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BRINDAVAN
PROPERTIES

19.03.2025

To

The Chairperson,
Tamil Nadu Real Estate Regulatory Authority (TNRERA)
1st Floor, No.1A, Gandhi Irwin Bridge Road
Egmore, Chennai – 600 008.

Sir,

Sub:–Application for project registration – Construction of Residential building of "PUSHKAR's SERENITY", Stilt Floor + 5 Floors (18.30 Height) Residential Building with 20 Dwelling Units availing Premium FSI at M-8, Old Door No.150, MIG Colony, L.B. Road, Thiruvanmiyur, Chennai – 600 041, comprised in Old S.No.30/1 (Part), T.S.No.171/6 Block No.10, Thiruvanmiyur Village, Chennai District, Tamil Nadu - Reg.

Ref: Application Ref. No. TNRERA/PBF/0008/2025 dated 03.01.2025
Latest File TNRERA/PBF/0201/2025 Dated: 01.03.2025

This is with reference to above, we have entered into a Joint Development Agreement executed on 11.09.2023 with the land owners for the project at "**PUSHKAR's SERENITY**", Stilt Floor + 5 Floors Residential Building with 20 Dwelling Units at M-8, Old Door No.150, MIG Colony, L.B. Road, Thiruvanmiyur, Chennai – 600 041, admeasuring 4 Grounds and 1,782 sq. ft., comprised in Old S.No.30/1 (Part), T.S.No.171/6 Block No.10, Thiruvanmiyur Village, Chennai District.

Pursuant to the **Joint Development Agreement** executed on **11.09.2023** with the respective landowners, the Promoter is duly authorized to undertake the development of the aforesaid property, admeasuring **4 Grounds and 1,782 sq. ft.**

Details of Authorization:

In compliance with the statutory requirements for development and registration under RERA, the Promoter has duly obtained the **General Power of Attorney** from the following parties:

1. **Mr. R. Veeraraghavan and Mrs. Mahalakshmi Veeraraghavan**
2. **Mrs. Vanaja Iyer and Mr. R. Kannan**
3. **Ms. O. K. Preethi, Ms. O. K. Sruthi, Mr. O. D. Kamalakannan, and Mrs. O. K. Radhika**
4. **Ms. R. Hemalatha and Mrs. Amritha Parthasarathy**
5. **Mrs. M. Sukanya and Mr. S. Manavallan**
6. **Mrs. Saraswathi Jayaraman and Mr. Umesh Jayaraman**

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The Promoter remains at the disposal of this Hon'ble Authority for any further clarifications or documentation required for the expeditious processing of this application.

Additionally, we have enclosed the Full Bench High Court Order vide WP No. for not insisting on any NOC or additional documentation from the Allottees for the Non-conveyance of UDS by the Tamil Nadu Housing Board back then.

However, in our case we have submitted the UDS letter issued by the TNHB to the respective Flat Owners/Allottees. The copy of the same has been submitted for your reference.

Considering this fact and issue us the Registration Certificate as soon as possible. This is for your kind information.

Undertaking:

The Promoter hereby undertakes that all the information provided in this application is true and accurate to the best of its knowledge and belief. Any discrepancies, if found at a later stage, shall be duly rectified as per the directions of the Hon'ble Authority. We earnestly request your kind consideration of this application.

Thanking You,

Yours faithfully,

For BRINDAVAN PROPERTIES

P. Kruthivas

P. KRUTHIVAS
Partner

BRINDAVAN PROPERTIES
CHENNAI

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FULL BENCH

2013 (3) CTC 129

IN THE HIGH COURT OF MADRAS

R.K. Agrawal, A.C.J., N. Paul Vasanthakumar & K. Venkataraman, JJ.

W.A. Nos.783, 784, 1394, 1395, 1396, 1771, 1772, 1952 of 2011 & W.A.SR Nos.41390, 41394, 41398, 41406, 41410, 41414, 41418, 41422, 41426, 41430, 41434, 41438, 41442, 41445, 41447, 41450, 41453, 100308, 100351, 100354, 100360, 107783, 107787, 107791, 107795, 107799, 107803, 107807, 107811, 111788, 111794, 111805 of 2011 & All connected Miscellaneous Petitions

26.4.2013

Tamil Nadu Housing Board, rep. by its Managing Director, Anna Salai, Nandanam, Chennai-600 035 .....*Appellant*

Vs.

