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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**19.08.2026**
Pronounced on	**30.10.2026**

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

CS No. 286 of 2020

M/s Greams Dugar Flat
Owners Association
Represented by its Secretary,
at No.149, Greams Road,
Greams Dugar bldg. 4th Floor,
Chennai – 600 006.

..Plaintiff(s)

Vs

1. S.Sudhakar,
   S/o. T.M.K. Selvaraj

2. S.Dhinakar
   S/o. T.M.K. Selvaraj
   Residing at
   No.48/84, M.C.Road,
   Old Washermenpet,
   Chennai – 600 021.

3. The Member Secretary
   Chennai Metropolitan Development Authority,
   Gandhi Irwin Road, Chennai – 600 008.

4. The Commissioner.
   The Greater Chennai Corporation,
   Rippon Building. Chennai – 600 003.

5. The Director,
   Tamil Nadu Fire and Rescue Services,
   No.17, Rukmani Lakshmpathy Salai,
   Egmore, Chennai – 600 008.

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..Defendant(s)

CS No. 286 of 2020

Prayer: plaint is filed under Order IV Rule 1 of this Court Original Side Rules read with Order VII Rule 1 of C.P.C, for the following reliefs:

(a) For a declaration that all the floors including the 6th and 7th floor of the property at Old No.149, and New No.64, Greams Dugar at Greams Road, Chennai – 600 006 morefully described in the schedule are commercial units to be used for office purpose only as per approved plan and constriction agreement.

(b) Granting a consequential relief of permanent injunction restraining the 1st and 2nd defendants or their men or successor in interest or anyone claiming through them or their agent from converting the 6th and 7th floor of the property at Old No.149 and New No.64, Greams Dugar at Greams Road, Chennai – 600 006 morefully described in the Schedule mentioned into a boarding or lodging or service apartment and any other purpose other than office purpose.

For Plaintiff(s): M/s.K.V Ananthakrushnan

For Defendant(s): Mr.M.Devaraj
for D1 & D2

Mr.P.Veena Suresh,
Standing Counsel for D3

Ms.P.T.Ramadevi for D4

Ms.Zeenath Begum, Govt. Advocate for D5

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Judgment

This suit has been filed seeking for the following reliefs:

(a) For a declaration that all the floors including the 6th and 7th floor of the property at Old No.149, and New No.64, Greams Dugar at Greams Road, Chennai – 600 006 morefully described in the schedule are commercial units to be used for office purpose only as per approved plan and constriction agreement.

(b) Granting a consequential relief of permanent injunction restraining the 1st and 2nd defendants or their men or successor in interest or anyone claiming through them or their agent from converting the 6th and 7th floor of the property at Old No.149 and New No.64, Greams Dugar at Greams Road, Chennai – 600 006 morefully described in the Schedule mentioned into a boarding or lodging or service apartment and any other purpose other than office purpose.

2.The Case of plaintiff in brief:

According to the plaintiff, the defendants 1 & 2, after purchasing the 6th and 7th floors, commenced substantial alteration and renovation with the intention of converting the premises into service Apartment. The plaintiff contends that the proposed conversion is not merely an internal renovation but a change in the nature and mode of user of the premises. It is specifically pleaded

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that the proposed service Apartments would contain a large number of rooms, each having attached toilet and kitchen facilities, thereby substantially increasing the occupancy, consumption of water, discharge of sewage and drainage, use of lifts and other common facilities. It is further pleaded that the conversion would have consequences relating to fire safety and other statutory requirements.

2.1.The plaintiff also relies upon the construction agreement and the covenants contained in the sale deeds and contends that the premises were intended for Commercial Office use and not for boarding, lodging or service apartment use. The plaintiff further relies upon the provisions of the Tamil Nadu Apartment Ownership Act, 1994 and the Bye-laws of the Association. It is contended that the defendants 1 & 2, being Apartment owners and members of the Association, are bound by the said statutory provisions, Bye-laws and lawful decisions of the Association.

2.2.The defendants 1 & 2 admit their ownership over the 6th and 7th Floors, contends that they purchased an extent of 4492 sq. ft. in the 6th floor and 3209 sq. ft., in the 7th floor, together with the rights mentioned in the respective sale deeds. Their principal contention is that the sale deeds confer upon them the right to use, and enjoy their property for commercial purposes. According to

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them, there is no prohibition against using the premises for service Apartments, which according to them is also a commercial activity. It is their further case that they have not carried out any structural alteration. According to them, the works undertaken were confined to internal partitions with light materials, replacement of worn-out sanitary fittings, replacement of tiles and other renovation and repair works. They deny having demolished any portion of the building or weakened the structure. They contend that no additional water or drainage burden would be caused and that the existing lift facility is sufficient.

3.It is further contented that the plaintiff association was constituted only subsequently and that defendants 1 & 2 have been prevented by the other Apartment owners from beneficially enjoying their property. They also dispute the locus of the Treasurer, who gave evidence on behalf of the plaintiff.

4.This Court, on 15.11.2021, framed the following issues for trial.

(1) Is not the suit property a commercial unit to be used only for office purpose as per approved plan and construction agreement?

