to the B-Schedule

property from Karunanithi 3rd Street, OA.No.1042 of 2017, seeking interim injunction restraining the 10th Respondent, namely, the Commissioner, Greater Chennai Corporation, Rippon building, Chennai, from issuing completion certificate to the B-Schedule property and OA.No.1043 of 2017, seeking interim injunction restraining the 1st Respondent, from alienating the B-Schedule property or any part thereof to third parties.

12. These original applications were moved before this Court on 13.10.2017. On considering the averments, this Court had granted an order of interim injunction in OA.No.1038 of 2017, thereby restraining the 1st Respondent/ 1st Defendant from proceeding with the construction in the B-Schedule property. This Court had also granted an order of interim injunction in OA.No.1039 of 2017, holding that there is an alternate pathway to the property of the 1st Defendant through Varadhapuram 2nd street. With respect to OA.No.1040 of 2017 and 1041 of 2017, this Court had directed the 15th Respondent, Assistant Engineer (TANGEDCO) and the 14th Respondent, Area Engineer (CMWSSB), not to process any further records/files, relating to the connection, sought by the 1st Respondent and to await further orders of this Court. This Court had also directed notice to be issued in OA.Nos.1042 and 1043 of 2017.

13. Notices were served on the Respondents/ Defendants and the 1st Respondent had entered appearance and

had filed A.Nos.7658 to 7659 of 2017, seeking to vacate the interim directions given to the 15th Respondent, Assistant Engineer (TANGEDCO) and the 14th Respondent, Area Engineer (CMWSSB). The 1st Respondent/ 1st Defendant has also filed A.Nos.7661 of 2017 and 7660 of 2017 to vacate the interim injunction granted in OA.Nos.1038 of 2017 and 1039 of 2017.

14. In the affidavits filed in support of the applications filed by the 1st Respondent/ 1st Defendant, the 1st Respondent has stated that he is the owner and is in possession of 990 sq.ft. of land, bearing Door No.1/B, Karunanithi 3rd Street, Kotturpuram, Chennai-85, in TS.No.32, now sub divided as TS.No.32/3, Adyar Village, Mambalam-Guindy Taluk. The original door number of the house suit property was old No27, New No.14, Varadhapuram 2nd Street. It is the B-Schedule property. According to the 1st Respondent, the land originally belonged to late Andavamurthy, son of Kanni, who purchased it under the sale deed dated 11.5.2014. His successors in interest, Krishnan and 17 others sold the property to the 1st Respondent, by sale deed dated 30.10.2006 in Document No.2231 of 2006. By mistake, the vendor mentioned the parent document of title as Document No.183 of 1914 instead of Document No.1016 of 1914. The 2nd Defendant sold the land to the 3rd to 7th Defendants by sale deed dated 28.9.2011 in Document No.2024 of 2011. They had obtained mutation of revenue records in their name with sub divided

TS.No.32/3 and door No.1B, Karunanithi 3rd street.

15. The 1st Respondent claimed to have purchased the land from the 3rd to 7th Defendants by sale deed dated 3.2.2012 in Document No.206 of 2012 in the Office of the Sub Registrar, Adyar with the same description of property. According to him, Karunanithi 3rd street, which is the A-Schedule property, has been the main access for many years. It has been stated that the house of A.Dharmalingam is situated between B-Schedule property and Varadhapuram 2nd Street. There exists a small lane measuring 3 ft. in between the house of one A.Dharmalingam and the house on the Eastern side. It was not used either by the 1st Respondent/ 1st Defendant or his vendors, as Karunanithi 3rd street was the main access. The lane was also not shown in any of the documents of title. He also applied for patta and got mutation of patta in his name by order of Tahsildar. He also started to put up a house in the B-Schedule property consisting of tilt+2 floor. He had obtained home loan from ICICI Bank. Construction was commenced in June 2014. Construction materials were brought only through Karunanithi 3rd street. The Area Engineer, Chennai Corporation periodically visited the site during the construction. Civil work of the construction was completed in July 2015. Interior works were alone to be carried out.

