



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 15th September, 2023**

+ **CS(OS) 353/1995 and I.A. Nos. 689/2017, 690/2017, 8440/2017 & 17911/2019**

NO.2 TILAK MARG G.H.FLAT BUYERS ASSOCIATION

..... Plaintiff

Through: Mr. Arvind Varma, Senior Advocate with Mr. Ankit Jain, Advocate

versus

M/S RAVINDRA PROPERTIES P. LTD. & ANR. Defendants

Through: Mr. Rajshekhar Rao, Senior Advocate with Mr. Ajay Sondhi, Mr. Mayank Mihail Mukherjee and Mr. Abhishek Rana, Advocates
Mr. Alok Gupta, Advocate for Ms. Kajal Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

I.A. Nos. 689/2017 & 17911/2019 (amendment) & I.A. No. 690/2017 (additional documents)

1. The plaintiff has filed the I.A. No. 689/2017 & 17911/2019 by invoking Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") for the amendment of plaint as well



as I.A. No. 690/2017 under Order VII Rule 14 of the CPC for placing on record additional documents.

2. The said applications, I.A. No. 689/2017 and 690/2017 have been preferred by the plaintiff on similar grounds that there are certain documents which have come to the knowledge of the plaintiff, subsequent to an application filed under the Right to Information Act, 2005 (hereinafter “RTI”).

3. Mr. Arvind Varma, the learned senior advocate appearing on behalf of the plaintiff submitted that the members of the plaintiff Association have come to know that the defendant had submitted various documents before the concerned authorities which in fact support the case of the plaintiff and shows that there is no force in the objections raised by the defendant. It is submitted that the plaintiff did not have the knowledge of the said documents till the filing of the instant applications.

4. It is further submitted that the plaintiff had filed an RTI Application, in reply of which the relevant documents were received by the plaintiff under the cover letter dated 10th January 2017 and hence, the plaintiff could not file the said documents earlier. It is also submitted that the documents sought to be filed are necessary for a fair decision and no prejudice would be caused to the defendant if the same are taken on record.

5. The learned senior counsel for the plaintiff also sought that the plaintiff be allowed to amend the plaint to provide explanation and details to elaborate the averments already made in the suit *inter alia* on the basis



of the documents sought to be placed. It is submitted that the plaintiff has been able to obtain certain documents from the Land & Building Department, as mentioned above, which also support the case of the plaintiff and hence, the learned senior counsel prays that the plaint may be allowed to be amended to incorporate the averments regarding the said documents.

6. The second amendment application was moved in the year 2019, i.e., after coming into force of the amendment in the Specific Relief Act, 1963, on the ground that such amendments could not have been sought prior to the enactment of the amendment. Reliance has been placed upon Section 10 and 20 of the amended Specific Relief Act, 1963.

7. It is submitted that upon attaining the documents and coming into force of the amendment Act, there are certain grounds which the plaintiff seeks to press to give force to its arguments. Therefore, it is prayed that the applications pertaining to the additional documents and the amendment of the plaint thereto may be allowed.

8. Mr. Rajshekhar Rao, the learned senior counsel appearing on behalf of the respondents, on the other hand, vehemently opposed the applications and submitted that they have been filed in gross abuse of process of law. It is submitted that the applications are misconceived and have been filed after an inordinate delay and hence, as such are not even maintainable.

9. On the application seeking to place additional documents on record, it is submitted that the plaintiff has sought to file such documents



after passing of 21 years of filing of the captioned suit and after the lapse of 12 years since the RTI Act came into force. The plaintiff has been grossly negligent in placing such documents before this Court. It is further submitted that there is nothing in the application or even in the submissions made on behalf of the plaintiff that sets forth sufficient grounds for non-production of the documents at an earlier stage. The application has been filed only to delay the disposal of the instant suit and hence, deserves to be dismissed.

10. On the application preferred by the plaintiff for amendment of the plaint, it is submitted that the plaintiff had earlier also been permitted to amend its suit, and it is attempting to carry out the entire process again only to derail the efficient disposal of the matter. It is submitted that the amendment sought by the plaintiff are all in the nature of facts and submissions, which were well within the knowledge of the plaintiff at the stage of filing of suit and it is an admitted case that the plaintiff has filed the application only to elaborate and explain the averments which already finds mention in the existing plaint.

11. It is submitted that on the previous dates in the suit, the effective hearing of the matter had been delayed at the behest of the plaintiff on one pretext or another and as such the present application is one such attempt at delaying the process. It is submitted that if the instant application is allowed, grave prejudice shall be caused to the defendant.

12. The learned senior counsel while referring to the relevant provision of the CPC submitted that since the Trial in the instant suit stands concluded, the plaintiff at this stage cannot seek amendment of the plaint.

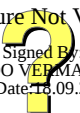


It is further submitted that such clarificatory or elaborative amendments are in any case impermissible, under the Scheme of the CPC and in any case the plaintiff has neither averred nor set out as to how the facts and/or submissions sought to be incorporated now, could not have been raised at an earlier stage despite the exercise of due diligence. Therefore, the applications are liable to be dismissed.

13. Heard. Perused the applications.

14. Liberty has been sought on behalf of the plaintiff to file additional documents before this Court. It has been claimed on behalf of the plaintiff that that such documents were not in their knowledge at the time of filing the suit or before filing of the instant applications and on the basis of the said documents, the plaintiff has also sought to amend the plaint to strengthen its arguments. The amendment of the plaint has also been sought, admittedly, for elaborating upon the averments already made in the plaint which is before this Court by relying upon the said documents as well as the Specific Relief Act, 1963, which stands amended.

15. The application preferred by the plaintiff to produce additional documents has been filed after more than 20 years of the suit being pending. The ground that the plaintiff has sought to invoke is that the said documents were not in the knowledge of the plaintiff, and it was only by way of filing an RTI application that the plaintiff could gather the documents. The RTI application and the reply thereto have been placed on record by the plaintiff.





16. The contents of the RTI application do not show any query which could not have been raised by the plaintiff upon the RTI Act coming into force or even within a few years of its enactment. There is also nothing in the contents which suggests that information sought was of such nature which was otherwise not in the knowledge of the plaintiff. The plaintiff merely sought queries as under:

- “1. When Lutian Building Zone guidelines were enforced?*
- 2. Is the Lutian Building Zone notification/guidelines still in force?*
- 3. Is construction of high rise buildings allowed in Lutian Building Zone area? If yes....*
- 4. How many floors/height can be build in Lutian Building Zone area.?*
- 5. Is there any ban to construct high buildins in Lutian Building Zone area.*
- 6. What are the current Lutian Building Zone guidelines?*
- 7. Rejected projects under Lutian Building Zone area notifications/guidelines?”*

17. The aforesaid queries only pertained to the status of the Lutyens Building Zone and the guidelines thereto. There is no new fact or question of fact which was raised by the plaintiff in the said RTI application. In fact, some of these very queries have already been addressed by the defendant during the pendency of this case by way of its pleadings and/or arguments.

18. Further, there is nothing in the averments of the plaintiff to indicate that the documents sought to be produced are of such a nature that would help in determining the real disputed questions before this Court. The



plaintiff has also failed to show that the documents sought to be produced are necessary for adjudication of the instant suit.