(2) Whether altering and converting the 6th and 7th floor as service apartment will not weaken the entire structure of the building?

(3) Is not permission necessary from defendants 3 to 5 for conversion of 6th and 7th floor by defendants 1 and 2 as service apartments?

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(4) Are not defendants 1 and 2, the co-owners and members of the plaintiff Association bound and governed by bye-laws of the association, construction agreement and Tamil Nadu Apartment Ownership Act to carry out conversion of apartment without the consent of other co-owners?

(5) Are not defendants 3 to 5 proper and necessary parties for the purpose of adjudication of the issue?

(6) Will not the conversion of 6th and 7th floor as service apartment affect the safety, fire etc., and additional amenities including separate Lift etc., cast burden on the Association?

(7) Whether the interior alteration done by the defendants 1 and 2 in the 6th and 7th floor of the suit property is within the Construction Agreement of beyond the construction agreement entered into between the promoter and the purchaser particularly schedule D of the Agreement, 11.11.1995.

(8) Whether the present repair works undertaken by the defendants 1 and 2 amounts to structural alterations affecting the buildings?

5.On behalf of the plaintiff, P.W.1, Mrs. A.Esther Selvam, Treasurer of the plaintiff's Association was examined, Exs.P.1 to P.18 were marked. Though defendants 1 & 2 filed a detailed written statement, they did not enter the witness box and did not let in any oral or documentary evidence.

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6.Defendants 3 to 5, who are statutory authorities remained ex-parte.

7.Issue 1 to 8 :

7.1. There can be no dispute that an apartment owner is entitled to possess and enjoy his apartment. Such right, however, is not an absolute right divorced from the sanctioned plan, the deed governing the Apartment, the construction agreement, the covenants, the Bye-laws and the statutory frame work governing Apartment ownership.

7.2.The Tamil Nadu Apartment Ownership Act, 1994, defines an "Apartment" to include a part of property intended for independent use for residents, office, profession, occupation, trade or business. The same enactment also defines "common areas and facilities" to include, among other things, foundations, columns, girders, beams, supports, main walls, roofs, Terrace, fire escapes, water supply, sewerage and drainage connections, elevators and fire deduction facilities. The statutory scheme therefore recognises individual ownership of an apartment together with an undivided interest in common areas and facilities. The enjoyment of the individual Apartment cannot consequently be considered in isolation from the common structure and common facilities of the building.

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7.3.Section 8 of the Act, is particularly relevant. It prohibits an Apartment owner from doing any work or putting the Apartment to any other use which would jeoparadise the soundness or safety of the property, reduce its value or impair an easement or hereditament. It also prohibits addition or material structure or excavation of additional basement or cellar without the previous unanimous consent of the other apartment owners. Thus, the right of ownership does not confer an unrestricted right to alter the character or use of an apartment when such alteration has consequences for the safety or common interests of the building.

7.4.Section 13 of the Act provides that the administration of the property shall be governed by the Bye-laws. The Bye-laws are required to contain provisions relating to maintenance and repair of common facilities, collection of common expenses and restrictions concerning the use and maintenance of Apartments and common areas. Section 23 further provides that apartment owners and persons using the property are subject to the Act, the Bye-laws and the Rules made thereunder and that lawful agreements, decisions and determinations made by the Society or Association in accordance with the Act or Bye-laws are binding on the apartment owners.

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8.Therefore, the contention of the defendant 1 & 2 that ownership of the 6th and 7th floors gives them an unrestricted right to use the premises in any manner they consider commercially convenient cannot be accepted. The ownership rights are subject to the statutory and contractual regime applicable to the apartment complex.

9.The plaintiff has specifically relied upon the construction agreement dated 11.11.1995 and, in particular, Schedule D thereof. The question is not whether the defendants can use their premises for a commercial purpose. They undoubtedly have a right to use the premises in accordance with their title and the governing documents. The real question is whether the expression "Commercial Purpose" permits a change from the sanctioned and agreed user as office accommodation into a boarding /lodging / service apartment facility.

10.An office premises ordinarily involved a particular pattern of occupation and use. A service apartment, on the other hand, contemplates residential type accommodation, repeated short term occupation, sleeping accommodation, attached bathrooms, kitchens and substantially different patterns of ingress and egress, water consumption, drainage, lift usage, waste generation and fire safety requirements. Therefore, merely because both activities may be described generally as "Commercial", it does not follow that a

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contractual covenant restricting the premises to office use becomes meaningless.

11.The defendants have raised several factual allegations in their written statement. However, these allegations have not been supported by oral evidence from either defendant or by any expert evidence. The plaintiffs, on the other hand has produced photographs as Ex.P.18 and the evidence of its Treasurer regarding the nature of the work and the proposed conversion. There is no evidence before this Court to show that P.W.1 examination was unauthorised or contrary to the Bye-laws of the Association. The plaintiff has therefore established its entitlement to the declaration and consequential injunction sought in the suit.

12.Accordingly, the suit is decreed as prayed for.

30.10.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.GOVINDARAJAN THILAKAVADI J.

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