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W.P.No.25879 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2025

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.25879 of 2025

&

W.M.P.Nos.29100, 29101, 50425 and 53361 of 2025

M/s.Aqualily Home Owner's Association
Main Club House, Aqualily
Plot No.33, 5th Avenue, Mahindra World City
Mahindra World City Sub-Post Office
Chengalpattu Taluk
Kancheepuram Distrit – 603 004
Rep. By its Secretary
Mr.Muthukumar Sunderesan

..Petitioner

Vs.

1. District Registrar (Administration)
District Registrar Office
Chengalpattu

2. Mrs. Kanagarathinam
EC Members – Phase -I
Villa-49, Mahindra World City
Chengalpattu District – 603 004

... Respondents

Writ Petition filed under Article 226 of Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to th letter dated 19.06.2025 bearing reference R.C.No.3159/E1/2025 issued by the first respondent and quash the same as illegal and consequently direct the first respondent to take on record the Form A dated 29.04.2025 filed by the petitioner and process the same in accordance with law.



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For Petitioners

... Mr.Krishna Srinivasan
Senior counsel
Assisted by
Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramanian Associates

For Respondents

... Mr.U.Baranidharan
Special Government Pleader for R1

Mr.Sricharan Rangarajan
Senior counsel
Assisted by Mr.S.Aravindan
of M/s.Fox Mandal Associates

ORDER

The present writ petition has been filed to quash the order of the first respondent dated 29.04.2025 returning the declaration filed by the petitioner in Form A and consequently direct the first respondent to take Form A on file and process the same in accordance with law.

2. The brief facts of the case is as follows:

2.1 The Mahindra World City Developers Ltd., had developed a project in the name of “Aqualily” in multiple stages and upon completion of each stage, the same given on perpetual lease to various individuals by executing lease deed between various individuals and the Developer. The project Aqualily consists of Villas, Twin Homes and Apartments. There is a clause in the lease deed to the effect that lessees shall be entitled to use all



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common infrastructure and utilities of the project. In the lease deed, the term

“Common Land” has been defined as *“the land comprising of roads, footpaths, open spaces, garden landscapes, club house including swimming pool or any facilities, internal roads, water tanks, supply networks and reservoirs, sewer networks and sewerage treatment plants, storm water drainage, electric poles etc., all the said property except specially leased to the lessees of Premium Villa, Deluxe Villa, Twin Homes and the buildings / apartments”*.

2.2. The petitioner Society was registered under the Tamil Nadu Societies Registration Act, 1975 on 09.10.2017 in the name of “Aqualily Home Owners Association”. The society was established with the consent of the Developer and the perpetual lease holders of all the houses in the project “Aqualily” viz., 151 Villas and 422 apartments and they have become the members of the Soccity. It is also stated in the bye-laws of the petitioner society that perpetual lease holders of all future units that would be constructed by the Developer in the project “Aqualily” would become members of the petitioner. The petitioner executed a “Aqualily Common Area Maintenance Agreements” on 20.06.2018 and 30.11.2020 with the developer whereby the common areas and facilities of the project “Aqualily” was handed over to the petitioner by the Developer.

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2.3. In the next stage, 196 apartments were constructed and leased to individuals in the year 2020 and these members were also became members of the petitioner association. The maintenance of the apartment buildings of these units were handed over to the petitioner by the developer vide Agreement dated 30.11.2020 and the developer is presently in the process of offering another 84 apartments on perpetual lease to individuals who are also required to become members of the petitioner Society and on completion of the project, the Developer is expected to handover those apartment buildings also to the petitioner for maintenance and once it is handed over, the project Aqualily would be comprising of 702 apartments and 151 villas together with common areas and facilities. It is stated that only for the purpose of convenience, 151 villas were referred to as “Phase 1” and 702 apartments were referred to as “Phase 2” and the petitioner has been collecting maintenance charges from all its members and maintaining the common area and facilities of the project for the past seven years. According to the petitioner, after the enactment of the Tamil Nadu Apartment Ownership Act, 2022 [in short “the Act”] and the Rules framed thereunder viz., the Tamil Nadu Apartment Ownership Rules, 2024 [in short “the said Rules”], on 29.04.2025, the petitioner submitted the Declaration vide Form A before the first respondent. A group of individuals in the name of Aqualily Phase 1

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Villa Owners Association represented by the second respondent, who alleges to be EC member of Phase 1, has also submitted the Declaration under Form A in respect of Phase 1 (151 Villas) to the first respondent on 12.05.2025. Therefore, it is the contention of the writ petitioner that such individuals are seeking to obtain preferential undivided share of the lands in their favour as part of their illegal and misguided cause to usurp the common areas and facilities which are available to all the members. It is submitted that the first respondent without providing an opportunity of personal hearing to the petitioner, vide its letter dated 19.06.2025 refused to accept and taken on file Form A submitted by the petitioner stating that the same is contrary to Rule 3 of said Rules and owners of Phase 1 and Phase 2 are required to file separate declarations with the approval of majority of its members. The said order is challenged in the present writ petition mainly on the ground that since the petitioner society has been registered prior to the enactment of the Act, there can be only one association for the entire project “Aqualily” and there cannot be any separate association for the Villa owners.