Mary Rani Immanual and others .....*Respondents*

Transfer of Property Act, 1882 (4 of 1882), Section 11 — Tamil Nadu Apartment Ownership Act, 1994 (T.N. Act 7 of 1995), Sections 13 & 18 — Tamil Nadu Apartment Ownership Rules, 1997, Rule 17 — Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961) — Property Law — **Rights of Allottees/Subsequent Purchasers — 'No Objection Certificate' from Tamil Nadu Housing Board (TNHB), whether a pre-requisite for obtaining Building Permission from Chennai Metropolitan Development Authority (CMDA) for demolition of superstructure ? — CMDA eligible authority for permitting eligible construction activities as per Rules — TNHB clearly shirking any responsibility with regard to dispute between original Allottees and Subsequent Purchasers with regard to dispute relating to demolition existing superstructure and putting up new one — Sale Deed executed by TNHB granting absolute interest to Allottees — No right over any portion of land retained by TNHB — All rights of TNHB cease to exist over Flats and common areas after execution of Sale Deed — In such circumstances, Allottees having right to demolish existing Flats and construct new buildings without obtaining 'No Objection Certificate' from TNHB, but same being in consonance with Rules and Regulations framed by CMDA — However, said construction to be with concurrence of all Allottees/Subsequent Purchasers of blocks — And, said construction not to convert Residential Blocks into Commercial Blocks.**

Facts : Allottees/Subsequent Purchasers sought Building Permission from CMDA for demolishing existing superstructure. Their request was rejected on ground of not obtaining 'No Objection Certificate' from TNHB. Writ Petitions filed by Allottees/Subsequent Purchasers were allowed and Corporation Authorities were

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directed to grant approval for demolition of existing structure. Instant Writ Appeals filed by TNHB challenging said order. Instant Larger Bench constituted to answer reference raised by Division Bench in Writ Appeal.

Held : By relying on the said clause in the Sale Deed, the learned Counsel contended that as soon as the Tamil Nadu Housing Board execute the Sale Deed in favour of the Allottees, a Housing Co-operative Society shall be formed by the Allottees and the land on which the building consisting of the Flats is raised shall vest with the society and the society shall held the land jointly on behalf of all its members to protect their rights and privileges. Therefore, according to him, the land do not vest with the Tamil Nadu Housing Board after the same is sold in favour of the Allottees. *[Para 13(ii)]*

Thus, the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994, the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining "No Objection Certificate" from the Tamil Nadu Housing Board will not arise. In such circumstances, the Allottees of the Flats, after execution of the Sale Deed in their favour have got every right to demolish the existing building and construct new Apartment Blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the Rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got not say, even if additional dwelling units are constructed after demolishing the existing Flats. As stated already, the Tamil Nadu Housing Board looses its rights as soon as it executes Sale Deed in respect of the Flats, appurtenant land and even in the areas earmarked for the common enjoyment of the Flat owners. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the Rules and Regulations of the CMDA. Even assuming that there are restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes Sale Deed in favour of the Allottees, it looses all its rights on the property and it cannot any more question the action of the Allottees by saying that the Allottees have violated the conditions enumerated in the Sale Deed. *[Para 15]*

In view of the discussions made above, We hold that the Allottees of the Flats in a scheme implemented by the Tamil Nadu Housing Board, after execution of the Sale Deed in their favour by the Tamil Nadu Housing Board are entitled to demolish the existing the superstructure and put up new Apartment Blocks with additional dwelling units and sell the same to the third parties without obtaining No Objection Certificate from the Tamil Nadu Housing Board, as long as the construction are within the parameters of the Rrules and Regulations of the CMDA. *[Para 18]*