19. Moreover, there is nothing in the application and in the arguments advanced on behalf of the plaintiff which suggest that the documents sought to be filed could not be brought before this Court despite due diligence. Also, taking such documents on record after more than 25 years of pendency of the suit will definitely not serve the ends of justice.

20. Therefore, this Court is not inclined to allow the application filed seeking placing on record the additional documents.

21. As regards the amendment applications, a perusal of the record shows that this is not the first time that an amendment of the plaint has been sought by the plaintiff. The present plaint already stands amended at an earlier stage. Even at this stage, the plaintiff is pressing two applications for amendment.

22. The provision for amendment under the CPC, i.e., Order VI Rule 17, reads as follows:

“17. Amendment of pleadings.—

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties...”

23. The first part of the provision stipulates that the Court “*may*” allow either party to amend its pleadings, in terms as “*may be just*”. The words used, in their true nature, signify that the Court has the discretion for





allowing an application for amendment. The considerations while allowing the amendment are that the amendments sought to be made are necessary for purpose of determining the real and actual questions that are in controversy before the Court. It is also provided that such amendments may be allowed in just terms, which also reflects the amendment which may obstruct the interests of justice or which may prejudice the rights of the other party.

24. The second portion of the provision provides for the condition which has been levied upon it and it reads as under:

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

25. It is apparent that the first part of the provision reads that an application for amendment may be allowed “*at any stage of the proceedings*”, whereas the rider or condition to the same strictly provides that no application may be allowed after the Trial has commenced. Therefore, a reading of the bare language of Order VI Rule 17 of the CPC makes it clear that an application for amendment can be allowed, in just terms, that the amendments which may be necessary for adjudicating the real questions under dispute, and only if the Trial has not commenced. In the instant case, the Trial proceedings have already completed, with the evidence having been completed in the year 2019. Therefore, at the very outset, the application of the plaintiff is hit by the proviso of Order VI Rule 17 of the CPC.



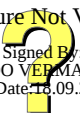


26. Further, the Hon'ble Supreme Court in ***Chakreshwari Construction (P) Ltd. v. Manohar Lal***, (2017) 5 SCC 212, while discussing the points for consideration before the Court before granting amendment stated as under:

13. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In Revajeetu Builders and Developers v. Narayanaswamy & Sons [Revajeetu Builders and Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84: (2009) 4 SCC (Civ) 37] , this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under: (SCC p. 102)

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*





These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

27. The illustrative questions and considerations are of aid to adjudicate the issue whether an amendment sought by a party may be granted in its favour. In the case at hand, this Court finds that the amendments sought are not imperative for the proper and effective adjudication of the case since the plaintiff is only seeking to elaborate upon the averments already made in the plaint and refusing the amendment application would not lead to any kind of injustice or multiple litigation.

28. Therefore, considering the facts of the matter at hand with reference to the abovesaid considerations, it is clear that there is nothing which may be allowed in favour of the plaintiff in the instant applications.

29. Secondly, a perusal of the applications for amendment show that the plaintiff is seeking to merely improve upon its case by way of amendment to make further assertions and averments to support its case, after an amendment at an earlier stage had already been allowed, the defendant has filed its objections in the written statement and after the evidence has been completed. There is nothing in the application of the plaintiff which even remotely suggests that the amendment that has been sought, if granted, will serve the ends of justice or will not affect the rights of the parties in question or that will be pertinent for the adjudication of the instant petition. Allowing such multiple applications for amendment, by way of which the plaintiff only seeks to keep



elaborating upon the submissions already made, will only defeat the purpose of the provision itself.

30. Therefore, in view of the aforesaid facts, circumstances and the law laid down, the instant applications stand dismissed.

CS(OS) 353/1995

31. The instant suit has been preferred by the plaintiff for declaration, permanent injunction and specific performance against the defendants under the provisions of the Code of Civil Procedure, 1908, seeking *inter alia* the following reliefs:

“a) Issue a decree of declaration declaring that the members of the Plaintiff Association are the co-owners of the land located at Plot No. 2, Tilak Marg, New Delhi - 110001;

b) Issue decrees of permanent injunctions restraining the Defendants, their employees, agents, representatives and servants from transferring, selling, mortgaging, alienating or creating any third party rights in the land situated at No. 2, Tilak Marg, New Delhi-110001 and further restraining the Defendants from transferring the shares of the Defendant-Company and prevent change of ownership and management of the Defendant Company;

b-1). Issue a decree for specific performance directing the Defendants to perform the Agreement specifically and deliver possession of the same to the Plaintiff-Association, be passed in favour of the Plaintiff and against the Defendants.

c) Award costs of the suit;”

32. The following course of events led to the controversy between the parties which is the subject matter of the instant suit:

a. The plaintiff is a registered Association of flat buyers in a Group Housing Complex at premises situated at 2, Tilak Marg,



New Delhi (hereinafter “Suit Property”). The said Group Housing Complex was promoted by the defendant no. 1, a Private Limited Company incorporated under the Companies Act, 1956, wherein, the defendant no. 2 is the Managing Director (hereinafter “defendant”).

b. The Suit Property was purchased by the defendant vide the Agreement dated 4th January 1975 and was obtained vide Sale Deed dated 2nd July 1975. The mutation of the property was allowed by the Land and Development Office (hereinafter “L&DO”) on 20th January 1976 and by the NDMC on 6th February 1976 upon a payment of Rs. 20,03,500/-. The defendant also paid a further payment of Rs. 1,03,50,118/- towards the additional premium as a condition for permission for the construction of the multi-storeyed Group House Building. A significant portion of the Suit Premises was going to be vested with the Government of NCT of Delhi in pursuance of the Urban Land (Ceiling and Regulation) Act, 1976.

c. In May, 1985, the defendant entered into Flat Buyers’ Agreement with 92 buyers for construction of the multi-storeyed Group Housing Building.

d. Subsequently, vide Office Memorandum dated 17th October 1985 (hereinafter “Ban Order”), the Central Government passed an order, thereby, stating that no new sanctions shall be given for the construction of multi-storeyed buildings exceeding four



storeys or beyond 45 feet in height in New Delhi and South Delhi, till the Master Plan for 2001 is finalised.

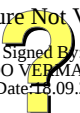
e. The construction hence was stalled, aggrieved by which the plaintiff approached this Court and sought the reliefs as stated above, since they had an apprehension that the defendant would alienate or create third party rights in the Suit Property.

33. As per the pleadings and the arguments advanced during the course of hearing, the following submissions were finally agitated on behalf of the parties.

On behalf of the Plaintiff

34. Mr. Arvind Varma, learned senior counsel appearing on behalf of the plaintiff submitted that the members of the plaintiff Association are entitled to the reliefs that have been sought on their behalf as the cost of the land was fully paid for by the flat buyers including all the amounts sought by the defendant. Moreover, although the defendant had initially paid Rs. 3,50,000/- for purchase of the entire plot of land, the defendant collected a sum of approx. Rs. 2.5 crores from the flat buyers. It is submitted that the flat buyers having paid to the defendant the cost of land, have a share/undivided interest in the land. Thus, the rights of the members of the plaintiff as Group Housing Scheme members stand crystallised.