3. The respondents have filed their counter affidavits.



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4. It is the contention of the first respondent in the counter affidavit that admittedly there was a project developed by Mahindra World City Developers Ltd., in the name of “Aqualily” consisting of two phases, wherein under Phase -1, Villas were constructed and then under Phase 2, Apartments with several individual flats were constructed. It is submitted that in the same layout approval, an extent of land measuring 16.80 acres has been shown as independent site for future development and in the year 2012 necessary permissions were obtained by the developer for putting up a High-Rise Apartment over the said 16.80 acres. According to first respondent, two separate approvals were obtained by the developer for construction of Villas and for construction of High-Rise apartments and now the Villa owners claim that they have absolute title to the plot and the independent house sold to them and they do not have any undivided share in the land measuring 16.80 acres wherein the High rise Apartments were constructed and similarly the Apartment owners do not have any share in the land where the Villas have been developed and they derive their undivided share only in 16.80 acres wherein High Rise Apartment was constructed and therefore, according to first respondent, Villa owners and High Rise Apartment owners derive their title to the land in their respective and distinctive portion without any overlap between the two phases. It is also stated that the developer has

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provided some amenities such as Main Club House, Shops, Utility Rooms etc., to be commonly used by the Villa owners and apartment owners and apart from the above said common amenities, the Villa Owners and the Apartment Owners do not share anything in common. Prior to the enactment of the Act, the Developer seems to have formed a Society known as “Aqualily Home Owners Association” for Villa owners and Apartment Owners for the purpose of maintaining the common amenities in the said project. The petitioner as well as the second respondent Association presented a declaration in Form A before the District Registrar, the same were received on 19.06.2025 and the first respondent instructed the petitioner to submit the declaration form separately for Phase 1 and Phase 2 and hence, it is his contention that declaration has to be given as per Section 4 of the Tamil Nadu Apartment Ownership Act, 2022.

5. The second respondent contention in the counter affidavit is that the writ petition is not maintainable since there is an appeal remedy provided under the Act. According to the second respondent, the Villa owners are having absolute title to the plot sold to them under the said approved layout and the houses are separately constructed after obtaining independent building plan sanction for each house and Villa owners do not own any undivided share of the land in 16.80 acres forming part of High-rise

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apartment project in Phase 2. Though Villa development and High rise Apartment development are two independently approved projects having distinct site areas, the developer has provided certain amenities and infrastructure such as main club house, shops, utility rooms etc., to be used commonly by owners of Villas and Apartments and this common area is to be utilized by Villa Owners and Apartment Owners in common as common area. In this regard, the developer has sent an e-mail dated 14.04.2025. The petitioner Association was formed prior to Tamil Nadu Ownership Rules, 2024 and only for the sake of convenience the developer had formed a single society and now as per the Act, filing declaration is mandatory and for each phase there can be separate Association. Hence seeks for dismissal of writ petition.

6. Mr.Krishna Srinivasan, learned Senior counsel appearing for the petitioner would mainly contend that the petitioner's Association has been registered under the Tamil Nadu Societies Registration, 1975 in respect of 702 apartments and 151 villas constructed by the developer, in the name of “Aqualily Home Owners Association” and as per sub-clause (iii) of sub-Section 3 of Section 16 of the Tamil Nadu Societies Registration Act, a declaration to the effect that the society has been carrying on business or has

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been in operation during the financial year should be filed with the Registrar.

It is the contention of the second respondent that when the petitioner filed Form A under existing Society, the same has been refused on the ground that a separate Association has to be formed and after getting the concurrence from the majority of the members such form can be filed. It is the contention of the learned counsel that the Tamil Nadu Apartment Ownership Act will not apply to the petitioner's society and as per Section 7 of the Act, formation of Association is not necessary in respect of the buildings which is already in existence on the date of commencement of the Act. It is further submitted that when there is a single Association already in existence, such Association alone shall be deemed to be Association of the building under the Act. Therefore, it is his contention that the first respondent has no right to insist to form a new Association for the Villa owners as per the Tamil Nadu Apartment Ownership Rules. Since the petitioner association is a registered Association and they are maintaining the common area, there need not be separate associations. It is contended by the learned Senior counsel that Villa owners and apartment owners have a common utility and therefore, there is no necessity to form a separate association and a single Association would be enough to maintain the common utility.

