

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE
W.P. No.8115 of 2019 and W.M.P. No.8707 of 2019

Ramar Vihar Apartment Owners Association
represented by its President Brig. Raymond Raj (Retd.)
having office at Ramar Vihar (AWHO), Anna Nagar
Chinnavadampatti Post
Coimbatore
Tamil Nadu 641 049

Petitioner

vs.

1. The Adjutant General
Chairman of Army Welfare Housing Organisation (AWHO)
IHQ, Ministry of Defence
South Block, DHQ PO
New Delhi 110 011
2. Army Housing Welfare Organisation
Duly represented by its Managing Director (AWHO)
South Hutments
Kashmir House
Rajaji Marg
New Delhi 110 011
3. The Project Director (AWHO)
Ramar Vihar (AWHO), Anna Nagar
Chinnavadampatti Post
Coimbatore
Tamil Nadu 641 049
4. Col. R. Ganesan Veteran
B2/60, Parameswaran Vihar
67 Arcot Road, Saligramam, Chennai 600 093
5. Lieutenant Colonel Ganesan S. (Retd.)
74 Lotus Colony II Street
Nandanam
Chennai 600 035

Respondents

(R4 & R5 impleaded vide orders dated
14.12.2020 and 18.03.2021 made in
W.M.P. No.23425 of 2020 and W.M.P.
No.6371 of 2021 respectively in
W.P.No.8115/2019)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the impugned proceedings No.B/030001/55/AWHO/Coimbatore dated 07.03.2019, issued by the second respondent and quash the same as null and void and consequently, direct the second respondent to hand over the entire maintenance of the project to the petitioner's association after complying with all required formalities.

For petitioner Mr. Srinath Sridevan
for M/s. Ramasubramaniam Raja

For R1 Mr. V. Balasubramanian, S.P.C.

For RR 2 & 3 Mr. Thriyambak J. Kannan

For R4 Colonel R. Ganesan
Party-in-person

O R D E R

This writ petition has been filed challenging the order dated 07.03.2019 passed by the second respondent, refusing to recognise the petitioner association and for a direction to the second respondent to hand over the entire maintenance of the project to the petitioner association after complying with all required formalities.

2 The facts in brief are as follows:

a. The members of the petitioner association as well as other residents are Army officers, who had purchased flats in Coimbatore in the project developed by the second respondent, who are managing the said building till date.

b. Majority of the residents/owners formed the petitioner association and they have also registered the said association under the Tamil Nadu Societies Registration Act.

c. Common amenities provided under the project by the second respondent to the residents of the apartment complex were not handed over to the petitioner association, since, earlier, they did not recognise them.

3 Today, the second and third respondents have filed an affidavit dated 17.03.2021 before this Court, wherein, they have agreed to recognise the petitioner association. The relevant portion of the said affidavit reads as under:

"2. I state that the 2nd respondent since its inception has been holding elections for resident welfare association ("RWA") as per Rule 76 of Master Brochure (as amended from time to time). It is only in the case concerning the petitioner that some of the residents had not allowed formation of AUC and conduct of subsequent elections of RWA as had been the norm for past 40 years.

3. I state that now the e-voting has been carried out with involvement of the 2nd respondent and majority of the allottees have voted in favour of present appointment holders of the petitioner association, the 2nd respondent recognizes the present representatives of the Managing Committee of the petitioner association as the elected representatives of Raman Vihar, Coimbatore Project."

4 In view of the recognition granted by the second respondent to the petitioner association, the impugned order dated 07.03.2019 passed by the second respondent is liable to be quashed.

5 The other grievance of the petitioner association is that common amenities and corpus fund available with the second respondent have not been handed over to the petitioner association.

6 The learned counsel for the second and third respondents, on instructions, would submit that the second respondent is willing to surrender the common amenities of the building complex to the petitioner association and is also willing to deposit the corpus fund available with the second respondent into the nominated bank account of the petitioner association.