16. At this juncture, an Advocate had purchased Flat

No.G1, B-Block, Sterling Promoters Apartment, 20/1, Karunanithi 3rd Street and occupied it during January 2016. The said B-Block is situated adjacent to the house on the South Western side. According to the 1st Respondent/ 1st Defendant, from then onwards, problems were created by them for himself and for the contractor. It also led to filing of police complaint, which was subsequently closed. It has been stated that a petition was also addressed to the Commissioner, Greater Chennai Corporation, alleging plan violation in the construction of the building. The Assistant Executive engineer, Greater Chennai Corporation had issued a notice and also issued a locking and sealing notice dated 27.2.2017. In this connection, WP.No.4503 of 2017 had also been filed and the 1st Respondent/ 1st Defendant had also filed WP.No.13268 of 2017, against the statutory authorities.

17. It has been further stated that finally, he was advised to resolve the ownership issue and obtain approval through regularisation of scheme. When he recommenced the interior work, once again there were problems created. This again led to filing of complaint before the Police. An enquiry was conducted by the District Registrar, Chennai South. There were also issues regarding parking of vehicles, which again went to the Police Station for resolution. According to the 1st Respondent, he is paying property tax and has obtained electricity connection and had applied to

the CMWSSB for sewerage and water connection. According to him, permanent electricity connection and water and sewerage connection are to be provided only through Karunanithi 3rd street. It was at this juncture that he came to know about the filing of the suit. According to him, he had filed a caveat before this Court and also before the City Civil Court. The Association itself was formed only subsequent to the filing of the caveat petition in August 2017. The Plaintiff Association was registered only in September 2017 and this was to avoid notice to the caveator. The 1st Defendant/ 1st Defendant claimed that he is being put to much hardship and difficulty and therefore, claimed that the interim orders must be vacated.

18. This Court heard the arguments advanced extensively by Mr.T.V.Ramanujam, learned senior counsel for the Plaintiff and Mr.V.Lakshminarayanan, the learned counsel for the 1st Defendant.

19. For the sake of convenience, the parties shall be referred to as the Plaintiff and the Defendants.

20. Even, according to the plaint averments, the Plaintiff residential flat apartment had been constructed in the year 2000 and the flat owners had occupied it from 2001. The 1st Defendant has come up with a specific allegation that one of the residential owners, who is an Advocate, had purchased the same and occupied it in 2016 and thereafter,

had started to give problems to the 1st Defendant. He had further specifically stated that he had filed a caveat in the High Court and in the City Civil Court in August 2017 in respect of a suit to be instituted against him by the said Advocate. To circumvent that, the 1st Defendant had further specifically stated that the Plaintiff Association was formed only in 15.9.2017 and registered on 15.9.2017 and therefore, urged that this court should draw an adverse inference as against the bona fide nature of the litigation. This has not been specifically replied by the Plaintiff.

21. If any member of the Plaintiff was in receipt of a caveat from the Defendant and if the Association were to represent each member and one of the members had been served with a caveat, the Plaintiff had a duty to disclose the same before this Court. They had suppressed it. They had deliberately not even mentioned about it in the plaint or in the affidavit filed in support of the applications seeking interim injunction. The purpose of a caveat cannot be defeated in such a simple manner and the Plaintiff cannot expect that the Court should take a lenient view over the same. Once a caveat had been suppressed even though it would have been in the name of the single individual and an Association files the litigation, but when it is specifically pointed out that the Association was registered subsequent to the lodging of the caveat, then the mala fide nature of the

Plaintiff exists. On this very short ground itself, the interim orders granted by this Court have necessarily to be vacated.

22. Even other wise, there an obligation on the part of this Court to examine the case of the Plaintiff in more detail.

23. The Plaintiff had produced as document the sale deed in Document No.183 of 1914, dated 26.1.1914. According to the Plaintiff, the purchaser of the property was Arunachala Naicker. It has been further stated that however, in the sale deed, through which the 2nd Defendant had purchased the property in Document No.2231 of 2006, dated 30.10.2006, the predecessor in title was given an Andavamurthy, son of late Kanni, who was shown as the purchaser in Document No.183 of 1914. According to the 1st Defendant, this was a typographical error and the actual document through which title flowed was Document No.1016 of 1914, dated 11.5.1914. This document had been filed by the 1st Defendant in the typed set of papers. Here the purchaser is Andavamurthy, son of P.Kanni. It has been mentioned that in the sale deed in favour of the 2nd Defendant dated 30.10.2006 in Document No.2231 of 2006, earlier parent document number was wrongly given as 183/1914 when it was actually 1016 of 1914. These are all the issues to be explained in more detail during the trial. At this stage,

neither party can be pointed out with the finger for a mistake which happened in the year 2006.