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7. The learned Senior counsel for second respondent would submit that Villa owners will have absolute right over the land in which the building has been constructed. Though separate common areas have been earmarked for the Villas, the fact remains that some extent of common area has also been earmarked for both Villas and Apartments. The learned Senior counsel submitted that though there are common areas for villas and apartments, since the Villas have been constructed in separate phase, the villa owners have become permanent lessees in respect of the land unlike undivided interest in respect of the apartments and Villa Owners have a right to form an Association as mandated under the Act and the formation of the separate association by the Villa owners will not affect the utility of the common area. Learned Senior counsel further submitted that to maintain such common area for both Villas and Apartments, a federation as contemplated under the Act could be formed by both the Associations. The learned senior counsel also submitted that District Register, having returned Form A filed by the writ petitioner, also rejected Form A filed by the second respondent. Therefore, it is his contention that the writ petition is not maintainable.



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8. I have considered the rival submissions and also perused the materials available on record.

9. The present writ petition has been filed against the order returning Form A filed by the petitioner. Acceptance or return of the form is normally nothing but a ministerial act. However, it is relevant to note that when such powers have been exercised arbitrarily without even an enquiry and returning the Form A filed by one Association stating that the same is contrary to Rule 3 of said Rules and that separate declarations have to be filed for Phase 1 and Phase 2 with the approval of the majority of the members and later rejecting the form A filed by the second respondent also clearly indicate that the first respondent returned Form A submitted by the petitioner arbitrarily. Though a Hon'ble Division Bench of this Court vide order dated 20.12.2007 in ***R.Muralidaran and Ors. Vs.The District Registrar and another*** [W.A.No.1333 of 2007] has held that mere accepting or rejecting Form A is a ministerial Act and no writ would lie in respect of the ministerial functions, it was also held by the Division Bench that when the act of the Registrar in rejecting or accepting form is arbitrary, such act is also amenable to be challenged in a writ petition. In the case on hand, Form A submitted by the writ petitioner association as well as the second

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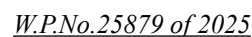


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respondent were rejected right away and hence, the act of the District Registrar is arbitrary in nature and therefore, this writ petition is maintainable.

10. The main grievance of the parties is with regard to usage of common area. The developer known as Mahendra World City Developers has developed the project known as “Aqualily” comprising of Villas, Apartments, Twin Homes etc.,. The apartments were constructed in Phase 2 and 151 Villas were constructed in Phase 1. These facts are not in dispute. However, while executing the perpetual lease in favour of Villa owners, the entire land area to the extent of 5705 sq.ft has been given to them whereas only Undivided Share (UDS) has been given to the apartment owners. These facts would clearly show that a clear distinction has been made and only UDS has been given in lease to apartment owner whereas the entire land area has been given to the Villa owners. The developer has also filed a communication sent to the Apartment Owners and Villa Owners, which is available in Page 78 of the typed-set of papers filed by the second respondent and a scanned reproduction of the details of the area are as follows:

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11. The above details clearly tallies with the area bifurcation of the project submitted by the petitioner counsel. From the above particulars, it is seen that certain common areas have been given to Villa owners exclusively and certain common areas were given for utility by both Villa owners and Apartment owners. Now it is the contention of the Villa owners that they have become absolute owners in respect of the land and certain common areas exclusively allotted to them, they have a right to form an association under the Act whereas it is the contention of the writ petitioner that they have registered the association under the Societies Registration Act prior to Tamil Nadu Apartment Ownership Act, 2022 came into force and hence, there can be only one association and the Apartment Ownership Act cannot be applied to the existing buildings as well as the society which are already in existence prior to the Act came into force.

12. In the light of the above submissions, this Court is of the view that the main dispute between the two groups is only with regard to the usage of common facilities and utilities. The petitioner Association, being the existing society, they wanted to have a control over the maintenance of the common area whereas the second respondent who represents the Villa

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Owners Association contend that since they are the owners of the larger area and common area has been allotted to them, they have a right to form their own Association. It is his contention that in respect of the utility of the common area earmarked for both Apartment owners as well as Villa owners, a federation can be formed by both Association.

