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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.21213 OF 2019

AND

W.M.P.NO.20423, 20422, 29542 & 34344 OF 2019

M.Viruthagiri

... Petitioner

Vs.

Arcot Terrace Owners' and Residents' Welfare Association,
rep.by its Secretary,
160, NSK Salai,
Vadapalani, Chennai 600 026,
Chennai District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondent to comply with statutory provisions of Tamil Nadu Apartment Ownership Act 1994 while fixing maintenance/changes for the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas the facilities and pass such other and further orders as this Court may deem fit.

For Petitioner	: Mr.S.Ayyathurai
For Respondent	: M/s.Ranthina Asohan

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the 1st respondent to consider the petitioner representation dated 08.07.2021 and permit the petitioner electrical service connection in his name permanently.

2. The case of the petitioner is that the petitioner is the owner of an apartment namely Arcot Terrace Owners' and Residents' Welfare Association, which was registered as a Society under the Tamil Nadu Societies Registration Act, 1975 and the petitioner is also a member of the said Association. The Association having been aware of the mandatory provision of the Tamil Nadu Apartment Ownership Act, 1994, which requires that



common maintenance expenses shall be charged to the apartment owners, according to the percentage of the undivided share of the apartment owners in the common areas, has taken a decision to increase the maintenance charge at a flat rate basis.

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3. The petitioner has filed this Writ Petition challenging the resolutions passed by the respondent fixing maintenance charges on flat rate basis in violation of the mandatory provisions of Tamil Nadu Apartment Ownership Act, 1994, which require fixation of charges according to the percentage of the undivided interest of the apartment owners in the common areas and facilities. There are 82 two bedroom apartments and 88 three bedroom apartments and the built up area of each apartment varies from 846 sq.ft to 1513 sq.ft. and during the meeting, the members who own two bedroom apartments objected to increase of maintenance charges at a uniform flat rate for both three and two bed room apartments and suggested for increase in maintenance charges proportionate to the built-up area of the apartment. However in the Extraordinary General Meeting, the Association passed a resolution increasing the monthly maintenance charges of Rs.2500/- by Rs.500/-. Aggrieved by the same, the petitioner along with few other members have sent objections dated 12.05.2019 to the Association. Thereafter in the another extraordinary General Body Meeting of the Association, dated 02.06.2019, the subject of increase in maintenance charges was discussed and the petitioner also strongly objected to any increase of maintenance, however, the resolution stated, 'till next revision the maintenance in Arcot Terrace is Rs.2,750/- per month irrespective of flat size. Aggrieved by the same, the present petition is filed.

4. The learned counsel appearing for the petitioner, would submit that Section 19 of the Tamil Nadu Apartment Ownership Act, 1994, mandates that the common profits shall be disturbed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas and facilities in the Deed of Apartment. Therefore, the said provision clearly mandates obligation to fix maintenance charges according to undivided share of interest. Therefore, passing a resolution for increasing the maintenance charges from Rs.2,500/- to Rs.2,750/- irrespective of the flat size and further the next increase will be on flat rate basis, are against the provisions of the above said Act and hence prays for appropriate orders.

5. The learned counsel appearing for the 1st respondent submitted that every apartment complex has got common area and facilities but it varies from one another, either number of



flats will be less or flats with various dimensions and each differ from one another and they cannot be treated at par and every apartment complex have more common facilities which cannot be apportioned or divided according to the area of the flat. For example, lights in the common area, staircases, and driveways, swimming pool, security, water distribution pipelines, sewerage pipelines, disposal of garbage, cannot be measured on the basis of the area of the flat, which will lead to multiple problems in the form of discrimination and further collecting monthly maintenance charges on the basis of area would trigger animosity and division among the residents and thereby the effective maintenance of the common facilities would suffer.

6. The learned counsel appearing for the 1st respondent further made a submission that if any objection is made, the petitioner will be considered in terms of Section 19 of the Tamil Nadu Apartment Ownership Act, 1994 , as expeditiously as possible.

7. In view of the aforesaid submissions, this Court without expressing any opinion on the merits of the case is inclined to pass the following order that if at all the petitioner is having grievance in respect of passing a resolution for increasing the maintenance charges, he is at liberty to make representation to the respondent, in terms of Section 19 of the Tamil Nadu Apartment Ownership Act, 1994. The respondent, after receipt of any such representation, shall consider the same as expeditiously as possible from the date of receipt of a copy of this order. This writ petition is accordingly disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
The Secretary,
Arcot Terrace Owners' and Residents' Welfare Association,
160, NSK Salai, Vadapalani,
Chennai 600 026, Chennai District.
+lcc to Mr.S.Ayyathurai, Advocate, S.R.No.62921

W.P.No.21213 of 2019

SMI (CO)
RLP (22/12/2021)