



WEB COPY

A No. 5715 of 2
in C.S. No.97 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

A No. 5715 of 2025

in C.S. No.97 of 2025

Bhuvaneswari Apartments Welfare
Association
Represented by its Secretary, Bharathidasan
Colony, K.K.Nagar, Chennai - 600 078.

..Applicant(s) / 27th defendant

Vs

Prem Kumar J and 35 others
S/o.J.Jesadian, Residing at No.2-C, Green Peace
Orion Apartments, No.2, P.T.Rajan Salai,
K.K.Nagar, Ch-78.

..Respondent(s)

PRAYER: This application has been filed under Order XIV Rule 8 of Original

Side Rules read with Section 151 and Order VII Rule 11 of Code of Civil

Procedure praying to reject the Complaint in C.S. No.97 of 2025.

For Applicant(s): Mr. Sathish Parasaran, Senior Counsel for
M/S.K. Prahalad Bhat

For Respondent(s): Mr. Manoj Sreevalson for
M/s. Kanimozhi Mathi [for R1 to R9]

Mr. M. Rajendiran,
Additional Government Pleader [for R10]



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Mr. C. Kalaichelvan
Standing Counsel (TNHB) [for R11 to R13]

Mr. R. Thamaraiselvan, Standing Counsel
[for R14]

Mr. Sathish Parasaran, Senior Counsel for
M/S.K. Prahalad Bhat [for R15 to R25 and
R27 to R36]

Mr. P. Ebenezer [for R26]

ORDER

This application has been filed by the applicant / 27th defendant to reject the Plaintiff.

2. According to the applicant, he is the 27th defendant in the main Suit. The respondents 1 to 9 have filed the main Suit for the reliefs of mandatory injunction for directing 3rd and 4th defendants in the main Suit to execute rectification deed by modifying the extent of Undivided Share of 81.4 sq. mt., to 1,4,5,8 and 9th Plaintiffs and to the 2nd Plaintiff to an extent of Undivided share of 79.60 sq. mt., and to execute rectification deed by including undivided share to the tune of 79.60 sq. mt., in favour of the 6th and 7th defendants, to grant permanent injunction restraining the 27th and 28th defendants from entering into any redevelopment / joint development agreement between themselves with respect to the Schedule A property until Plaintiff's being owners of B and C type flats are conveyed by the 3rd and 4th defendants and their respective 81.40



sq. mt and 79.60 sq. mt, of undivided share of land in compliance with its proceedings dated 30.12.1988 and also mandatory injunction directing the 5th defendant to produce the Planning Permission and Building Approval vide PPS No.91A/E/88 and for costs.

2.1. The Plaintiffs are seeking rectification deeds executed between 1991 and 2010 and the same is barred by limitation. The present Suit arises from certain letters issued by the 3rd and 4th defendants, which were intended to clarify the undivided share of land allocated to various categories of flat owners and bring about uniformity. The original sale deeds executed by the Tamil Nadu Housing Board in respect of these flats did not follow a consistent standard regarding UDS and some sale deeds specified a particular UDS, while others, including that of the 1st Plaintiff, were silent on the matter. While so, it was incumbent upon the Plaintiffs to raise objections or seek rectification at the earliest opportunity. Originally the property belonged to the 1st Plaintiff, was purchased from Mr. Arun Kumar. The said Arun Kumar sold the same to Mr. Vinod Kumar. The said Mr. Vinod Kumar sold the property to the Plaintiff. At no point of time, they raised objections. No legal proceedings have been initiated seeking the enforcement of such right to UDS by the Plaintiffs or the other flat owners for the past 36 years. There is no cause of action for the Suit, since the conveyance of the UDS is extinguished in law. The allocation of undivided share of land must necessarily be confined to the extent of land



