

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAISWAMY
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

O.S.A.NO.342 OF 2017

The Anjuman-e-Himayath-e-Islam
rep by its Secretary Mr.H.Azeez Akthar,
having their registered office at
No.16, Narasimha Road,
T.Nagar, Chennai - 600 017.

.. Appellant

Vs.

1. Syed Khaleefathullah
2. Syed Muneer Ahmed
3. U.Nusrath Sharief
4. M/s.Prestige Estates Projects Ltd.,
rep by its Chairman & Managing Director
Irfan Razack
having registered Office at
"The Falcon House",
Main Guard Cross Road,
Bangalore - 560 001.
5. The Greater Chennai Corporation,
rep by its Commissioner,
Rippon Buildings, Chennai - 600 003.
6. The Chennai Metropolitan and Development Authority,
rep by its Member Secretary,
Gandhi Irwin Road, Ansari Estate,
Egmore, Chennai - 600 008.
7. The Tamil Nadu Pollution Control Board,
rep by its Member Secretary,
No.76, Mount Salai, Guindy,
Chennai - 600 032.

8. The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Veperiy, Periyamet,
Chennai - 600 007.
9. The Tamil Nadu State Environment
Impact Assessment Authority (SEIAA - TN),
Third Floor, Panagal Maaligai,
Saidapet, Chennai - 600 015.

.. Respondents

(R5 to R8 suo motu impleaded vide order dated 21.01.2021 and R9 suo motu impleaded vide order dated 04.03.2021)

Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI Rule II of the Madras High Court Original Side against the judgment and decree passed in O.A.No.666 of 2017 in C.S.No.516 of 2017 dated 10.10.2017.

For Appellant : Mr.P.S.Raman, Senior Counsel
for Mr.Zaffarullah Khan

For Respondents : Mr.M.Ramalingam (R1)
Mr.Muninuddin Sheriff (R2 & R3)
Mrs.Karthikaa Ashok,
Standing Counsel (R5)

Mrs.Veena Suresh,
Standing Counsel (R6)

Mrs.S.Shanmugavalli Sekar,
Standing Counsel (R7)

Mr.P.Harish, Government Advocate
for Mr.Edwin Prabakar,
Special Government Pleader (R8)

R4 - no appearance

J U D G M E N T

(JUDGMENT WAS MADE BY M.DURAI SWAMY, J.)

Challenging the order passed in O.A.No.666 of 2017 in C.S.No.516 of 2017, the 1st defendant has filed the above appeal.

2.The respondents 1 to 3/plaintiffs filed the suit for declaration and permanent injunction.

3.The case of the respondents 1 to 3 is that the appellant initially started an orphanage for boys and girls at Triplicane. Thereafter, the appellant requested the Corporation of Chennai to sell an extent of 19 acres of land at T.Nagar in order to carry out the noble services rendered by the appellant and the Corporation of Chennai, taking into consideration the service rendered to orphans and children of destitute women, sold the property to the appellant by Sale Deed dated 03.05.1940. The respondents 1 to 3 are the life members of the appellant-Society and therefore, they are interested in the proper running of the Society by continuing to function towards the noble object. It is the case of the respondents 1 to 3 that the appellant unilaterally decided to enter into a Joint Venture Agreement with the 4th respondent and the same virtually amounts to parting with the property to the 4th respondent, which is totally against the interest of the Society and the entire exercise was done in order to favour the 4th respondent and some of the persons in the Asset Management Committee.

4.According to the respondents 1 to 3, the entire exercise goes against the prohibition imposed by the Sale Deed executed by the Corporation of Chennai and it is a pure and simple commercial exploitation of the land against the interest of the Society and also against the object of the Society. In the said suit, the respondents 1 to 3 filed an application in O.A.No.666 of 2017 seeking for an order of interim injunction restraining the appellant and the 4th respondent from in any manner entering into any contract or agreement or arrangement or entering into any contract in the nature of Joint Development Agreement either with the 4th respondent or any other third party for construction of new Commercial Complex, Marriage Hall and other facilities in the AHI Campus at No.16, Narasimha Road, T.Nagar, Chennai - 600 017 pending disposal of the suit.

5.The learned Single Judge, after taking into consideration all the facts, granted an order of injunction till the disposal of the suit. Aggrieved over the same, the 1st defendant has filed the above appeal.