35. The learned senior counsel submitted that the defendant has wrongly claimed that the contract between the flat buyers and the defendant stands frustrated with the passing of the Ban Order. The





members of the plaintiff have conveyed that they will be willing to take any kind of the construction that is carried out on the Suit Property. It is vehemently argued that the members of the plaintiff Association have been ready and willing to perform their part of the Agreement between the parties.

36. It is submitted that the ingredients of Section 12 of the Specific Relief Act, 1963 are being satisfied by the members of the plaintiff Association and as such there arises an entitlement in the favour of the flat buyers for performance of the contract on the part of the defendant. Reliance has been placed upon the judgment passed in ***Surinder Singh vs. Kapoor Singh, (2005) 5 SCC 142***, to give force to the arguments.

37. It is submitted that the plot in question cannot be used for any other purpose than construction of a multi-storeyed building and providing flats to the flat buyers. The defendant sought the ground of *force majeure* to escape from its liability, however, the ban on construction of the multi-storeyed building does not prevent the defendant from constructing a building on the plot according to the Master Plan and the Bye-Laws by drawing up a fresh plan. Moreover, the members of the plaintiff are willing to take whatever building that can be constructed on the plot and share the same proportionately in their respective shares.

38. It is submitted that the plaintiff has a real and substantial interest in the construction and development of the Group Housing Complex, however, the construction has been delayed by more than 4 decades even though the earnest money, and thereafter 25% of the value of the flats, has been paid by the flat buyers. It is submitted that each buyer has paid



more than Rs. 3 lakhs from time to time as demanded by the defendant. Moreover, the defendant continued to take the sum of money from the flat buyers even after the Ban Order was passed, which has been affirmed by the DW3, during his cross-examination.

39. It is the case of the plaintiff that the defendants were to contribute the land and provide services for the construction of a multi-storeyed building and the plaintiff along with the flat buyers were to contribute towards the cost of the land and construction of the said building however, the defendant has not taken any steps to further or complete the construction in question. It is further submitted that a meeting was held between the representative of the flat buyers and the Managing Director of the defendant, wherein, it was held that the defendant would consider constructing a building to the extent permissible and reduce the size of the flat proportionately, or in case only 2-3 storeys are permissible, they would sell the land and distribute the proceeds among the flat buyers, however, till date, despite repeated requests on behalf of the flat buyers, the defendant has not even begun raising any construction.

40. It is submitted on behalf of the plaintiff that the land in question would have vested in the appropriate government under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter "UCLA"). However, it was only because of creation of rights in favour of the members of the plaintiff under Group Housing Scheme that the land was not vested in the appropriate government. In view thereof, the defendant took benefit of creation of rights in favour of the members of the plaintiff under Group Housing Scheme. Thus, the rights of the members of the plaintiff as



Group Housing Scheme members stood crystallized. The defendant cannot deny any of the rights of the members of the plaintiff and should not be allowed to approbate and reprobate. The stance taken by the defendant is completely inequitable, for having avoided the land from vesting under the ULCA, using the group housing scheme exemption, they should not be allowed to wriggle out of the group housing scheme exemption after the repeal of the ULCA. In any event, the vested rights of the Group Housing Society members and the exemption granted under the provisions of the ULCA were for the benefit of the flat buyers and the said exemption is expressly saved by the provisions of the ULCA Repeal Act, 1999.

41. It is also vehemently argued on behalf of the plaintiff that the plaintiff has *locus standi* to file the instant suit. The plaintiff Association is a representative-in-interest of its members. It is submitted that the objection to the maintainability is a mere vexatious objection raised on behalf of the defendant since the parties were also before the Hon'ble Supreme Court where no such ground was raised on behalf of the defendant. In the present suit the plaintiff, representing its members, is seeking relief for construction of the complex to the extent permissible under law. Further, Section 15(b) of the Specific Relief Act, 1963, provides that any representative-in-interest of any party can obtain specific performance. There is no bar in the Agreements with the members of the plaintiff or for the plaintiff to act as the representative-in-interest of its members. Furthermore, the plaintiff Association is only a



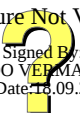
homogenous and collective mode of describing the Flat Buyers who are its members.

42. It is, thus, submitted that the plaintiff is entitled to the relief as sought by it and it is prayed that a decree of declaration and specific performance may be granted in the favour of the plaintiff.

On behalf of the Defendant

43. *Per Contra*, Mr. Rajshekhar Rao, the learned senior counsel appearing on behalf of the defendant vehemently opposed the instant suit and, at the very outset, challenged the *locus standi* of the plaintiff to come before this Court. It is submitted that the defendant never entered into any written contract with the plaintiff and it has no right to file the instant suit on behalf of the Association, which is not even a registered body.

44. It is submitted that the right to specific enforcement is a personal right. The plaintiff cannot file a suit as representative to all flat owners especially when the plaintiff has not filed any authorization on behalf of individual flat owners. It is also submitted that this Court, vide orders dated 1st December 2016 and 7th December 2016, directed the plaintiff to submit a list of the members of the Association, however, no such list ever came before the Court or before the defendant and hence, there is no way of determining as to who are the members of the plaintiff Association. Further, the plaintiff also contended that it is a registered Association, however, there is nothing on record to support the said averment. It is submitted that PW1, Ajay Kumar Gupta, who claims to be the Secretary of the alleged plaintiff Association, in his cross-examination





failed to produce any document or evidence even though he claims to be with the plaintiff Association from its inception. He admittedly, was unaware of the date of formation of the plaintiff Association, number of flat buyers who are members of the Association, when he became the Secretary of the said Association and about the daily workings of the same.

45. It is also submitted that the original documents as filed on behalf of the plaintiff do not contain the Registration Certificate of the alleged plaintiff Association. The plaintiff had in 2011 filed an I.A. No. 12946/2011 whereby it has been admitted by the plaintiff that the Memorandum of Association of the plaintiff and the Registration Certificate of the Plaintiff Association has not been filed as Ex.PW1/1 even though the evidence by way of Affidavit stated so. The plaintiff through the said application sought permission to place on record both the memorandum of association and the certificate of registration, however, vide order dated 20th October 2011, the plaintiff withdrew this application. Thus, the plaintiff of its own volition has not placed either the Certificate of Registration or the Memorandum of Association on record.

46. Relying upon the judgments passed in *Kalyan Singh v. Smt. Chhoti & Ors.* AIR 1990 SC 396, *Mathura Bhuvan Co-op Housing Society Ltd. v. The Official Liquidator & Anr*, AIR 2004 BOM 14, *Subash Market Association & Anr. v. M.C.D. & Ors.*, RFA522/2004, High Court of Delhi, *Subash Market Association & Anr. v. M.C.D. & Ors.* 2004 SCC OnLine Del 1146. and *Jamiatulama-i-hind & Anr. v.*



Mauulana Mahmood Asad Madni, CS (OS) 685/2008, High Court of Delhi, the learned senior counsel for the defendant submitted that an unregistered group of individuals cannot file a suit without obtaining leave of the court vide an application under Order I Rule 8 of the CPC, and hence, the instant suit is liable to be dismissed *in limine* for want of a plaintiff, which has filed the instant suit only in a representative capacity.

47. It is submitted that the plaintiff Association has no mandate to represent the flat buyers as there is no privity of contract between the plaintiff and the defendant since, at the very first instance, the defendant did not enter into any agreement with the plaintiff. The Flat Buyers Agreement was entered into with separate individuals and never with the alleged plaintiff Association.