However, We may add that the Allottees or the Subsequent Purchasers from the Allottees shall not convert the residential blocks into commercial one. Further, there cannot be any demolition of the existing Flats and construction of new Flats without concurrence or acceptance of all the Allottees or the Subsequent Purchasers of the said block where there is a proposal to demolish the existing superstructure and put up new construction. *[Para 19]*

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Transfer of Property Act, 1882 (4 of 1882), Section 11 — Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961) — Transfer of Absolute Interest — Consequence of — Sale Deeds executed in favour of Allottees by Tamil Nadu Housing Board (TNHB) in respect of Flats as well as land appurtenant thereto — Common areas to vest with Society/Association formed by Allottees — No right retained by TNHB over Common Area — In such circumstances, absolute interest created in favour of Allottees — Any condition to contrary if stipulated in Sale Deed, *held,* would not be applicable to Allottees.

In the case on hand, the Tamil Nadu Housing Board has executed Sale Deed in favour of the Allottees not only in respect of the Flats, but also the land appurtenant thereto. Even with regard to the common areas, the same vest with the Society or an Association formed by the Allottees. Further, it has been found that the Tamil Nadu Housing Board has not retained any right even over the common area. In such circumstances, Section 11 of the Transfer of Property Act comes to the rescue of the Allottees. Therefore, in our considered view, even if condition has been imposed in the Sale Deed, Section 11 of the Transfer of Property Act will come into play which will be in support of the Allottees. *[Para 11]*

The restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will not prevent the Allottees or the Subsequent Purchasers from the Allottees, in utilising the common areas, so long as the Society or Association, which have been formed by the Allottees gives consent for the same and no doubt, that the construction are within the parameters of the Rules and Regulations of the CMDA. *[Para 18]*

Deeds and Documents — Sale Deed executed by Tamil Nadu Housing Board (TNHB) — Interpretation of — Allottees by virtue of Sale Deed conveyed Flats as well as lands appurtenant to it — Common area also left for utilization of all Allottees and no rights over same retained by TNHB — Fact that TNHB did not retain any portion of land, evident from reading of entire Sale Deed.

The above covenants in the Sale Deed executed by the Tamil Nadu Housing Board to the Allottees would amply establish that what has been conveyed to the Allottees are not only the Flats but also the land appurtenant thereto. How common areas have to be utilised by all the Allottees have also been set out in the third schedule to the Sale Deed extracted above. Hence, the contention raised by the learned Advocate General that even after the allotment was made to the Allottees in respect of the Flats constructed by the Tamil Nadu Housing Board, the land appurtenant/common area have been retained by the Tamil Nadu Housing Board and it has got control over it, may not be correct. *[Para 5(iv)]*

Further, a reading of the entire Sale Deed will disclose that the Tamil Nadu Housing Board has not retained any portion of the land. *[Para 5(v)]*

Tamil Nadu Apartment Ownership Act, 1994 (T.N. Act 7 of 1995), Sections 13 & 18 — Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961) — Right over Common Area — Society or Association formed by Flat Owners entitled to maintenance, repair and replacement

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of Common Areas — Right over Common Areas, thus, does not vest with TNHB.

The various provisions of The Tamil Nadu Apartment Ownership Act, 1994 which was extracted above deals with the common areas and who shall have the right to maintain common areas and utilisation of the same. At the risk of repetition, it has to be pointed out that Section 13 of the Act provides for framing of bye-laws of the Society or Association by the Flat owners not only for maintenance and repairs of existing Flats but also for "replacement of common areas". The Society or Association so formed shall take action relating to "common areas and facilities". Right of the Society or Association to maintain, repair and replacement of common areas is provided under Section 18 of the Act. Thus, the Act takes care of the common areas and facilities. Therefore, the Tamil Nadu Housing Board may not have any right over the common areas. *[Para 17]*

Tamil Nadu Apartment Ownership Rules, 1997, Rule 17 — Undivided interest over Common Area not to be separated from Apartment — Said interest deemed to be conveyed along with Apartment — Non-mention of conveyance of said interest in Conveyance Deed, irrelevant — In such circumstances, Allottees not required to obtain 'No Objection Certificate' from TNHB for demolition existing Flats and constructing new Flats — *Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961).*