13. The term "Apartment" has been defined in Section 2 (a) of the Act, which reads as follows:

"2(a) "apartment" means a separate and self-contained part of any property, including one or more rooms or enclosed spaces, located in one or more floors or any part thereof in a building, used or intended to be used for residential or any commercial purpose, whether called block, chamber, dwelling unit, flat, office, showroom, shop, premises, suite, tenement, unit or by any other name"

14. The term "Villa" has not been defined. However, the term "Federation" has been defined in sub-section (o) of Section 2 and the same reads as follows:

"(o) "federation" means the body formed by two or more societies or associations as per bye-laws."

15. Section 4 of the Act deals with the "**Declaration**". Section 4 mandates that declaration to be submitted to the competent authority within



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three hundred and sixty five days from the date of issue of the completion certificate of the building by the appropriate authority whereas in respect of the building which is already in existence on the date of commencement of this Act, the Form shall be submitted within with Seven Hundred and Thirty days from that date. On receipt of such application under sub-section (1) of Section 4, the competent authority has to conduct an enquiry to ascertain whether the property comes within the purview of the Act and the declaration is in order and on being satisfied, shall make an endorsement on the body of the declaration testifying the fact of acceptance of the declaration, put its dated signature and set its seal and return it back to the declarant and retain a copy of the same on record. Only when the competent authority finds that the declaration does not conform to the requirements of the Act or the Rules made thereunder, it shall return the declaration indicating the defects to be rectified with a direction to re-submit the same within a period of thirty days. Section 4 of the act mandates filing of declaration in respect of not only the apartments constructed after the Act came into force, but also the existing apartments. Only the time limits will vary in respective of the newly constructed apartments as well as the existing apartments.



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16. A careful reading of entire section makes it clear that even though the apartments were already in existence, still the declaration is required under the Act followed by an enquiry by the competent authority to ascertain whether the said property comes within the purview of the Act or not.

17. Section 7 of the Act deals that formation of association of apartment owners. Section 7 states that on registration of the bye-laws with the competent authority, the apartment owners shall form an association of the apartment owners for a building as per the bye-laws. As per proviso to Section 7, the building which are already in existence on the date of commencement of the Act wherein there is a single association for a building, such association shall be deemed to be the association of that building under the Act. Though Section 7 makes it clear that no further association is required provided the Association is already registered prior to the coming into force of the Act, the fact remains that Section 4 mandates filing of declaration even by the existing building owners followed by an enquiry by the competent authority to find out whether the building comes within the purview of the Act.

18. Section 8 of the Act deals with the common area and facilities, which reads as follows:

“8.Common areas and facilities._(1) Each apartment

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owner entitled to an undivided interest in the common area and facilities in proportion to the carpet area of his apartment to that of the total carpet area of the project and the undivided interest in the common area and facilities shall not be separated from the apartment to which it appertains or partitioned or divided under any circumstance and shall be deemed to be conveyed or encumbered with the apartment.

(2) Each apartment owner shall use the common areas and facilities for the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other apartment owners.

(3) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the bye-laws.”

19. In the case on hand, though in the same project in Phase 2 there are several apartments constructed, 151 villas were separately constructed in Phase I. As far as Villas are concerned, the entire landed area has been given on lease perpetually on which the building came to be constructed. It means that that Villa owners have become the absolute owner of the property whereas in Phase 2 only UDS has been sold and only for that purpose Apartment Owners joined together to safeguard their interest under Section 8.

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20. This court finds from the records placed before this Court that apart from the common areas exclusively given to the Villa owners, there are certain common areas also earmarked for utility by both the groups. When such being the position, this Court is of the view that though the term "Villa" has not been defined in the Act, the formation of federation is absolutely necessary to at least maintain the common area. Only when the federation is formed by both the groups, there can be smooth management and maintenance of the common area in the entire Mahindra World City earmarked for utility by both the groups.

21. In such view of the matter though Section 7 of the Act does not mandate formation of separate association, single association deemed to be association of the building, this Court, considering the fact that in Phase 2 only apartments have been constructed and what was given on perpetual lease is UDS of the land whereas in Phase I entire land has been leased with exclusive common area for the villa owners utilization and apart from that, in the entire project, the common area is also earmarked for both the groups. Therefore, this Court is of the view that to maintain the common area by both the groups as per the lease agreement executed by the developer, it is absolutely necessary to have a federation formed by two Associations. Since the separate common area is also earmarked for the villa owners, to maintain

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that area a separate association among the Villa owners is also absolutely necessary so that it will balance rights of both the villa owners as well as apartment owners and it will take care of the rights of all the parties.

Accordingly, this writ petition is disposed of directing the first respondent to receive Form A from both the Associations, namely Villa Owners Association and Apartment Owners Association and process the same in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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To

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EC Members – Phase -I
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