48. It is further submitted that as per the Flat Buyers Agreement on record, there are no such terms that the defendant no. 1 was to contribute the land or as premium towards the land and provide the services for the construction of the multi-storeyed building and the flat buyers were to contribute towards the cost of land and costs of construction of the said building. In fact, the terms of the Flat Buyers Agreement stipulate the payment of per sq. ft. value of the flat.

49. The learned senior counsel also submitted that that the L&DO, Ministry of Works and Housing vide letter dated 26th May 1984 cleared the proposed Group Housing Scheme under the Urban Land (Ceiling and Regulations) Act, 1976 subject to payment of Rs 1,03,50,118/- towards additional premium as a condition of permission for construction of a multi-storeyed/Group Housing building. This was duly and solely paid by



the defendant. It is further stated that all premiums were paid solely by defendant. The alleged payment made by the individual flat buyers was in terms of Clause 3 of the Flat Buyers Agreement and not towards the land or as premium towards the land.

50. It is submitted that even otherwise, pursuant to the Ban Order, the Agreement between the flat buyers and the defendant stood frustrated and there is no cause of action which arises in favour of the members of the plaintiff. The validity of the said Ban Order was also upheld by the Hon'ble Supreme Court. The defendant filed a writ petition, being W.P. (C) No.2544/1986 before this High Court challenging the Ban Order which was dismissed vide Order dated 30th April 1992. Aggrieved by the aforementioned Order, the defendant, as well as the Plaintiff Association approached the Hon'ble Supreme Court by way of a Special Leave Petitions which were heard together as SLP No. 12908/92. The said Special Leave Petition was dismissed on 23rd November 1994 and upheld the validity of the Ban Order imposed by the Central Government.

51. It is submitted that a copy of the order of the Hon'ble Supreme Court was also sent to all the individual flat buyers including Mr. Ajay Kumar Gupta, in his capacity as an individual flat buyer, the very next day i.e., on 24th November 1994. Hence, the information that the guidelines and the Ban Order was upheld by the Hon'ble Supreme Court was in the knowledge of the flat buyers.

52. Reliance has been placed upon the judgment passed in **NDMC & Ors. v. Tanvi Trading & Credit Pvt. Ltd. & Ors.** and **K. Narendra, Riviera Apartments (P) Ltd** to submit that the Ban Order was upheld.



After coming into force of the Ban Order dated 17th October 1985, and after challenging the same upto the Hon'ble Supreme Court and failing, the *bona fide* of the Defendants is not in question. It is a settled proposition of law that when the government changes its policies, and the same affects private contracts between parties, the same are held to be frustrated, which is also the case in the instant matter.

53. Referring to Section 56 of the Indian Contract Act, 1872, which provides for that '*a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful*', it is submitted on account of coming into force of the Ban Order, the contract between the parties was rendered void due to an impossibility to act/perform.

54. It is submitted that since the Agreement between the relevant parties cannot be performed after passing of the Ban Order, there is nothing which can be granted in favour of the plaintiff. Therefore, it is prayed that the instant suit may be dismissed.

ANALYSIS AND FINDINGS

55. Heard the learned counsel for the parties on both maintainability as well as merits and perused the record.

56. The Predecessor Bench of this Court after consideration of all the facts, circumstances, issues raised and arguments advanced, vide order dated 20th August 2007, had framed the following issues:



1. Whether the plaintiff has paid any sum of money to the defendant towards cost of the land and / or as premium? OPP.
2. Whether the plaintiff has an undivided share / interest in the suit property located at Plot No. 2, Tilak Marg, New Delhi? OPP
3. Whether the alleged ban on construction of multi-storeyed building beyond four stories does not prevent the defendant from constructing a building on the suit property according to the Master Plan and Bye-laws and distribute the same in proportion to the respective share in the original project as envisaged? OPP.
4. Whether the Flat Buyers Agreement between the parties stands frustrated on account of the ban imposed by the Union Government regarding constructions of multi-storeyed building in Lutyens bungalow zone? OPD
5. If Issue No. 4 is decided in favour of the defendant, then whether the Members of the Plaintiff Association are entitled to be adequately compensated in terms of plots of a similar area or in monetary terms? OPP
6. Whether there was any privity of contract between the plaintiff association and the defendant? OPD
7. Whether the plaintiff association has a mandate to represent the flat buyers? OPD
8. Whether the suit is barred by limitation? OPD
9. Whether the plaintiff is entitled to any relief?



57. This Court, upon hearing the parties, finds that certain issues need not be adjudicated at this stage and certain issues, i.e., Issue Nos. 1, 2, 6, 7 and 8 may be clubbed and be adjudicated accordingly. Hence, upon the perusal of the entire record, including the evidence adduced, upon hearing the learned senior counsels on the merits of the case, and considering the arguments that were ultimately pressed by the parties, this Court deems it appropriate to finally adjudicate upon the following issues:

I. Whether the plaintiff association has the *locus standi* to institute the instant suit and has a mandate to represent the flat buyers?

II. Whether the alleged ban on construction of multi-storeyed building beyond four stories was absolute and prevented the defendant from constructing a building on the suit property according to the Master Plan and Bye-laws?

III. Whether the Flat Buyers Agreement between the parties stands frustrated on account of the ban imposed by the Union Government regarding constructions of multi-storeyed building in Lutyens bungalow zone or can it be performed by the defendant?

IV. Relief.

58. This Court shall delve into the aforesaid issues accordingly.

ISSUE I

59. The arguments were heard on behalf of the parties on the issue of maintainability of the instant suit. It has been argued on behalf of the



defendant that the plaintiff does not have a *locus standi* to file the instant suit and even otherwise, the plaint is barred by limitation. It has been contended on behalf of the defendant that the role of the plaintiff Association has not been specifically laid out by the plaintiff as it has not been able to satisfy the Court that the plaintiff Association is registered and is acting in the representative capacity. On the other hand, on behalf of the plaintiff it has been argued that the plaintiff is very well entitled to institute the instant suit and seeks the reliefs which have been sought since it is representing certain flat buyers who had actually entered into Agreements with the defendant and hence, the suit and the reliefs sought therein, are maintainable before this Court.

60. The issue of *locus standi* of the plaintiff has been raised on behalf of the defendant since the institution of the suit. It has been contented that there is no document to show that the plaintiff is a registered Association representing the aggrieved flat buyers. Moreover, there is no certainty as to who all are the members of the plaintiff Association.

61. To adjudicate upon this issue, it pertinent to see whether there is any document on record to show that the flat buyers are members of the plaintiff Association and whether the plaintiff Association stands registered under the appropriate provisions of law. Then the consideration before the Court would be whether the plaintiff Association seeks the instant reliefs in a representative capacity and consequently, whether the plaintiff has the *locus standi* to institute the suit before this Court for declaration and specific performance against the defendant.

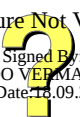


62. The plaintiff has claimed that it has come before this Court in a representative capacity for some of the flat buyers and has the authority and entitlement, supported by law, to approach this Court in the said capacity. It has also been contended that the plaintiff is a duly registered Association representing some of the buyers who had entered into Agreements with the defendant.

