



2024:DHC:10151



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

% ***Date of decision: 4th December, 2024***

+ **C.R.P. 364/2024 & CM APPL. 70647-48-49/2024**

THE AMBA DEEP FLAT OWNERS WELFARE SOCIETY

.....Petitioner

Through: Mr. Aditya Wadhwa, Mr. Raunaq
Bali, Mr. Arunav Sarma, Advocate
for the Petitioner

Versus

1. **AJAY GARG**
S/O LATE SH. R.S. GARG
OFF: FLAT NO. 408, AMBADEEP BUILDING,
14, K.G. MARG, NEW DELHI – 110001Respondent No.1.

2. **K.K.R. DAS**
S/O LATE SH. V.K. PILLAI
OFF: FLAT NO. 402, AMBADEEP BUILDING,
14, K.G. MARG, NEW DELHI – 110001 & ORS.
.....Respondent No.2.

3. **VNN FACILITIES**
HROUGH ITS PARTNERS
SITE OFF: AMBADEEP BUILDING,
14, K.G. MARG, NEW DELHI – 110001.....Respondent No.3.
Through: Mr. Ajay Garg & Mr. Uday Garg,
Advocates for Respondent No.1

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Revision Petition under *Section 115* of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed against the Order dated



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01.08.2024 *vide* which Petitioner's Application under Order VII Rule 11 CPC seeking rejection of the plaint preferred by the Respondents/Plaintiffs, was dismissed.

2. The Respondents/Plaintiffs Ajay Garg and K.K.R. Das, filed a *Suit for Declaration And Permanent Injunction* seeking a *Declaration* that the Petitioner is not the Association of Apartment Owners of Amba Deep, K.G. Marg, New Delhi and that this Society has no right to administer the affairs of the Amba Deep Apartments or to make any demands or enhance the common service Charges or to restrain the Residents from carrying out modifications, renovations in their Apartments in the Building and also for permanently restraining the Petitioners from demanding the charges mentioned in the impugned Invoices dated 15.05.2020, 01.08.2021, 01.01.2021, 01.04.2021 and 01.07.2021 etc. with enhanced rates issued by the society and renovation/modification charges as demanded in letter dated 21.09.2020.

3. The Revisionists herein, filed an Application under Order VII Rule 11 CPC for rejection of the Suit on the *ground of limitation, that no cause of action was disclosed in the plaint; and that the Defendant, Amba Deep Flat Owners Welfare Society was a duly registered Society having a right to seek enhanced Maintenance Charges, as per its Memorandum of Association.*

4. The learned District Judge dismissed the Application under Order VII Rule 11 CPC by observing that the right to challenge the Constitution of the Defendants/Ambadeep Flat Owners Welfare Society, is a continuing cause of action and is *not barred by limitation*. The Residents have questioned the Right of the defendant Society to claim enhanced Maintenance Charges and



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it cannot be held that Plaintiff does *not disclose any cause of action*. Further, various issues in regard to Constitution of the Society was raised on the ground that they are in contravention of the *Delhi Apartment Ownership Act, 1986* ('Apartment Ownership Act' *hereinafter*). The Application under Order VII Rule 11 was consequently, dismissed.

5. The impugned Order has been challenged on behalf of the Revisionists/Defendant on the ground that the *Suit is barred by limitation* under Article 50 to the Schedule of *Limitation Act, 1963*. The Declarations could have been sought within three years from the date of the accrual of the cause of action; however, in the present case it has been erroneously observed that there is a recurring cause of action in favour of the Plaintiff Respondent. The continuing wrong means that a wrongful act has been done which is resulting in continuing injury recurring/successive wrongs and each wrong gives rise to a distinct and separate cause of action. Reliance has been placed on Union Of India & Anr vs Tarsem Singh, 2008 (8) SCC 648 to argue that there is no continuing cause of action giving a fresh period of limitation from every date.

6. It is contended that the Defendant Society got elected way back in 2017 while the present Revision has been filed in the year 2021, which is way beyond the period of three years and is *therefore, barred by limitation*.

7. It is further asserted that the averments made in the plaint are vague, ambiguous and do not specify or substantiate the allegations made in the plaint. It is asserted that the cause of action means that every fact necessary to constitute a cause of action must be specified in the plaint, as has been explained by the Apex Court in M/S. Kusum Ingots & Alloys Ltd vs Union



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Of India And Anr, 2004(6) SCC 254.