The above extracted Rule would amply establish that the undivided interest over the common areas cannot be separated from the Apartment and shall be deemed to have been conveyed along with the Apartment, even assuming that such interest is not expressly mentioned or described in the conveyance. The said Rule further strengthens the case of the Flat owners and the contention raised on behalf of the Tamil Nadu Housing Board that the common areas vest with the Tamil Nadu Housing Board and hence, it shall be approached for getting "No Objection Certificate" in the event demolition of the existing Flats and construction of new Flats therein, cannot hold good. *[Para 13(iv)]*

Tamil Nadu Apartment Ownership Act, 1994 (T.N. Act 7 of 1995) — Law under enactment — Aim of Enactment to provide for ownership of individual Apartment in a building, undivided interest in Common Areas and facilities pertaining to transfer of Apartments — All Common Areas and facilities in Apartments are to be under exclusive control of Society or Association formed under Enactment — Said Society/Association entitled to frame Rules with regard to transfer of any Apartment and percentage of undivided interest in Common Areas and facilities.

Thus, a reading of the various provisions of the Act clearly demonstrate that the Society or the Association formed under the Act alone is in control over the common areas and facilities available in the Apartments and it alone shall deal with the same. It can also frame Rules and Regulations for transfer of any Apartment and percentage of undivided interest in the common areas and facilities. The Preamble of the Act, which is extracted above clearly spells out that the Act is enacted to provide

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for ownership of an individual Apartment in a building, undivided interest in common areas and facilities pertaining to the transfer of Apartment. *[Para 8]*

Some areas have been earmarked for the common enjoyment of the Flat owners. The common areas have to be enjoyed in common by the Flat owners and if a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without No Objection Certificate from the Tamil Nadu Housing Board. The various provisions extracted from the Tamil Nadu Apartment Ownership Act, 1994 will amply establish that if all the Allottees, who have formed the society or association decides to pull up the existing structure and raise a new construction with additional dwelling units even in the common areas, they can do so, provided such construction is in consonance with the Rules and Regulations of the CMDA. *[Para 18]*

Tamil Nadu Apartment Ownership Act, 1994 (T.N. Act 7 of 1995), Section 25 — Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961) — No provision in 1961 Act dealing with rights of Allottees to put up new structure after demolition — Section 25 of 1994 Act mandating overriding effect of Act over all existing laws — In such circumstances, any condition contrary to 1994 Act, in Sale Deed executed by TNHB, not to prevail.

While that being so, it cannot be urged, still, on behalf of the Tamil Nadu Housing Board that it has got control over the Apartments put up by it and the common areas available for the Apartment owners. Even assuming that the Tamil Nadu Housing Board has retained its power, even after selling the individual Apartments, the provisions of the Tamil Nadu Apartment Ownership Act, 1994 will prevail over and above the rights of the Tamil Nadu Housing Board, if any. *[Para 9]*

In our considered view, none of the provisions of the said Act envisages on the rights of the Allottees or the Subsequent Purchasers from the Allottees to put up new Apartment after demolition of all Apartments and on the common area. *[Para 14(i)]*

That apart, We have already held that the Tamil Nadu Apartment Ownership Act, 1994 will alone prevail over the Tamil Nadu State Housing Board Act, 1961, in view of Section 25 of the Tamil Nadu Apartment Ownership Act, 1994 which was extracted above. Hence, the argument made by Mr. V. Raghavachari will have to be rejected. *[Para 14(ii)]*

Property Law — Land Acquisition — Rights of Housing Board — Life of — Lands acquired by Housing Board under Land Acquisition Act for public purpose — Public purpose, *held,* would come to an end once Flats constructed have been transferred to Allottees by Housing Board — Scheme of Housing Board, *held,* would cease to have effect after its implementation — *Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961).*

Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose ends with the construction of the Housing Board Flats and handing over the same to the Allottees, after execution of the Sale Deed. *[Para 16]*