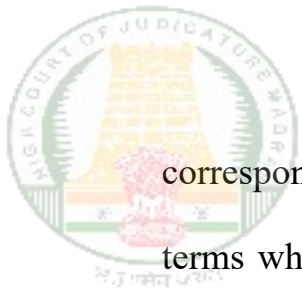
actually available beneath the superstructure and the common areas appurtenant thereto. The UDS can only be apportioned proportionately with reference to the plinth area of each flat. As per Tamil Nadu Apartment Ownership Rules 2024, the developer is duly authorized to reallocate apartments and readjust the corresponding undivided share of land based on approved layouts and proportionate entitlement. The Association had convened a Special General Body Meeting on 05.01.2025, wherein, in compliance with statutory requirements, more than two-thirds of the apartment owners duly approved the redevelopment scheme and resolved to move forward with the selected developer and the decision was made in accordance with due process. Out of nearly 132 flat owners, only 9 persons have approached this Court and the present Suit is malafide, intended to secure unjust enrichment and to obstruct a redevelopment process duly initiated under law. Therefore, the Suit is a clear abuse of process of Court and the Plaint is liable to be rejected.

3. The respondents have filed a counter stating that the respondents / Plaintiffs 1 to 9 have filed the Suit for mandatory injunction for directing 3rd and 4th defendants in the main Suit to execute rectification deeds in respect of their respective Sale deeds for the undivided share and for permanent injunction. The respondents denied the allegations levelled in the affidavit. The 12th and 13th respondents are yet to execute the Sale Deed to an allottee. All of a sudden on 29.11.2024, the 12th and 13th respondents issued a letter to this applicant,



wherein they have contrary to the Sale Deed, unilaterally declared the UDS as 100.50 sq. mt., 61.90 sq. mt., and 60.53 sq. mt to A, B and C type flat owners respectively. It was also informed that the UDS mentioned in the letter, supersedes all the UDS certificates / deeds issued earlier in respect of the above said schemes. The extent of UDS of each owner was ascertained based on the consideration paid to the 12th and 13th respondents / 3rd and 4th respondents along with the contemporaneous documents executed to the different owners of similar pattern flats. Therefore, no such need arose on questioning undivided share of land to the 1st Plaintiff's flat. The 8 Plaintiffs have not been conveyed their undivided share of land and similarly 48 'B' type flat owners, 42 'C' type flat owners, 13 'A' Type flat owners have not been conveyed their respective undivided share of land by the 12th and 13th respondents till date. Therefore, cause of action is a continuous one and cannot be specified the year and date until the entire property get transferred to the flat owners to the proportion for money to the 12th and 13th respondents. Therefore, the Suit is not barred by limitation.

3.1. The applicant / 27th defendant with respect to re-development project is without lack of transparency and no clarity on how the applicant / 27th defendant have entered re-development project with the builder before arrival of settlement of issue regarding UDS with the 12th and 13th respondents. The developer can be authorized to reallocate apartments and re-adjust the



corresponding undivided share of land only after the settlement of business terms which could happen only based on the share of UDS each flat owner is entitled as per their title deed. Therefore, the developer on his own whims and fancies cannot reallocate or readjust the undivided share of an owner. The flat owners of 'A' type are levied a sum of Rs.2,97,824/- for the plinth area of the flat and UDS of land irrespective of the floor. The flat owners of 'B' type flats are levied a sum of Rs.1,90,000/-, Rs.1,80,000/- and Rs.1,70,000/- for ground, first and second floors respectively towards the plinth area of the flat and UDS of land. The flat owners of 'C' type flats are levied a sum of Rs.1,87,000/-, Rs.1,77,000/- and Rs.1,67,000/- for ground, first and second floors respectively towards the plinth area of the flat and undivided share of land.