8. Further reliance has been placed on Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra) & Ors, 2020 (7) SCC 366 wherein it was observed that a meaningful and not formal reading of the plaint must be done to ascertain if it is manifestly vexatious and meritless in the sense of not disclosing any clear right to sue. Similar observations have been made in ITC vs Debt Recovery Appellate Tribunal, (1998) 2 SCC 70 and Madan Uri Sri Ramchandra Murti vs Syed Jalal AIR 2017 SC 2653.

9. It is submitted that the Revisionist Society was duly registered under the *Society's Registration Act, 1860* and was issued Certificate of Registration by the Registrar of Societies on 16.02.2017. Though the Plaintiff had claimed that the Society had been constituted in contravention of *Delhi Apartment Ownership Act, 1986*, but has failed to specify which statutory provision or Rule or Regulation has been violated. *The plea in this aspect is absolutely vague and baseless and thereby disclose no cause of action.*

10. It is further submitted that *Respondent No.1-Ajay Garg* (Plaintiff No.1) was an Executive member of the Revisionist Society and had participated in the Executive Committee Meetings on 17.02.2017 and 06.03.2017. It clearly shows that by way of clever drafting, a cause of action is sought to be alleged when in fact, none exists. Reference has been made to Maria Margadia Sequeria Fernandes & Ors. vs Erasmo Jack De Sequeria, 2012 (5) SCC 370 wherein the Supreme Court observed that where the pleadings are vague and do not contain sufficient details, the Plaint is liable to be rejected for want of cause of action. Similar



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observations have been made in Sagar Gambhir vs Sukhdev Singh Gambhir, 2017 SCC OnLine Del 7305.

11. The Revisionists/Defendants have further contended that it is the sole Association of the Flat owners of Amba Deep Building and has the requisite authority to administer its affairs and undertake its repair, maintenance and renovation etc. Section 15 of the *Apartment Ownership Act* provides for Association of Apartment Owners and Byelaws relating thereto.

12. In the case of O.S. Bajpai vs The Administrator (Lt. Governor Of Delhi) & Ors. 2010 SCC Online Delhi 2125, the importance of Section 15 was highlighted and it was observed that an Association of Apartment Owners for the administration of affairs in relation to the Apartments and the property thereto and for its management, must be set up. The Society which has been duly elected, has the authority to raise the charges for common services and other miscellaneous works which are revised from time to time as the need arises.

13. It is explained that The Memorandum of Association/Byelaws of the Petitioner Society more particularly Clause 21(i) and Clause 34, expressly provide that the Revisionist shall be responsible for maintenance and upkeep of Ambadeep Building and for that purpose, the Flat owners are obligated to bear the common expenses as determined by the Society. There is no legal basis to challenge the decisions of the Executive Committee of the Society.

14. In the end, it is submitted that the Court should ordinarily not interfere in the internal management of Association of Society, as has been observed by this Court in the case of Ashok Kumar & Anr. Vs SBI Officers Association & Anr., 2013 SCC OnLine Del 1631.



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15. It is, therefore, submitted that the impugned Order be set aside and the Suit be rejected.

16. *Learned counsel on behalf of the Respondents*, however, has vehemently contended that as per the Delhi Apartment Owners Act, 1986 owner of each flat *ipso facto* becomes a member of the Association. However, the Revisionist Society which has been constituted in contravention of the Act, 1986 limits the rights of the flat owners to acquire the ownership. Moreover, as per the Apartments Act, only Rs.1 per member has to be charged for becoming the member, but the Revisionist/Society is claiming Rs.5000/- per month. It is argued that this is an illegally constituted Association which is not in tandem with the Delhi Owners Apartments Act. It is therefore, submitted that the Respondents who are the owners of the Apartments in the Ambadeep Building, not only have a *locus standi* but also a cause of action to challenge the illegal acts including undue enhancement of the maintenance charges, of the Association.

17. *In the end*, it is asserted that the Learned District Judge has rightly dismissed the Application and the present Revision has no merit.