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Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose ends with the construction of the Housing Board Flats and handing over the same to the Allottees after execution of the Sale Deed. When once the scheme is implemented, the Housing Board looses its rights and the scheme does not come into play. *[Para 18]*

Property Law — Housing Board, whether empowered to levy charges at rate of 10% of market value on additional floor/eligible FSI — Tamil Nadu Housing Board (TNHB) need not be approached for obtaining 'No Objection Certificate' with relation to demolition of existing Flats and construction of new Flats — In such circumstances, TNHB not empowered to levy charges at rate of 10% of market value on additional floor/eligible FSI in absence of any Act, Rule, Regulation contemplating same — *Tamil Nadu State Housing Board Act, 1961 (T.N. Act 17 of 1961).*

As regards this reference, even the learned Advocate General fairly submitted that there is no Rules, which permit the Tamil Nadu Housing Board to collect 10% of the market value after registration of the Sale Deed by the Tamil Nadu Housing Board in favour of the Allottees. While so, there is no rhyme or reason for the Tamil Nadu Housing Board to insist for 10% of the market value for issuance of No Objection Certificate. When the Tamil Nadu Housing Board need not be approached for obtaining No Objection Certificate for demolition of the existing Flats and putting up new construction, the collection of charges at the rate of 10% of the market value on the additional floor area/eligible FSI which is not traceable to any Act or Rules cannot be levied. *[Para 18]*

CASES REFERRED

R & M Trust *v.* Koramangala Residents Vigilance Group, *2005 (3) SCC 91* 13

A.L. Somayaji, Advocate General for C. Kasirajan, Advocate for Appellant in all W.As.

A. Suresh, Advocate for Respondent Nos.1 to 12 in W.A. No.783 of 2011; D.S. Rajasekaran, Advocate for Respondent Nos.1 to 6 in W.A.SR Nos.41430 & 100360 of 2011; K. Rajasrinivasan, Advocate for Respondent No.7 in W.A.SR Nos.100354 & 100351 of 2011; N. Sampath, Advocate for Respondent No.13 in W.A. Nos.783 & 784 of 2011; N. Sampath, Advocate for Respondent No.27 in W.A. No.1771 of 2011; N. Sampath, for CMDA in W.A.SR No.107791 of 2011; P.S. Raman, Senior Counsel for Anand Venkatesh, Advocate for Respondent No.10 in W.A. No.1394 of 2011; R. Jayaseelan, Advocate for Respondent No.3 in W.A.SRNo.107791 of 2011; R. Mohan, Advocate for Respondent Nos.1 to 26 in W.A.SR Nos.107799 & 107811 of 2011, for Respondent Nos.1 to 33 in W.A.SR No.111788 of 2011, for Respondent Nos.1 to 40 in W.A.SR No.41438 of 2011, for Respondent Nos.1 to 6 & 8 in W.A.SR No.100351 of 2011, for Respondent Nos.1 to 7 in W.A.SR No.41442 of 2011 & for Respondent Nos.1 to 8 in W.A. No.784 of 2011; R. Muthukumarasamy, Senior Counsel for R. Mohan, Advocate for Respondent Nos.1 to 13 in W.A.SR No.41406 of 2011; R. Usha Priya, Advocate for Respondent No.1 in W.A. No.1952 of 2011, for Respondent Nos.1 to 27 in W.A. No.1771 of 2011, for Respondent Nos.1 to 4 in W.A. No.1772 of 2011 & for Respondent Nos.1 to 6 in W.A. Nos.1395 & 1396 of 2011; Respondent Nos.1 to 9, 11 to 15 in W.A. No.1394 of 2011, Respondent Nos.5 & 6 in W.A. No.1772 of 2011 & Respondent Nos.7 & 8 in W.A. Nos.1395 & 1396 of 2011 : Not ready; S. Muthuraman, Advocate for Respondent No.1 in W.A.SR No.111805 of 2011; V. Bharathidasan, Advocate for No.14 in W.A. Nos.783 & 784 of 2011, for Respondent No.28 in W.A. No.1771 of 2011 & for Chennai Corporation in W.A.SR No.107791 of 2011.