7 The learned counsel for the petitioner association, on instructions, is satisfied with the submissions made by the learned counsel for the second and third respondents.

8 However, both the respective learned counsel would submit that as far as the applicability of Article 12 of the Constitution of India to the second respondent and the applicability of the Tamil Nadu Apartments Ownership Act, 1994, to the petitioner association, are concerned, the same shall be left open.

9 For the foregoing reasons, this Court issues the following directions:

a. Since the second respondent has recognised the petitioner association, who shall act on behalf of the residents of Raman Vihar complex, the impugned order dated 07.03.2019 passed by the second respondent is hereby quashed.

b. The second respondent shall surrender the common amenities in Raman Vihar complex to the petitioner association and also deposit the corpus fund available with them into the nominated bank account of the petitioner association on or before 31.03.2021.

c. The legal issues as to whether Article 12 of the Constitution of India gets attracted for the second respondent and whether the petitioner association is required to be registered under the Tamil Nadu Apartments Ownership Act, 1994, are kept open.

In the result, this writ petition stands disposed of in the above terms. Costs made easy. Connected W.M.P. stands closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

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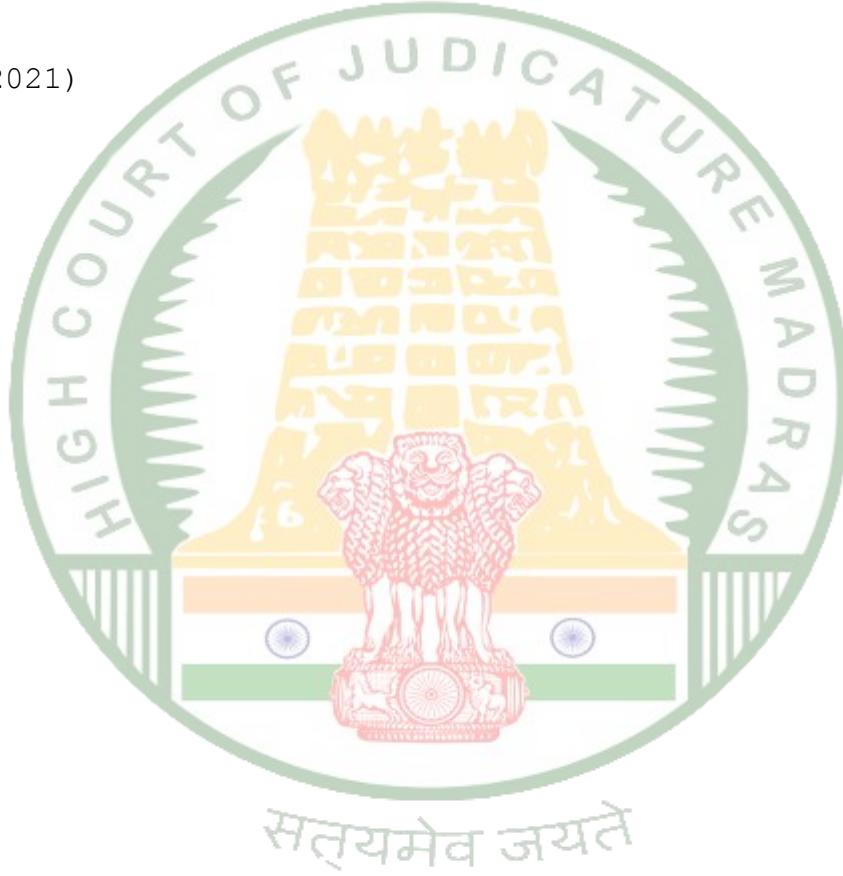
3 The Project Director (AWHO)
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+2 CCS to Mr.R. Ramasubramaniam, Advocate sr 18115, 17980.

+2 CCS to Mr. Thriyambak J. Kannan, Advocate sr 17874.

W.P. No.8115 of 2019

VGII(CO)
SP(23/03/2021)



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