18. Submissions Heard.

19. The *Delhi Apartment Ownership Act, 1986* was enacted by the legislature for providing ownership to the individuals in a Multistorey Building; to give them undivided interest in the common areas and facilities appurtenant to such flat, and also to make the interest heritable and transferable. The purpose which was sought to be achieved by this enactment is elaborately stipulated in Objects and Reasons to the *Delhi Apartment Ownership Act, 1986* which recorded that because of the scarcity



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of land in Delhi on account of rapid urbanization, has led to vertical growth of buildings. Therefore, the legislature by enactment of this Act proposed to meet the persistent demand for statutory recognition of an Apartment or a Unit of property capable of transfer and statutory recognition. Consequently, this Act was enacted which not only recognizes the ownership in the exclusive Units along with proportionate ownership and right and undivided interest in the common areas and the facilities, but also made the Apartments heritable and transferable.

20. Furthermore, in the case of Ashok Kumar & Anr. (Supra), it had been observed that where a person becomes a Member and subjects himself to the byelaws of the Society, then he enters into the contract and his rights are merged into the rights of the Society as a whole and he is subjected to the byelaws of the Association. He has a right to remain in the Society or continue to be part of it; is governed by the Byelaws and any grievance therein is subject to the Byelaws of the Association and any challenge to the acts, has to be made within the purview of the Byelaws.

21. In this backdrop, the *facts as narrated in the plaint*, may be considered. The Builder/Promoter *M/s Ansal Properties & Industries Ltd.* at 115 Ansal Bhawan, 16 K.G. Marg, New Delhi, entered into an Agreement with the owners of the property i.e. *M/s B.S. Sons, Katra Tobacco, Delhi-110006* a registered Partnership Firm through its Partner *Sh. Bhawani Shankar*, to develop the entire property being plot of land ad-measuring 1.32 acres, being Plot No.57 in Block No.148, commonly known as 14, Kasturba Gandhi Marg, New Delhi. As per the collaboration, the builder *M/s Ansal Properties and Industries Ltd.* built the entire multi-storied Building



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consisting of office spaces of the property which is called ‘Amba Deep’ and retained 20% rights to sell and allot office spaces situated therein with itself and 80% with Mr. Bhawani Shankar. The Plaintiff purchased Flat No.408 in Ambadeep Building in 2014.

22. After the completion of Amba Deep Building, *M/s Ansal Properties & Industries Ltd.* or its nominees like Star Facilities Management Ltd. were taking care of the entire maintenance, upkeep and preservation of the building, operation of common services and management of common areas. An Agency “*Pro-Facilities Services Pvt. Ltd.*” (known as ‘*Pro Fac*’) took over the maintenance and raised quarterly Invoices for maintenance and common services of Flat owners, at the given rate.

23. Subsequently, in 2017 *Pro Fac* informed the plaintiffs and the other Flat owners about the formation of “*Amba Deep Flat Owners Welfare Society*”/*Respondent No.1* and its registration with Registrar of Societies, Govt. of NCT of Delhi.

24. The first Executive Committee of the Society (without any elections) was constituted by the family of Mr. Bhawani Shankar and necessary formalities were completed in this regard. Plaintiff No.1 Sh. Ajay Garg was included as a member of the Executive Committee. The owners of the Flats were requested to deposit the payment of the Bills and Invoices towards maintenance and common service charges in the Bank Account of the Association instead, of *Pro Fac*.

25. The averments made in the Plaint reflect that a Multi-Storey Building was constructed by the name of Amba Deep and wherein residential Flats were constructed by *M/s Ansal Properties & Industries Ltd* and initially the



maintenance and commons services of the Ambadeep Building was being taken care of by the Builder through its nominee *Pro Fac*. As and when the Flats got sold over a period of time and the possession of the Flats were handed over to the owners/allottees.

26. Section 15 of *The Delhi Apartment Ownership Act, 1986* ('Act, 1986' *hereinafter*) which provided as under :

15. Association of Apartment Owners and bye-laws relating thereto.—

(1) There shall be an Association of Apartment Owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities:

Provided that where any area has been demarcated for the construction of multi-storeyed buildings, whether such area is called a block or pocket or by any other name, there shall be a single Association of Apartment Owners in such demarcated area. (2) The Administrator may, by notification in the Official Gazette, frame model bye-laws in accordance with which the property referred to in sub-section (1) shall be administered by the Association of Apartment Owners and every such Association shall, at its first meeting, make its bye-laws in accordance with the model bye-laws so framed, and in making its bye-laws the Association of Apartment Owners shall not make any departure from, variation of, addition to, or omission from, the model bye-laws aforesaid except with the prior approval of the Administrator and no such approval shall be given if, in the opinion of the Administrator, such departure, variation, addition or omission will have the effect of altering the basic structure of the model bye-laws framed by him.