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REFERENCE ANSWERED WITH DIRECTIONS — W.As. DISMISSED — M.Ps. CLOSED — NO COSTS — CONDONE DELAY PETITIONS CLOSED

Prayer : Writ Appeal has been filed against the order dated 12.1.2011 made in W.P. No.29387 of 2010.

JUDGMENT

K. Venkataraman, J.

1. The order of reference was made by the then The Hon'ble The Chief Justice M.Y. Eqbal and Hon'ble Mr. Justice T.S. Sivagnanam. The reference, thus, reads as follows:

> "This batch of Appeals filed by the Tamil Nadu Housing Board is directed against the judgment and order passed in W.P. No.29837 of 2010 dated 12.2.2011 and W.P. No.670 of 2011 dated 18.1.2011 respectively.
>
> *2.* The Respondents 1 to 8 in this Appeal are the Writ Petitioners. The Writ Petition was filed for issuance of a direction upon the Chennai Metropolitan Development Authority (CMDA) and Corporation of Chennai to receive, consider, process and approve the Writ Petitioners' Application for demolition and reconstruction by issuing Planning Permission to construct residential Flats in the property situated at block No.97A to F, Sowbackya Colony, Anna Main Road, K.K. Nagar, Chennai-78 comprised in Survey No.394/1(part) in Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District, without insisting or production of No Objection Certificate from the Tamil Nadu Housing Board/Appellant or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously.
>
> *3.* The learned Single Judge disposed of the Writ Petition with a direction to CMDA to proceed with the Application submitted by the Writ Petitioners without insisting No Objection Certificate from the Appellate Board subject to the condition that the property will be developed only for residential purpose. The learned Single Judge relied on the decision of a Division Bench of this Court in *The Managing Director v. Lancor G. Corp Properties Ltd. and another*, W.A. No.1052 of 2007. The operative portion of the judgment and order reads as hereunder:
>
> > "*3.* Petitioners are owners of the property, which was originally developed by Tamil Nadu Housing Board and sold to the individuals. The present owners are either original Allottees or Subsequent Purchasers. The undisputed fact is that the Tamil Nadu Housing Board has no lien over the property. For the purpose of developing the property, the First Respondent orally insisted the Petitioners that No Objection Certificate issued by the Tamil Nadu Housing Board should be submitted along with the Application for the purpose of demolition, Planning Permission and for issuance of Planning and Building Permit to put up new construction.
> >
> > *4.* Similar issue with regard to the insistence of No Objection Certificate from Tamil Nadu Housing Board was considered by a Division Bench of this Court. *The Managing Director v. Lancor G: Crop Properties Limited & another*, W.A. No.1052 of 2007, where it has been clearly held that the Housing Board has no right over property developed and sold to the individual Allottees. The

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Petitioners have enclosed Sale Deeds to show absolute ownership. The only restriction appears to be that the property developed for residential purpose should not be commercial use. The Petitioners' plea is only for demolition and reconstruction as residential property.

5. Petitioners' Counsel states that the development of the property is for residential use only and Petitioners are willing to file an Affidavit to that effect. Following the Division Bench Judgment as above, several orders have been passed by this Court, *viz.*, W.P. No.15170 of 2010 dated 20.7.2010, W.P. No.14784 of 2008 dated 6.8.2008, where the Chennai Metropolitan Development Authorities were directed to accept the Application without insisting on No Objection Certificate.

6. Since the property in question undisputedly has been sold to the individual Allottees by way of proper Sale Deeds, the Tamil Nadu Housing Board can have no right over the property and therefore, the question of issuing No Objection Certificate does not arise.

7. In view of the above, the First Respondent is directed to proceed with the Application submitted by the Petitioners without insisting No Objection Certificate from the Third Respondent-Tamil Nadu Housing Board subject to condition that the property will be developed only for residential purpose. The Petitioners, however, are directed to submit the individual Sale Deeds of all the land owners to the Competent Authority to get Planning Permission. The Writ Petition is ordered as above. No costs."