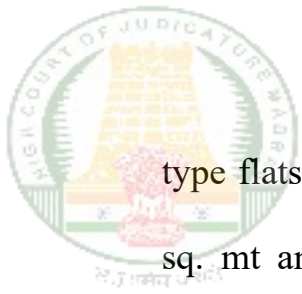
3.2. The 12th and 13th respondents after receiving the consideration, by merely issuing a letter dated 29.11.2024, substantially reduced UDS of the B and C flat owners, which is against law. The Suit is not challenging a settled transaction but to enforce the original undivided share of land as promised in the TNHB proceedings, which was only furnished to the Plaintiffs on 08.07.2024 after a direction from this Court. The cause of action arose when the fraudulent misrepresentation was discovered in the year 2024. It is admitted that the Special General Body meeting was held and decided to proceed. However, that decision was taken despite the Plaintiffs' express request to the applicant / 27th defendant to defer the meeting pending the outcome of their



challenge against the unilateral UDS reduction by the 12th and 13th respondents.

The Plaintiffs being 'B' and 'C' type flat owners, are the most prejudiced parties due to the TNHB's actions in favour of 'A' type flat owners. It is true that the flats are old. However, the dilapidated condition of the flats does not override the Plaintiffs' fundamental right a fair and equitable redevelopment based on their legally entitled Undivided Share of Land. The mandatory injunction for the execution of rectification deeds based on the original TNHB scheme and consideration paid which involves complex questions of title, contract and fraud requiring detailed evidence and trial. Therefore, the present application is liable to be dismissed.

4. The learned Senior Counsel appearing for the applicant would submit that the applicant is the Apartment Owners' Association / 27th defendant in the main Suit. In fact, the Plaintiffs have filed the Suit for the reliefs of mandatory injunction for directing 3rd and 4th defendants in the main Suit to execute rectification deed by modifying the extent of Undivided Share of 81.4 sq. mt., to 1,4,5,8 and 9th Plaintiffs and to the 2nd Plaintiff to an extent of Undivided share of 79.60 sq. mt., and to execute rectification deed by including undivided share to the tune of 79.60 sq. mt., in favour of the 6th and 7th defendants, to grant permanent injunction restraining the 27th and 28th defendants from entering into any redevelopment / joint development agreement between themselves with respect to the Schedule A property until Plaintiff's being owners of B and C



type flats are conveyed by the 3rd and 4th defendants and their respective 81.40 sq. mt and 79.60 sq. mt, of undivided share of land in compliance with its proceedings dated 30.12.1988 and also mandatory injunction directing the 5th defendant to produce the Planning Permission and Building Approval vide PPS No.91A/E/88 and for costs. In respect of mandatory injunction, the Sale Deeds in the name of the Plaintiffs were executed between 1991 and 2010. Therefore, the relief is clearly barred by limitation. The cause of action in respect of conveyance of UDS is extinguished in law. In view of redevelopment resolution and the Memorandum of Understanding executed pursuant to the majority decision of the flat owners at the Special General Body Meeting. The Plaintiffs have filed the Suit for mandatory injunction after a lapse of 36 years. The mere sending of letters by the Housing Board cannot give any cause of action for the Suit. The Plaintiffs have not taken any steps within the limitation period. Therefore, the Suit is barred by law and no any cause of action arose for the Suit. Therefore, the Plaint may be rejected.

5. The learned counsel appearing for the respondents would submit that the Plaintiffs filed the Suit for mandatory injunction for directing 3rd and 4th defendants in the main Suit to execute rectification deeds in respect of their Sale Deeds. In fact, they purchased the properties through Sale Deeds on various dates for plinth area, but no UDS has been conveyed, as long as the Undivided share of land and conveyance of UDS is pending, the cause of action is the



continuous cause of action. Therefore, the Suit is not barred by limitation.

Further, the defendants 12 and 13 have reduced and issued proceedings dated 08.07.2024, thereby the Suit is filed within the limitation period and therefore, it is a matter of trial and so many facts involved in this case and it can be decided through trial and therefore, the application is liable to be dismissed.