63. There is no description of the plaintiff Association in the entire set of pleading which lays out the list of members who are a part of the said Association or which states under which provision of law the plaintiff is registered. A perusal of the orders passed in the instant matter, including orders dated 1st December 2016 shows that the Court had raised a query to the plaintiff directing it to furnish a list of members whom the plaintiff is representing. The relevant portion of the order reads as under:

“9. The counsel for the plaintiff Association has today fairly stated that the twenty odd members of the plaintiff who have paid advances varying between Rs.3 lacs and Rs.4.5 lacs would be satisfied if the defendant no.1 refunds the said monies with interest as may be awarded by this Court and the plaintiff will not press the present suit. It is further stated that the defendant no.1 in fact has been offering the refund at various stages in this suit and which the members of the plaintiff Association then under mistaken advice did not accept. ’

14. The aforesaid is not intended to make the defendant no.1 liable to refund to all and sundry. On enquiry, it is informed that there is no list of members of the plaintiff on record. The counsel for the plaintiff to today itself deliver to the counsel for the defendants, the list of members preferably with the amount paid by each to the defendant no.1 and proof thereof.”





64. The list admittedly did not come to the Court or to the defendant on the said date of hearing, and hence, an observation was also made to this effect on the subsequent date of hearing, i.e., vide order dated 7th December 2016, as well. It is not disputed that the said list was not placed before this Court even after passing of the order dated 7th December 2016 and until the time the matter was finally heard.

65. The list which is before this Court has been filed only in the year 2023, that is, at the time when the matter was finally heard. While the list which is before this Court comprises the names of 38 individuals, in the order dated 1st December 2016, it was stated on behalf of the plaintiff stated that there are 20 odd members in the plaintiff Association. There is clearly an inconsistency to this effect.

66. The said list was evidently not placed before the Court at the time of evidence. There has been no examination or cross-examination on the list of members which now lies before this Court and has been filed only subsequent to conclusion of the trial. The defendant did not get the opportunity to challenge, examine or cross-examine the list of members by way of adducing evidence. This Court does not find any reason to consider the document which has not been examined in entire process of the trial. At this stage, after hearing the parties at length on all the contentions raised, this Court does not find any reason to accept the list to be authentic and true for the reasons that,

firstly, it has taken the plaintiff about 28 years to say who all are comprised in the Association it claims to be;



secondly, the list has not been tested by way of evidence and its veracity remains to be a question unsolved and as such the list cannot be even considered as evidence or a supporting document since its authenticity has not been established; and

thirdly, the list so produced does even not bear the signatures of any person acting in representative or authoritative capacity or any other person/member of the Association, neither is supported by any affidavit etc, but has been placed on record as an Annexure to the additional written submissions made by the plaintiff after this Court had reserved the judgment.

67. Further, even the sole witness examined by the plaintiff as PW1, Ajay Kumar Gupta, to this effect, in his statement dated 19th February 2011, stated as under:

“.... Members of the plaintiff association are many of the flat buyers. I do not recall if in this Court or in the Hon'ble Supreme Court, list of members of plaintiffs association has been filed or not. I cannot admit or deny the suggestion that till date no such list has been filed in any Court. (Volunteered:) We were never asked to file the said list.”

68. The only witness produced before this Court on behalf of the plaintiff also could not answer the question regarding who all are the members of the plaintiff. Hence, there is nothing on record to answer the question as to who all constitute the plaintiff Association.



69. The second question, to be adjudicated upon while deciding the question of locus of the plaintiff Association, which has been raised on behalf of the defendant, is that the plaintiff Association failed to show that it has been duly registered under the relevant provisions of law.

70. To appreciate and decide this argument, it is deemed necessary to look into the evidence adduced on behalf of the plaintiff and the submissions otherwise made in the pleading.

71. On the first day of listing for evidence, the plaintiff produced one Inderjeet Singh Gujral, the President of the plaintiff Association, as its witness, who on 26th November 2009, made the following statement:

“I tender in evidence my affidavit Ex. PW1/A and tender the document in evidence Ex. PW1/2 to Ex. PW1/4. PW1/1 is not on the record as it has not been filed.”

72. The plaintiff in evidence has stated that there were three documents that were brought before the Court along with his affidavit. Subsequently, on the next day of his evidence, the plaintiff had examined one Ajay Kumar Gupta, as its witness PW1, who stated that he was the Secretary of the plaintiff Association and on 19th February 2011, PW1 made the following statement:

“I tender in evidence my chief examination affidavit Ex. PW1/X which bears my signature at Points A & B. I also tender in evidence document exhibited as Ex. PW1/1. It is clarified that although my chief affidavit mentions documents Ex.PW1/1 to Ex.PW1/4, there is only one document which is being tendered in evidence.”

73. At first instance, the plaintiff produced two different individuals to give statement before the Court. Thereafter, the sole witness of the



plaintiff stated that the statement originally made on behalf of the plaintiff was infact incorrect and instead of four documents, there was only one document which had been tendered in evidence.

74. The said witness PW1, stated that he was the secretary of the plaintiff Association, however, he was neither able to say when was the plaintiff Association formed nor was he able to tell the year in which he took the post of the Secretary. The relevant portion of his statement is reproduced hereunder:

“I am an undergraduate. I cannot tell the date when plaintiffs association was formed. Without looking into the certificates, I cannot tell as to whether the association was registered under the Societies Registration Act or any other law. The plaintiffs association was formed subsequent to the year 1985. I cannot admit or deny the suggestion that plaintiffs association was formed subsequent to the year 1992.”

“I became Secretary of plaintiffs association subsequent to formation of the association but I cannot recollect the year in which I became Secretary. It is correct that from inception of plaintiffs association, I was not Secretary. I was elected as Secretary to the plaintiffs association in General Annual Meeting. I do not know if any Resolution or authorization in my name has been filed in this case by the office bearers or not.”

75. PW1, i.e., the sole witness examined by the plaintiff, was also not aware as to the peculiar information regarding the establishment and other details of the plaintiff Association. The fact of the date of formation of Association was also not in his knowledge. He could not even confirm if there was a resolution or authorization which was signed by the members of the Association in his favour and further, he stated that the



pleadings also did not bear his signatures. There is nothing in the statement made by PW1 which gains confidence of this Court to say that PW1, being the Secretary, furnished information which could help the Court reach to the conclusion that the plaintiff Association actually even existed or was ever registered. This Court is also not able to accept the factum of registration of the Association since it has also been stated in the pleadings of the plaintiff that the Certificate of Registration has been filed on behalf of the plaintiff along with the plaint. However, there is no mention of any registration number, date etc. and even upon the scrutiny of the entire record before this Court, the said Certificate of Registration could not be found. The plaintiff has taken support of a document which does not even exist or is atleast not before this Court for testing its veracity or even for perusal.

76. Therefore, even the contention pertaining to the plaintiff Association being registered cannot be decided in the favour of the plaintiff.

77. Thereafter, the final question which remains, is whether the plaintiff Association can act in a representative capacity, considering the observations above that there is no certainty as to who all are the members of the plaintiff Association and that the plaintiff could not show that it possesses a Certificate of Registration, has the *locus standi* to institute the instant suit and thus, whether it has the mandate to represent the flat buyers.