(3) The model bye-laws framed under sub-section (2) shall provide for the following, among other matters, namely:—

[...]

(m) maintenance, repair and replacement of the common areas and facilities and payment therefore;

(n) manner of collecting from the apartment owners or any other occupant of apartments, share of the common expenses;

27. Section 15 thus, provides that for the purpose of administration of the affairs in relation to the Apartments and the properties pertaining thereto and for management of common areas and facilities, an Association of Apartment owners shall be constituted. The Association in the name of "*Amba Deep Flat Owners Welfare Society*"/Respondent No.1, consequently



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got created in the year 2017, in terms of Section 15 of the *Delhi Apartment Ownership Act, 1986*. It got registered under the *Societies Registration Act, 1860* for which Certificate of Registration dated 16.02.2017 was issued. The Plaintiff Ajay Garg was the Member Executive in the Society.

28. The *first grievance* of the Plaintiff is a challenge to the constitutionality of *Amba Deep Flat Owner's Welfare Society* on the ground that as per Section 3 of the *Delhi Apartment Ownership Act, 1986*, all the owners of the Apartments in the building *ipso facto* become the members of the Society. However, the Plaintiff has asserted that out of 496 units who are eligible to be the members, the strength of the Society is 365 members; thereby the provisions of the Memorandum of Society is in violation of the provisions of the *Act, 1986*.

29. However, in this context it may be pertinent to refer to the Memorandum of Association, wherein the *Aim and Objective of the Society* states the following:

“AIMS AND OBJECTIVES

[...]

4. To provide for and do all and any of the matters regarding –

iv) Maintenance, repair and replacement of the common areas and facilities and payments thereof.

8. To do all things necessary or otherwise provide for their welfare expedient for the attainment of the objects specified in these bye-laws.”

30. *Article 3 of Memorandum of Articles of the Society* deals with the Membership and reads as under:



“Article 3. Definitions

1. “Society” means the Society of all apartment owners ‘constituted by such owners of the “Society” AMBA DEEP Building, 14 Kasturba Gandhi Marg, New Delhi 10001.

[...]

6. “Owners” or “apartment Owner” means the person owning the apartment or by his/her kids and kins including spouse in the “SOCIETY” condominium.

[...]

9. MEMBERSHIP PROCEDURE:

In case of a person seeking membership in this “SOCIETY” is not a recorded owner of the unit, he/she will be required to furnish any of the following documents;-

- (I) General Power of Attorney (GPA) from the recorded owner,*
- (II) Special Power of Attorney (SPA) form the recorded owner.*
- (III) Letter of Authority from the recorded owner.”*

31. It states that all persons who have purchased or hold Apartment or would be owners in due course, shall automatically be the members of Society and would pay one time entrance fee of Rs.1,000/- and fixed interest free deposit of Rs.1,000/- with the Society, for the maintenance of common facilities of the building. Upon subsequent sale, bequest or transfer of Apartment, the purchase of the Apartment or the grantee or legatee or the transferee shall automatically become the member of the Society and shall be admitted as member on payment of the entrance fee of Rs.1,000/-. It is therefore, evident that these provisions admitting the entire Apartment owner’s as the member of the Society, is in consonance with the *Act, 1986*.

32. Pertinently, *Article 3(9)* of the Memorandum of Association of the Society further provides for *membership procedure* which states that in case of a person seeking membership of the Society who is not the recorded owner of the unit, he shall be required to furnish the General Power of Attorney, Special Power of Attorney and a Letter of Authority from the recorded owner for becoming a Member. Though there are 365 members



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out of 496 owners of the Units, who have become the member of the Society, but it is evident that the others have an option to become the member on completion of the prescribed formalities. The Memorandum of Association provides for Membership of all the members, in consonance with the *Act, 1986*.

33. The Plaintiff had further asserted that as per the *Act, 1986*, Rs.1/- is payable by each Member at the time he is inducted as the Member of the Association. However, the Defendant No.1 Society according to its Memorandum, had been charging Rs.1,000/- per Unit which has been enhanced to Rs.5,000/-.

