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W.P.No.33865 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.33865 of 2022
and W.M.P. Nos.31104, 33347 & 33348 of 2022

Sholinganallur Phase-II
TNHB 1500 MSB Flat Owners Welfare Association
Rep. by its Treasurer
U.Karthic
Residing at MIG 9/54, TNHB 1500, MSB Flats, Phase-II
Sholinganallur, Chennai - 600 119

.. Petitioner

Vs

1.The District Registrar of Societies (Admin)
Chennai South
Integrated Commercial Taxes building
and Registration Department
Fanepet Nandanam, Chennai - 600 035

2.The Inspector General of Registration
No.100, Santhome High Road
Chennai - 600 028

3.TNHB Unity Flat Owners Association-Sholinganallur
Represented by its Secretary Jayakumar.K
Residing at LIG 2/13 TNHB 1500 MSB Flats, Phase-II
Sholinganallur, Chennai - 600 119

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for



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a Writ of Certiorarified Mandamus to call for the records of the Letter No.Ka.No.12750/11/2022 dated 07.10.2022 and the same hand delivered on 14.11.2022 on file of 2nd respondent and quash the same and directing the 1st and 2nd respondent to restrain the functioning of the 3rd respondent's association registered on the date of 22.11.2022 Regd.No.SRG/Chennai South/572/2022 till the disposal of the writ petition.

For Petitioner : Mr.D.Gentley Rathnaraj

For Respondents : Mr.Stalin Abhimanyu
Addl. Govt. Pleader for R1 and R2
Mr.T.N.Rajagopalan for R3

ORDER

This writ petition has been filed by Sholinganallur Phase-II TNHB 1500 MSB Flat Owners Welfare Association.

2. Heard Mr.D.Gentley Rathnaraj, learned counsel for the petitioner, Mr.Stalin Abhimanyu, learned Additional Government Pleader for respondents 1 and 2 and Mr.T.N.Rajagopalan, learned counsel for the third respondent.

3. Counter affidavits have been filed by the first respondent, namely the District Registrar of Societies (Admin) as well as the third respondent, namely



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TNHB Unity Flat Owners Association-Sholingallur. Serious objections are raised on the maintainability of the writ petition itself.

4. The first objection is that the writ petition has been instituted by the Treasurer on behalf of petitioner association. My attention is drawn to the provisions of Section 20 of the Tamil Nadu Societies Registration Act, 1975 (Act) which states that a society may institute legal proceedings or defend such proceedings through a committee or any officer of the registered society authorised in this behalf by its by-laws. R3 has extracted in its counter the by-laws of the petitioner society, which states that the Association shall sue or be sued in the name of the President of the petitioner association.

5. Since the present petition is stated to have been executed by the treasurer, the first respondent contends that the same is not maintainable. Though a valid point, it would have little impact overall as it is a defect that could be cured immediately. I would thus prefer not to reject this writ petition on this score. There are far more valid concerns that have been raised.

6. The second objection raised is that the petitioner association is not a validly constituted society in terms of Section 3(2) of the Act. This contention



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appeals. Chapter II of the Act deals with constitution and registration of the societies. Particularly, Section 3 therein deals with societies which may be registered. Section 3(2) states that among other societies which are specified, no society, which does not consist of at least 7 persons shall be registered under this Act.

7. Learned counsel for the third respondent has circulated a copy of the draft sale agreement wherein clause 8 thereof provides for the constitution of an association by the allottees of the scheme. The word 'persons' in Section 3(2) of the Act would imply, in this context, the allottees alone. In the present case. Learned counsel for the petitioner admits that out of the seven persons comprising the petitioner society, four persons are not allottees at all, but only 'legal heirs' of the allottees.

8. According to him, those 4 persons belong to the family of the allottees. The admitted position is thus, to the effect that the constitution of the society is not as per the provisions of the Act. This, in my considered view, would be fatal to the maintainability of the writ petition itself and the petitioner cannot project itself as an owners welfare association. This goes to the root of the registration



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itself thereby supporting the impugned order.

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9. Various submissions have been made to assail the registration of the third respondent association itself. However these submissions would not require to be adverted to, for the reason that such registration, is not under challenge. Suffice it to state if at all any resident in apartments in question has a grievance as against R3 association, it is open to them to bring it to the notice of the first respondent, to be decided, in accordance with law.

10. With the above observation, the writ petition is dismissed. No costs. Consequently, the connected MPs are closed.

03.07.2024

Index : No
Neutral Citation : Yes
Asr

Dr.ANITA SUMANTH,J.,

Asr



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