78. Undisputedly, there is no agreement between the defendant and the plaintiff Association. It only claims that the flat buyers who had entered



into the Flat Buyers' Agreement with the defendant constituted the plaintiff Association. The flat buyers with whom the defendant had entered into agreements were private individuals and not represented by any group/society/association at the time of entering into the Agreement.

79. The law regarding the proposition which is before this Court has been discussed and adjudicated upon by Courts of this Country. The CPC also makes way for a comprehensive provision for a suit filed in a representative capacity. The relevant provision, i.e., Order I Rule 8 of the CPC reads as under:

“[8. One person may sue or defend on behalf of all in same interest.—

(1) Where there are numerous persons having the same interest in one suit,—

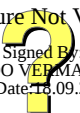
(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no





agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.—For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.]”

80. Rule 8 as stipulated under Order I of the CPC provides that where multiple persons having similar interest seek to sue or defend, one or more of such persons may sue, be sued, defend such suit on behalf of the said multiple persons having the same interests, with the permission of the Court, or the Court may direct that one or more of such persons may sue, be sued, defend on behalf of all so interested. Sub-rule 1 of Rule 8 makes it abundantly clear that the permission of the Court, as stipulated in Clause (a), or the directions from the Court itself, as stipulated in Clause (b), is a necessary pre-requisite for preferring a suit on behalf of other interested parties.

81. The position has been reiterated by various judgments. The Hon'ble Supreme Court in ***Kalyan Singh vs. Smt. Choti & Ors.***, AIR



1990 SC 396, while dealing with similar facts and circumstances which are before this Court, observed as under:

“12. The next relevant issue which requires consideration is the issue with regard to mode and manner of the institution of the suit. The suit was instituted by an unregistered association. The said association is not a legal entity in the eye of law. In a memo of parties filed with the plaint one more name has been given. But the same cannot be treated as a part of the plaint. The provisions contained in the Code of Civil Procedure do not mandate filing of a memo of parties as a part of the plaint. The legal requirement in the suit is only filing of an address form under the Code of Civil Procedure. A reading of the entire plaint would prove that the suit was intended to be instituted by a single plaintiff. Reference in the plaint is made to a single entity i.e. plaintiff “in singular” and therefore there could be no doubt that the suit was instituted and the plaint was filed by an unregistered society, which is not a legal entity. Sh. Mukesh Kumar Gupta (shown as plaintiff No. 2 on the memo of parties) has not signed or verified the plaint. Therefore, it is also held that the suit was not properly instituted and the plaint was also not signed by duly authorised person.”

82. In the case at hand as well, the plaintiff has not been able to show that it is a registered entity/Association. Further, the statement made by the sole witness of the plaintiff had categorically stated that he had not signed the pleadings etc. Moreover, the plaintiff herein has also been referred to as a single entity representing its members, who as discussed above are not even known.

83. This Court this aspect has expressed its views in ***Jamiatulama-ii-hind & Anr. v. Maulana Mahmood Asad Madni***, CS (OS) No. 685/2008 dated 9th July 2008 and observed as under:



“20. Next, the more substantial issue about maintainability on the ground that the suit is not a representative one. Order I Rule 8 was conceived in public interest to enable “numerous” persons having common interest, to approach the court, through one, or few of them, in a representative character. The object of the provision is avoidance of multiplicity in litigation. In T.N. Housing Board v. T.N. Ganapathy, (1990) 1 SCC 608 the Supreme Court held that:

“The provisions of Order I of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In Kodla Goundar v. Velandi Goundar AIR 1955 Mad 281 a Full Bench of the Madras High Court observed that on the plain language of Order I Rule 8, the principal requirement to bring a suit within that rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The court, while considering whether leave under the rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will sub-serve the object for its enactment.”

21. In Ahmed Adam Sait –vs- M.E. Makhri AIR 1964 SC 107 the Supreme Court held that decision in a representative suit, properly instituted, would bind all the persons sought to be represented, and constitute res judicata, under Section 11, CPC. There is also authority (Hubli Panjarapole case; Saraf and Swarnakar Samiti; Smt. Ram Piari’s case and



Radhaswami Satsang Sabha – referred to supra) that the lacunae or infirmity in not seeking leave in the suit, at the initial stage, can be cured later. To this extent, the plaintiffs' contentions are well founded.

22. The defendant applicants contend that the nature of the right sought to be projected, and the cause of action is such that leave cannot be granted; they also contend that neither has the second plaintiff shown authorization or right to represent the membership of the Jamat as a whole, nor has he disclosed the Jamat's membership, to enable the court to take effective steps toward issuing notice to them, and granting leave, under Order I Rule 8, to pursue this suit in a representative capacity, to him.

23. In this context, the reliance, by the defendants, on the decision in Rajendra Nath Tikku, appears to be appropriate. That was a case of an unincorporated entity, viz a club; the contention raised was that the mis-description of the party was curable, by amendment of the cause title. The Calcutta High Court negatived the plea, in the following terms:

"5. The term 'misdescription' a fortiori means that a defendant has not been correctly described. It has been recently held by the Supreme Court in the decision of Purushottam Umedbhai and Co. Vs. Manilal, reported in (1961) 1 SCR 982; (AIR 1961 SC 325) that if a foreign firm is sued in the firm name though the Code does not recognize such a procedure, the plaint is not bad and such a defect or irregularity is one of misdescription of the defendant because all the partners who form the firm are in effect sued as defendants but their names are not set out behind the firm cloak used for the sake of brevity in the plaint. Counsel for the respondent contended in the present case that the suit as constituted against the Royal Calcutta Turn Club was a nullity because such a Club cannot be suit in its Club name. It may be stated here that Lord Parker in the London Association for Protection of Trade V. Greenlands Ltd., (1916) 2 AC 15





said that an association which is not a corporate body, nor a partnership nor a creation of statute could not be made of defendant in its name. A member's club which is an unincorporated and unregistered body is not a legal entity which can be sued in its own name. If that is so, is the amendment of the nature sought in the present case an attempt to describe the defendant correctly? In my opinion, counsel for the respondent is right in his contention that it is not a case of misdescription at all."

The Special Bench of the Allahabad High Court in N.F. Barwell v. John Jackson AIR 1948 All 146, was concerned with a resolution by a majority vote that an unregistered Club should be dissolved. It was held by the Special Bench that in the absence of any provision in the rules of the Club laying down the circumstances and the manner in which the dissolution of the Club could take place, the dissolution of the Club would not be brought about by a majority vote. The Club could be dissolved only if all the members unanimously agreed to such dissolution. Similarly, the Madras High Court, in D.Gopalan, Vs. Raghava Naicker & Others AIR 1990 Mad 314 held that:

"From the answers given by the deponent to the affidavit as could be seen from his evidence recorded before the learned judge on the Original Side, it is clear that the very existence of the so called Association is doubtful. More than this, the number of members of the Association and their interest in this matter and their having authorized the deponent to the affidavit to institute the suit on behalf of the Association since all the members had the same interest in the subject-matter in suit, have all not been established."

24. Similarly, in Tulsi Ram & Ors, V. Mathura Sagar Pan Tatha Krishi & Anr, AIR 2003 SC 243 the Supreme Court held that a suit on behalf of several persons, claiming community rights is not maintainable. In this case too, the nature of the right sought to be asserted on behalf of the



Jamat, that the impugned resolution was illegal, and that the second plaintiff continued as President, has been pleaded in a general manner; the Jamat's interest has been projected as the cause of action for approaching the court. The second plaintiff has nowhere disclosed his right, or authorization by the body of persons, on whose behalf the Jamat's rights are sought to be asserted. Therefore, even if he were to be allowed to sue in representative capacity; the suit would have to fail.