6. This Court heard both sides and perused the entire materials available on record.

7. The Plaintiffs have filed the Suit for the reliefs of mandatory injunction for directing 3rd and 4th defendants in the main Suit to execute rectification deeds by modifying the extent of Undivided Share of 81.4 sq. mt., to 1,4,5,8 and 9th Plaintiffs and to the 2nd Plaintiff to an extent of Undivided share of 79.60 sq. mt., and to execute rectification deed by including undivided share to the tune of 79.60 sq. mt., in favour of the 6th and 7th defendants, to grant permanent injunction restraining the 27th and 28th defendants from entering into any redevelopment / joint development agreement between themselves with respect to the Schedule A property until Plaintiff's being owners of B and C type flats are conveyed by the 3rd and 4th defendants and their respective 81.40 sq. mt and 79.60 sq. mt, of undivided share of land in compliance with its proceedings dated 30.12.1988 and also mandatory injunction directing the 5th defendant to produce the Planning Permission and Building Approval vide PPS



No.91A/E/88 and for costs. It is an admitted fact that the buildings are under dilapidated condition and the Flat Owners' Association namely the 27th defendant / applicant has passed a resolution for redevelopment of the properties and entered into a Memorandum of Understanding with the 28th defendant. The applicant also participated in the Special General Body Meeting and now filed the Suit for mandatory injunction. As far as the mandatory injunction is concerned, the limitation period is 3 years. The Sale Deeds are between the years 1991 and 2010. The Plaintiffs very well know about the Sale Deeds executed by the 12th and 13th respondents in respect of the flats. Having accepted the Sale deeds, they have not raised any objections in respect of the undivided shares and after a long time, beyond the limitation period, they filed the Suit for the relief of mandatory injunction and permanent injunction. Therefore, the Suit is barred by limitation.

8. Though the Housing Board issued notices in respect of the undivided shares by quantifying the undivided shares, that has not been challenged through the Suit and the Plaintiffs have filed the Suit for mandatory injunction and for execution of rectification deeds. Therefore, the Suit is clearly barred by limitation. As far as limitation is concerned, it is well settled law that if it is mingled with law and fact. It should be decided after full trial. However, when the matter is barred by limitation and the same is in respect of law, then it can be decided through Order VII Rule 11 of Code of Civil Procedure application.



In the case on hand, based on the Plaint documents and the averments of the Plaintiffs show that the Sale deeds were executed between 1991 and 2010 and therefore, the claims of the Plaintiffs are barred by limitation and cause of action arose immediately after execution of sale deed in respect of undivided shares and thereby, there is no cause of action through the letters issued by the 12th and 13th defendants. Moreover the Plaintiffs themselves admitted that except the Plaintiffs, all other apartment owners decided to redevelop the properties, due to the dilapidated condition of the buildings. Since the majority of Apartment Owners agreed for redevelopment and also the Special General Body meeting passed the resolution, the Plaintiff without challenging the said resolution filed the Suit for mandatory injunction based on Sale deeds between 1991 and 2010, after a long period of 30 years. Therefore, the Suit is barred by limitation and the Plaint is liable to be rejected.

9. Accordingly, this application is **allowed**.

20-02-2026
[1/2]

MJS

To

1. **The State of Tamilnadu**

REP. BY THE SECRETARY TO GOVERNMENT 27 OTHERS
Housing and Urban Development Department, Secretariat,
Chennai-600 009.

2. The Chairman

Tamil Nadu Housing Board, CMDA Complex, E and C Market Road,
Koyambedu, Chennai - 600 107.



3. The Managing Director
Tamil Nadu Housing Board, CMDA Complex E and C Market Road,
Koyambedu, Chennai - 600 107.
4. The Executive Engineer
Tamil Nadu Housing Board, K.K.Nagar Division, NO.kC-48, 2nd
Avenue, 3rd Floor, Anna Nagar, Chennai - 600 040.
5. Chennai Metropolitan Development Authority (cmda)
Thalamuthu-Natarajan Maaligai, No.1, Gandhi Irwin Road, Egmore
Chennai - 600 008.

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P.DHANABAL, J.

MJS

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[1/2]**