24. It is suffice to point out that the document of the year 2006 emanated subsequent to the purchase of the land and construction of the flats where the Plaintiff Association is functioning and consequently, the document of the year 2006 being a public document, the Plaintiff should have come to Court at the earliest and not 10 years later about this fact.

25. It is the contention of the learned senior counsel for the Plaintiff that the B-Schedule originally had as its access Varadhapuram 2nd Street. However, subsequent document had been created by showing its access as Karunanithi 3rd street (previously Varadhapuram 2nd street). In this connection, it is stated that the wall at the Northern end of Karunanithi 3rd Street, beyond which the B-Schedule property is situated, was demolished by the 1st Defendant. The date of demolition is not given. But, however, it was stated as some time in 2014. This is very convenient since the suit had been presented before the Assistant Registrar (OS) on 4.10.2017. Consequently, "some time in 2014' can be expanded to bring the suit within the period of limitation. But, again I will skip over the said fact.

26. However, the Plaintiff has not explained as to

why they kept quiet from 2014 till this date for nearly three years since the demolition of the wall. The only explanation given by the Plaintiff is that the 1st Defendant demolished the wall with a promise to rebuild after he had constructed his house. If that is to be accepted as on date, if he had not yet completed the construction, then cause of action has not arisen for the suit and for the 1st Defendant to perform his promise. Once again, these are the issues which have to be decided during the trial.

27. The Plaintiff cannot take umbrage of the fact that the 1st Defendant is utilising the entry from a public road to access his house. Karunanithi 3rd street is a public road. There cannot be denial of access from the same to any member whose house is situated abutting the said road. If the primary cause for grievance is demolition of the wall, then the Plaintiff should have instituted the suit at the earliest and not nearly three years after the wall had been demolished and after the building had been nearly constructed and at the last minute, impleading the statutory authorities and holding out a threat of injuncting them from providing amenities to the building. The Plaintiff should have been alert from the time when the foundation of the was dug.

28. The learned counsel of the 1st Defendant has pointed out the sketch and stated that there is a house

between the B-Schedule property and Varadhapuram 2nd Street. These are again the issues to be taken during the trial.

29. A perusal of the papers filed by the Plaintiff shows that the Plaintiff had also filed an application, seeking appointment of an Advocate Commissioner, but for some reason had chosen not to number the said application. The Plaintiff cannot expect the Court to suomotu take up the application, number it and also appoint an Advocate Commissioner. Once the Plaintiff had filed the said application and had deliberately not decided to pursue the same, it specifically implies that the Plaintiff had abandoned the said relief. Consequently, this Court has to go only by the records.

30. The records reveal that Karunanithi 3rd Street is a public road. The house of the 1st Defendant is situated abutting the public road. The 1st Defendant cannot be prevented from having access to his house through a public road. The statutory authorities cannot be prevented from giving water and electricity connection through a public road. If the said connection is to run through a private property, then Plaintiff Association would have a reasonable cause to object. But, they have come to Court, seeking relief against statutory authorities, who have a right to access in a public road and who have a duty to provide connections only through a public road. The entire case of

the Plaintiff is totally misconceived. Whether originally Varadhapuram 2nd Street had been converted into Karunanithi 3rd street as the main point of access by the 1st Defendant and by his predecessor in title are issues of facts which have to be gone into during the trial.

31. The documents which have been registered and which are sought to be altered or cancelled or modified can be done only after notice to all the parties and on examination of oral and documentary evidence. The 1st Defendant had specifically named an Advocate, who from the year 2016 appears to have caused problems for him, but there is no rejoinder to the said allegation by the Plaintiff Association. These are all facts which point against the Plaintiff. Primarily, the issue of filing of caveat and formation of a registered Association to circumvent the issue of notice to the caveater is very disturbing and this practice cannot be encouraged at all. I hold that Karunanithi 3rd Street being a public road cannot be prevented from being accessed by a member of the public. In view of the above reasons, the original applications filed by the Plaintiff do not stand scrutiny and have to be dismissed and the applications filed by the 1st Respondent are to be allowed.

32. In the result, A.Nos.7658 to 7661 of 2017 are allowed and OA.Nos.1038 to 1043 of 2017 are dismissed. No costs.

Sd/-C.V.K.J
12.01.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 12/02/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.