25. This court, in *Sudhir Joshi & Others V. Smt. Shanta Joshi & Others* 113 (2004) DLT 254, held that:

"The Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy, AIR 1990 SC 642 in which it has been observed that provision of Order I Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. In the present situation, since partition of property is in question, fifteen Plaintiffs who have not either subscribed their signatures to the Plaint or have executed Power of Attorneys in favour of any of the other Plaintiffs, could have been arrayed as Defendants. There would have been no question of multiplicity of proceedings. What I see, therefore, is a possible mischief in that the Court will not be in a position to know the views and stance of these unrepresented Plaintiffs unless they are personally summoned to the Court. Neither of these decisions, therefore, advance the case of the Plaintiffs."

In an earlier decision, Kapoor Group & Another v. Supreme Court of India Bar Association, 2002 III AD(Delhi) 490 this court had held, inter alia that:

"13. Order I Rule 8 applies only to representative suits when there are large number of persons having common interest in a suit. One or more of those persons with the permission of the Court can sue or be sued or defend the suit on behalf of others also. On such permission, if given, it becomes the imperative duty of the Court to direct notice to be given to the

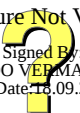


absent parties in the manner as the Court in each case required. Under this rule the suit cannot be filed on behalf of innumerable, countless persons but it may be filed on behalf of limited and clearly defined class of people who had common interest and common right. Indeed the proper course is to obtain the permission for suing in representative capacity before the suit is actually instituted. But Order 1 Rule 8, CPC does not forbid leave being granted afterwards at any stage of the proceeding. No notice of the application is contemplated to be served on the opposite party for granting the permission. In the instant case the permission has been applied for and granted by the Court though notice has not been issued to all those persons on whose behalf and in whose interest the suit was filed because of a subsequent event”.

26. These observations underscore the necessity of seeking leave, under Order I Rule 8, on behalf of a named body of individuals, whose particulars are disclosed, to permit the court to take effective steps to notify them. This is a necessary procedure, since any decree made in the proceeding would bind them (Kumaravelu –vs- Ramaswami AIR 1933 PC 188; FA. Shihan –vs- Abdul Alim AIR 1930 Cal 787; Bishan Singh –vs- Mastan Singh AIR 1960 Punj. 26 and Ahmed Adam Sait [supra]).

27. A Division Bench of this court had dealt with a somewhat similar situation, where the plaintiff's request for leave under Order I Rule 8 was rejected, in Subhash Market –vs- Municipal Corporation of Delhi AIR 2005 Del 211, in the following manner:

” ...Order 1 Rule 8 of the Code of Civil Procedure.. Sub-rule (2) of Rule 8 of Order I of the Code of Civil Procedure mandates that the court in all cases where a permission or direction to sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested, to give notice of the institution of





the suit to the persons so interested, either by personal service or by public advertisement.”

“... The plaintiff claimed membership of 75-80 persons in the plaint. It was strongly canvassed that in compliance with the orders, the appellant filed process fee in the case for issuance of notices by the court. Perusal of the process fee form shows that the process fee filed by the appellant would have been sufficient to serve only 3/4 persons. No list of the 75-80 members was filed. It was also an admitted position, as stated in paragraph 11 of the impugned judgment, that the plaintiff did not comply with the requirements of Order I Rule 8 of the Code of Civil Procedure. We find no reason to vary the findings of the learned Trial Judge.”

28. In this case, the plaintiff’s application, IA 6338/2008, under Order I Rule 8 generally mentions about the District Committees having authorized him to file the suit on behalf of Jamat. However, the membership of those committees remains undisclosed; the membership of the Jamat, whose interests are allegedly affected due to the impugned resolution, has not been shown. According to the suit, the Jamat has a membership base of one crore. These lacunae are, in the opinion of this court, incurable.”

84. The discussion in the aforesaid matter comprehensively and extensively deals with the position regarding a representative suit being filed by an unregistered entity. There is no requirement to further elaborate upon or set forth the position of law in this regard, since it already stands settled by way of the pronouncements referred to in the judgment passed by this Court. Seeking the leave of the Court before filing a representative suit is not a condition which may be done away with, given the object of the provision being ‘interest’ which serves a large number of persons similarly affected, especially when the decision



would be having an implication on all those involved in their individual capacities. Therefore, the law in this regard does also does not favour the plaintiff in any manner whatsoever, since the plaintiff has evidently not sought the leave of this Court under Order I Rule 8 of the CPC, which provides for the procedure for the suit in a representative capacity.

85. In the entirety of the facts, circumstances, the law explicitly laid down, the conduct of the plaintiff and the evidence adduced, this Court decides ISSUE I in favour of the defendant and holds that the plaintiff has failed to show that it has the *locus standi* to contest the instant suit on behalf of its alleged members. The plaintiff does not have the mandate to represent the suit on behalf of the flat buyers.

86. Since, the plaintiff as such does not have the authority to contest the instant suit, however, there are certain questions which may be discussed pertaining to the merits of the case, which also had been argued on behalf of the parties during the course of hearing, and shall not change the nature of the relief sought.

ISSUE II & III

87. The Ban Order which has given rise to the present suit was passed by the Union Government vide its Notification dated 17th October 1985, which reads as under:

“SUB: STOPPING of multi-storeyed buildings in New Delhi including areas under MCD & DDA In South Delhi till the Master Plan for 2001 has been re-worked.

The Government has decided to stop construction of multi-storeyed buildings in New Delhi including areas under



Delhi Development Authority and Municipal Corporation of Delhi falling in Sought Delhi, which immediate effect till the master Plan for 2001 has been finalised. No new sanction for such construction should be issued hereinafter.

2. *It is clarified and a 'multi-storeyed' building may be taken as a building going beyond 45 feet or above four storeyed which has to be serviced by lifts.*

3. *Orders with regard to sanctions already issued where work on the multi-storeyed buildings has not commenced or completed will follow."*

88. The words used in the Office Memorandum are sufficient to understand the implications and consequences of the same. There is no doubt to the effect that this Office Memorandum prohibited any construction beyond the limits provided. The serious implications can be gathered from the contents which say "*which (with) immediate effect*", expressly stating that the action be taken immediately stopping any constructions which were already sanctioned and also not sanctioning any further construction. Such a Ban had a direct and substantial impact on the subject matter, i.e., the construction of the multi-storeyed building and consequently upon the flat buyers and the defendant.