34. It is pertinent to mention here that the Rules annexed to Apartment's Act, are the model Rules on the basis of which each Apartment Association/society is to frame its own bye-laws. The Model Rules are only recommendatory; merely because the Entrance Fee has been fixed at an enhanced rate than what has been suggested in the Act, would not make the constitution of the Society violative of the *Delhi Apartment Ownership Act, 1986*.

35. The constitution of the Defendant No.1 Society even as per the averments made by the Plaintiff, is in consonance with the *Act, 1986* and the Plaintiff has not been able to explain in his Plea as to how Defendant No.1 Society has violated provisions of the *Delhi Apartment Ownership Act, 1986*. The Plaintiff has not been able to establish any of the grounds to *Declare* the constitution and the functioning of Defendant No.1 as not in accordance with the *Act, 1986*.

36. The ***second grievance*** which has been raised by the Plaintiff in their



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Plaint, is that Mr. Bhawani Shankar constituted the Executive Committee without holding any elections and Mr. Ajay Garg/Plaintiff No.1 was invited as the Member Executive. He was invited for the Executive Meeting on 20.12.2017 but thereafter, he was never invited for any meeting, if held thereafter at all.

37. The primary grievance therefore, from the averments made in the Plaint is that he has a grievance of the elections not having been held. *Article 28 of Memorandum of Association* provides that the elections of the Office Bearer's of the Society shall be held annually, by the General Body. The Memorandum of Society, therefore, provides for the annual elections. If the plaintiffs have a grievance that the Elections are not being held, then the appropriate recourse is to seek Elections by following the procedure detailed in the Memorandum of Association of the Society and not to challenge the decisions of the Society, in this manner by filing the present Suit for Declaration.

38. The **third main grievance** raised by the Plaintiffs is about the lack of proper functioning of the Society. It is asserted that the Charges for common areas are being increased arbitrarily; that the inspection of the records of the Society is not being permitted and that the access to the parking in the first basement, has been unjustifiably blocked causing great inconvenience to the Plaintiffs.

39. All these grievance of the Plaintiffs, do not strike at the root of the constitution of the Society itself nor are the grounds to claim the Society is functioning in violation of the Apartment's Act. In case the Plaintiff has any grievance about the elections not being held or about the Society not



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functioning properly, then as per Article 15 of Memorandum of Association which provides for *Special Meetings* which can be called by the President, by Resolution of the Executive Committee or may be called by a Petition signed by majority of the owners which shall be presented to the Secretary.

40. It is pertinent to observe that Society got formed in 2017 and the Plaintiff- Ajay Garg was nominated as the Member Executive and even attended two Meetings. He never questioned the Constitution of the Association since then till filing of this Suit in 23.09.2021. He even abided by the decisions of the Association and had no objection to payment of the Maintenance Charges till they got enhanced, much to his displeasure and became the reason to challenge the Constitution of the Association itself.

41. Therefore, if the plaintiff has any grievance about the excessive enhancement of the charges for the common facilities or in regard to any of the other functions being discharged by the Society or that the elections must be held, then the appropriate remedy with the Plaintiff is to seek a Special or a General Body Meeting and to question the actions taken by the Society which may be put to House, to be altered or confirmed by the majority members.

42. None of the averments made in the Complaint disclose any cause of action since it is not shown that the Constitution of the Society is in violation of the *Act, 1986*. In case of any dissatisfaction in regard to the functioning of the Society, the appropriate remedy is by way of calling a General or a Special Body Meeting and to seek the elections or to question the decisions taken by the Executive Committee Meeting.

43. From the aforesaid discussion it is evident that no cause of action has



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been disclosed by the Plaintiff in his Suit. The learned District Judge fell in error in holding that there was a cause of action disclosed in the Plaint. Once, there is no cause of action, the other issue about the Declaration being barred by the limitation, becomes otiose.

44. It is, therefore, concluded that the Plaint does not disclose any cause of action. The impugned Order is set aside and the Plaint is rejected.

45. The Revision Petition is allowed and is disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 4, 2024/r/rk/va

Signature Not Verified

Digitally Signed By: NIKAS
ARORA

Signing Date: 07.01.2025
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