6.Heard Mr.P.S.Raman, learned Senior Counsel for Mr.Zaffarullah Khan, learned counsel appearing for the appellant, Mr.M.Ramalingam, learned counsel for the 1st respondent, Mr.Muninuddin Sheriff, learned counsel for the respondents 2 & 3, Mrs.Karthikaa Ashok, learned Standing Counsel for the 5th respondent, Mrs.Veena Suresh, learned Standing Counsel for the 6th respondent, Mrs.S.Shanmugavalli Sekar,

learned Standing Counsel for the 7th respondent and Mr.Edwin Prabakar, learned Special Government Pleader for the 8th respondent.

7.Mr.P.S.Raman, learned Senior Counsel appearing for the appellant submitted that the only restraint that was imposed in the Sale Deed dated 03.05.1940 was that the Society must not let out or sell the property to any person and the proposed agreement with the 4th respondent does not violate any of these conditions. Further, the learned senior counsel submitted that the arrangement entered into with the 4th respondent will clearly establish that the appellant-Society will be able to provide more services to the orphans and children of the destitute women and the appellant will also be able to augment more income by putting the property into proper use. The learned senior counsel also submitted that the suit filed by the respondents 1 to 3 is liable to be dismissed on the ground that the members do not have the locus to question the internal affairs of the Society which has been approved by majority of the members.

8.Countering the submissions made by the learned senior counsel for the appellant, the learned counsel for the respondents 2 & 3 submitted that the learned Single Judge has taken into consideration the prima facie material, balance of convenience and the hardship and came to the conclusion that the proposed development should await the final result in the suit and hence, the appeal is liable to be rejected.

9.Under normal circumstances, a member of a Society or a Club cannot be permitted to file a suit questioning the decision taken by a majority of the members regarding the internal affairs and the running of the Society. Unless the decision is violative of the object of the Society or in violation of the statutory provisions of the Societies Registration Act or in violation of law. Each and every decision of a Society cannot be put to challenge by a member by filing a suit. However, in the present case, the plaintiffs have raised larger issues regarding a Clandestine arrangement between some of the members in the Asset Management Committee and 4th respondent. The respondents 1 to 3/plaintiffs have also raised the larger issue as to whether the present arrangement will amount to giving of the control of nearly 50% of the property to 4th respondent by permitting the 4th respondent to collect the entire rental and the same will go against the covenants in the Sale Deed and go against the interest of the Society. These are also issues which has to be gone into at the time of trial.

10.The learned Single Judge has come to the conclusion that there is commercial exploitation and the entire story will get

revealed only at the time of trial and therefore, the entire project must wait till the disposal of the suit.

11. Admittedly, the property is located in a prime area in Chennai. Most of the property is remaining vacant without being put to proper use. Ultimately, the Society must be benefited through this property and the income from the property must help the Society in carrying out the object and helping more and more children. This Court, therefore, feels that striking a balance between the interest of the Society on the one hand and examining the claim made by the plaintiffs on the other hand, is the need of the hour.

12. It will be of no use to keep the property idle and at the same time, it must also be ensured that the whole process is clean and in line with the interest of the Society and the noble object that is sought to be achieved by the Society.

13. The appellant-Society is permitted to process the approval before the Statutory Authorities for the project. The appellant-Society is restrained from proceeding further after the stage of approval, pending further orders. The plaintiffs will not be prejudiced with the present arrangement, since the status-quo of the property is going to be maintained. This exercise will, at least, bring some certainty as to whether this project can proceed further or will be objected by the Authorities based on the covenants in the Sale Deed. By undertaking this exercise, this Court has attempted to strike a balance and tread a middle path.

14. Since the Corporation of Chennai is a proper and necessary party, we give liberty to the Corporation to get themselves impleaded as a defendant in the suit and contest the suit in accordance with law. The appellant/1st defendant shall file their written statement within a period of two weeks from the date of receipt of a copy of this judgment.

15. With these observations, the Original Side Appeal is disposed of. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

va

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.40915

+1cc to M/s.Veena Suresh, Advocate, S.R.No.41870

+1cc to M/s.S.Shanmugavalli Sekar, Advocate, S.R.No.41779

+1cc to Mr.M.Ramalingam, Advocate, S.R.No.40900

O.S.A.No.342 of 2017

RSI(CO)
RLP(25/07/2022)