89. Therefore, in the case at hand, not only the plaintiff, but the defendant itself, being aggrieved by the order passed by the Central Government, had moved this Court by way of filing a writ petition, being W.P. (C) No.2544/1986. The said petition came to be dismissed vide the Order dated 30th April 1992, thereby, observing as under:

"In support of contention No. 2 the learned counsel for the petitioner submitted that while sanctioning building plans, the NDMC was bound to Act in accordance with the



provisions of PM Act and building Bye-laws. Since the Government of India's decision datd 17th October, 1985 was not issued in exercise of power under any provision of the PM Act, the said decision was not binding on the NDMC and was not enforceable in law. In this connection the learned counsel also placed reliance on Supreme Court judgments in S. Pratap Singh vs State of Punjab, AIR 1964 SC 72 and C.A. Rowjee vs The State of Andhra Pradesh AIR 1964 SC 962 and Hasan Nurani Malak vs S.M. Ismail, Assistance Charity Commissioner, Nagpur, AIR 1967 SC 1742. We, however, find no merit in the submissions made by the learned counsel. In fact in terms of the Building Bye-laws applicable to NDMC read with section 14 of the Delhi Development Authority regarding land use as per Master Plan/Zonal Plan is required to be submitted by the petitioner. Further under section 41(1) of the said Act the Delhi Development Authority is bound to carry out any directions issued by the Central Government. In view of the aforesaid provisions of law, the NDMC could not sanction the building plans of the petitioner after the Government of India took the decision dated 17th October, 1985.

We are also not impressed by the argument of the learned counsel for the petitioner that the directions contained in the Government of India decision dated 17th October, 1985 are not reasonable. In fact, these directions appear to have been issued to maintain the basic character and pleasant environment of this area. Further these directions were interim in nature and were applicable only till the finalisation of the Master Plan for 2001. Here, it will be relevant to note that even under the new Master Plan, construction of multi-storeyed building is not permissible in the area which falls under Lutyen Bungalow Zone."

90. The order of dismissal categorically noted that the instrumentalities of the government as well as all those falling within the ambit of the relevant provisions of law are bound by the directions passed by the Central Government. Other than the instrumentalities, the entities



otherwise related to the subject matter upon which the Central Government may have issued guidelines shall also be bound by the terms so laid down. It was observed that the defendant had to abide by the guidelines and the ban imposed upon with respect to multi-storeyed buildings in the Lutyens Bungalow Zone.

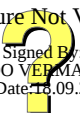
91. Against the order of dismissal, the defendant and the plaintiff both approached the Hon'ble Supreme Court, which matters were heard together as SLP no. 12908/92, which also was dismissed on 23rd November 1994. The Hon'ble Supreme Court, while upholding the Ban Order, noted as under:

“The more we have heard the respective learned counsel for the petitioners, the more have our doubts in relation to the impugned orders of the High Court receded. We have thus come to the view that the impugned orders of the High Court require no interference.

The Special Leave Petitions are accordingly dismissed. No costs.”

92. It is evident that the Hon'ble Supreme Court found no reason to interfere with the order of the High Court, hence, denoting that there was nothing in the challenge raised by the parties against the Ban Order. Upon passing of the said order, there remains no scope of indulging into the argument that the Ban Order was not made absolute. The Order was upheld by the High Court and then by the Hon'ble Supreme Court by way of the aforesaid orders.

93. It has been stated that the flat buyers concerned were sent a communication by the plaintiff Association, intimating them about the





decision of the Hon'ble Supreme Court. It cannot be said that the flat buyers did not have the knowledge that the Ban Order had been confirmed and made absolute by the Hon'ble Supreme Court. Moreover, once the Order of the Ban for construction had been passed, there is nothing which suggests that the Agreements between the defendants and the flat buyers could have been performed in the terms as laid down thereunder. The doctrine of frustration of contracts already stands settled and is no more *res integra*. Once the law bars the performance of the contract, there is nothing that may be granted in the favour of the party to enforce specific performance of the contract.

94. Therefore, regarding ISSUE II and III, there is no doubt that the Ban Order was made absolute and had remained in operation, having huge implications on the rights of the concerned parties and the nature of their contractual relationship.

ISSUE IV

95. The final consideration, which remains, is whether there is any relief which may be granted in favour of the parties.

96. The plaintiff had argued that certain amount was paid by the flat buyers towards the premium in pursuance to the Agreement entered into between the concerned parties. The defendant had vehemently opposed the submission regarding payment of premium by the flat buyers and stated that the premium was entirely made by the defendant itself.

97. There are no receipts, acknowledgements, cheque details etc. anything on record to show that the plaintiff had indeed made payments



towards premium for the Suit Property. Further, even the witness examined by the plaintiff, PW1, had made the following statement at the time of his evidence:

“I do not remember the amount but payments were made by flat allottees in accordance with the schedule to the flat buyers’ agreement. I cannot admit or deny the suggestion that each flat buyer paid 25% of the total sale value. I cannot tell as to whether I paid 25% or more of the total sale value to the defendants. It is correct that whatever payments were made by me to the defendants, the same were as per only the buyers agreement.”

98. Therefore, there is nothing which satisfies that an advance payment was made by the alleged members of the plaintiff Association to the defendant.

99. At this juncture, it pertinent to refer to order dated 7th December 2016, wherein, the issue pertaining to the refund of the amount paid in part consideration for the Agreement entered into between the defendant and the flat buyers was raised. However, the Court at that point could not come to a conclusion. It has also been stated by the learned senior counsel for the defendant, during the course of arguments before this Court, that the defendant has entered into a comprise with certain other flat buyers, who are not before this Court, however, there was no definite answer to the amount or claims made by the plaintiff and the proposal given by the defendant. Additionally, the issue also remains as to who all are actually before this Court in the instant suit. Therefore, since the flat buyers, themselves are not before this Court in proper capacity, there is nothing which may be granted in their favour.





100. ISSUE IV is, thus, decided accordingly.

CONCLUSION

101. A decision on the issues framed makes it evident that the plaintiff has not been able to show that any relief accrues in its favour. At the very outset, the plaintiff has not been able to satisfy this Court that apart from the observations on merits, this Court was also pushed to draw attention to the conduct of the plaintiff. The plaintiff, despite repeated questions being raised by this Court and the opposite party, could not produce any document to support its arguments that it is before this Court in a representative capacity for the flat buyers who had entered into Agreement with the defendant. Neither was the plaintiff able to produce the names of the members it has been claiming to be representing, nor there is a single document to show that said Association is registered. Moreover, the plaintiff could not even satisfy the rigours of Order I Rule 8 of the CPC as well, which in itself is a comprehensive provision for instituting suits in a representative capacity. Therefore, this Court reached the conclusion that there is no relief which the plaintiff is entitled to which can be granted by this Court by way of issuing a decree in its favour.

102. Furthermore, a consideration of the case of the merits also establishes that Ban Order, which had sown the seeds for the dispute between the parties, had been upheld and confirmed by the Hon'ble Supreme Court. Hence, the Order and the bar it levied was absolute and had a massive implication on the dispute in question as well as on status of Agreement entered into between the defendant and the concerned flat



buyers. Accordingly, as discussed above, the Agreement between the defendant and the concerned flat buyers also stood frustrated in light of the Ban Order.

103. Hence, in light of the aforesaid facts, circumstances, pleadings presented, contentions raised, submissions made, evidence adduced, the law laid down and settled, and the observations made in the foregoing paragraphs, this Court finds it appropriate to dismiss the instant suit since there is, *firstly*, no *locus standi* in favour of the plaintiff, *secondly*, there is no relief which otherwise also may be granted in its favour considering the merits of the case.

104. Accordingly, the instant suit stands dismissed, along with pending applications, if any.

105. The Decree Sheet may be prepared accordingly.

106. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 15, 2023
gs/ms