



W.P.No.10778 of 2024
and
W.M.P.No.11879 of 2024

P.T.ASHA, J.,

Today this matter is posted under the caption "for clarification" at the behest of the learned Advocate Commissioner, who seeks clarification on the instructions that he has received by way of an e-mail dated 09.01.2025 which reads as follows:

"2. As rightly mentioned by you, the honourable high court in its order dated 20/12/2024 has stated that the list of voters has to be finalized in accordance with the rules and bylaws of the association. Our amended bylaw section 8.2, clearly notifies that any payment liable to be paid to the association by members will cease the voting rights of the members if the dues are not cleared. This liability includes not only the maintenance amount but also any other dues owed despite proper intimation, to the Society by the respective owners. This same practice was also followed in the previous EC election held in Dec 2021



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where All outstanding dues were paid by the prospective EC members before their nomination for EC election. The list of members with overall society dues is already circulated to you, unfortunately in your notice, it is only mentioned as maintenance dues/ Subscription alone in place of overall society dues, which we feel amounts to non-compliance with the court order and the amended bylaws. Therefore we request you make the necessary corrections to your notice before we circulate to all the flat owners."

2. It is brought to the notice of this Court that a Circular dated 16.10.2022 which has been forwarded to the Plot owners would indicate that the plot owners are proposing to install a second lift. The text of the circular would read as follows:

"The required contribution amount for a flat has been fixed as Rs.50000 and is a part-payment of the Rs.1.2 lakhs required from each owner to complete the entire pending work in common areas. This amount can be paid in installments with a minimum payment



of Rs. 20000 per time. Please note this demanded amount will not attract late-fee or penalty or interest. Since installation of a 2nd lift is a block-oriented development activity, the EC has decided to proceed with the purchase and installation of a second lift to that block that contributes the required amount, and that particular block will not be made to wait until all the others give their contribution. The same procedure will be followed by every other block. Please don't mistake that the EC is trying to create a rift among the NK owners."

3. This circular is followed by another WhatsApp message dated 18.06.2023, which reads as follows:

"We are EC completely understand the dire necessity for the second lift.

Unfortunately as informed by us (EC) earlier, KNKOA cannot execute this under its banner due to the legal complications of taking up capital works with a maintenance association. Besides the vested interests will stall any effort by



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us by giving notices, complaints etc.

In this context, if NABA members / interested owners who are staying in Each Block can form a small committee and start collecting money by forming a special purpose vehicle. I guess we can go forward.

.We need volunteers from Each Block.

EC will support from behind definitely."

4. Section 8(ii) of the Bye-Law has been amended as follows:-

4	Section 8(ii)	Subscription / Donation and Entrance Fees: Section 8(ii) If any membership is in arrears of the subscription for more than three months, shall automatically cease to be a member of the Association	Subscription /Donation and Entrance Fees: Section 8(ii) Any member having arrears in any payment to the Association for more than three months, shall automatically cease their voting rights and other privileges but their rights will be restored on payment of arrears including late fee or fine, if in practice	Section 8(ii) be replaced as alongside
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5. From a reading of Section 8(ii), it is clear that the amount claimed towards lift charges cannot be termed as arrears in payment to the



association. The payment itself appears to be optional. Further the demand is only with respect to the payment for the second lift. Therefore, for the purpose of the election, the non-payment for the charges for installation of the second lift shall not be considered as arrears. It is once again reiterated that voting will be physical and no on-line voting will be permitted.

23.01.2025

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