4. The learned Advocate General appearing for the Appellant submitted that certain vital facts and legal position were not placed before the Division Bench while deciding W.A. No.1052 of 2007 and therefore, this Court should permit the Appellant-Board to contest the matter on merits. It is submitted that the Writ Petitioners were Allottees of Flats constructed by the Appellant-Board and are bound by the terms and conditions of allotment as well as the covenants contained in the Deed of Conveyance executed in their favour after they had paid the full cost to the Board. It is submitted that absolute ownership was conveyed to the Allottees concerned only in respect of built up portion of the Flats and not along with other common land and this aspect of the matter requires to be considered. Further, it is submitted that as per the deed of conveyance, executed in favour of the Allottees one of the condition is that the vacant land around the building and the terrace shall be held in common by the owners of all the Flats and the allottee/purchaser shall not be entitled to convert the common land for their personal or exclusive use and in several cases including the present Writ Petitioners are Subsequent Purchasers and therefore, they are not entitled to proceed without obtaining No Objection Certificate from the Appellant-Board. It is submitted that the deed of conveyance executed in favour of the Allottees stipulates that they shall not put up any additional construction to the Flat without prior permission of the Appellant Board and therefore, the Appellant-Board is fully justified in enforcing such condition and the requirement to obtain No Objection Certificate cannot be dispensed with. Further, it is stated that as per Board Resolution No.11.05, dated 30.6.2004, the Board shall collect 10% of the market value on the additional floor area/eligible FSI under the Development Control Rules for the proposed reconstruction and the learned Advocate General

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placed reliance on the following covenants contained in the Sale Deed executed in favour of the Allottees:

"The Sale Deed is only for the cost of construction of the Flat and the proportionate cost of land on which building stands.

"The land is hereby conveyed, granted transferred and assigned unto and to the use of the purchaser to be enjoyed by the purchaser for every absolutely, free from all encumbrances and charges whatsoever except the restrictions and under takings given herein, that is Vendor's covenants and Purchaser's covenants.

The purchaser and the persons deriving title under him shall not put up any additional construction to the Flat without prior permission of the Tamil Nadu Housing Board in writing.

The purchaser and the persons deriving title under him shall not put up construction of any sort over or around the space available in an around the Flat, without prior permission of the Tamil Nadu Housing Board in writing.

In case of any dispute arising between the parties hereto the same shall be referred to Secretary to the Government of Tamil Nadu, Housing Department, whose decision thereon shall all final

The Land should not be converted to commercial purpose, it should remain as residential purpose."

5. It is further submitted that the Board is enforcing the terms and conditions of allotment and conveyance and therefore, the necessity to frame a rule to insist upon a No Objection Certificate does not arise. The learned Advocate General prayed that the judgment of the earlier Division Bench requires to be reconsidered and may be referred to a Larger Bench to decide all points.

6. The learned Counsel appearing for the Respondents/Writ Petitioners contended that all the points raised by the Appellant-Board had been dealt with by the earlier Division Bench and the Writ Petitioners being purchasers of the property and a deed of absolute sale having been executed in their favour, the Housing Board has no right over the property and they cannot insist upon issuance of No Objection Certificate. The learned Counsel placed reliance on the Division Bench judgment of this Court in W.A. No.124 of 1995, dated 25.7.1997, wherein the Division Bench held that the Board having sold the Flats in favour of the Allottees and the Flat owners having formed an association, the entire area belongs to the Allottees and the Housing Board has no right to interfere with control, possession and management of the said area.

7. It is on the above rival contentions, it has to first decided as to whether the judgment of the earlier Division Bench of this Court in W.A. No.1052 of 2007, requires reconsideration. The Appeal before the earlier Division Bench arose out of an order passed by a learned Single Judge, wherein prayer was made to quash the order passed by the Corporation of Chennai insisting upon production of No Objection Certificate from the Housing Board for considering their Application for demolition of the building and for issuance of Building Permit. The learned Single Judge in the said case, allowed the Writ Petition and Housing Board

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preferred the Appeal. At this stage, we may refer to the operative portion of the judgment in W.A. No.1052 of 2007:

"*6.* The Writ Appeal is filed on the ground that originally the property was acquired by the Tamil Nadu Housing Board for housing purposes and after putting up the construction, they were allotted to various Allottees and the Allottees were conveyed the necessary documents in respect of the built up Flat portion and therefore, in respect of the common land, the Allottees are expected to keep intact as per the conditions of allotment. According to the Appellant, when the original plan lay out consisted of the built up house as well as common land for the common use of all occupants, by virtue of the demolition, the occupants cannot be expected to convert the common land for the personal and exclusive use and the First Respondent, who is a subsequent purchaser is attempting to put up construction in the common space left for the common purpose and that is why the No Objection Certificate is required from the Tamil Nadu Housing Board.

7. The No Objection Certificate is insisted based on the terms of allotment, which is binding upon the First Respondent. According to the Appellant, on receipt of such Application for receipt of No Objection Certificate and on payment of Application charges, such No Objection Certificate is issued for demolition and reconstruction. As per S.R. No.11.09 dated 30.6.2004, the Tamil Nadu Housing Board is entitled to collect 10% market value on the Additional floor area/eligible FSI under the DCR proposed for reconstruction and only thereafter, No Objection Certificate is issued.

8. The learned Counsel appearing for the Appellant-Housing Board apart from insisting the above said point would also submit that the First Respondent cannot be permitted to use the common area to put up the commercial complexes. When this Court has directed the learned Counsel for the Appellant to produce the Rules which permit the Tamil Nadu Housing Board to collect 10% of the market value from the occupants after the registered Sale Deed has been executed, the learned Counsel is unable to point out any such rule. Therefore it is clear that there is absolutely no reason for the Tamil Nadu Housing Board to insist for 10% market value for the purpose of issuance of No Objection Certificate. The allotment has been made nearly thirty years ago and admittedly the entire sale consideration and other charges have been paid by the Allottees and documentations have been made and therefore, the Allottees have sold away the properties to the third parties.

9. In such circumstances, unless there is a statutory Rule enabling the Housing Board to make such collections, the Housing Board cannot arbitrarily refuse to issue the No Objection Certificate on the basis that it is entitled to collect 10% market value.

10. As far as the other apprehension raised by the learned Counsel for the Appellant that the common area shown in the Flats are sought to be converted by the First Respondent for non-residential multi-storied building, Mr. Muthukumarasamy, learned Senior Counsel appearing for the First Respondent would fairly submit that the proposed reconstruction is not for non-residential purpose and it is for residential purpose and therefore, there is no need for any

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apprehension on the part of the Tamil Nadu Housing Board that multi-storied building are sought to be put up for non residential purposes."

8. The Division Bench recorded a finding that there was no statutory Rule enabling the Appellant-Board to collect 10% of the market value for issuing No Objection Certificate and in the absence of any such Rule, the Board is not justified in insisting upon No Objection Certificate. The Division Bench also noticed the decision of the earlier Division Bench in the case of Ramakrishna Nagar Flat Allottees, wherein the Division Bench held that the entire area belongs to the Allottees and the Board had no control.

9. It is seen that the Appellant-Board seeks to enforce terms and conditions of allotment as well as the covenants contained in the Deed of Sale executed in favour of the Allottees. Admittedly, the conditions contained in the letter of allotment as well as the covenants in the Deed of Sale are binding upon the parties. It is contended that the Deed of Sale is a conveyance in favour of the allottee subject to the conditions contained and it is not a deed of absolute sale simplicitor. Therefore, the question would be whether such covenants and conditions contained in the Deed of Sale and accepted by the allottee would be binding on the allottee or his successor in interest. The Larger Question would be whether the Board was justified in imposing conditions in the Letter of Allotment and covenants in the Deed of Sale so as to ensure that the purpose and object for which the scheme was promoted continuous to remain intact.

10. It is submitted by the learned Advocate General that the deed of transfer was only in respect of the built up area of the Flat and the remaining common area shall continue to remain common with no person be entitled to claim any exclusive right over such common area. It that be so, if all the owners of the Flats join together and decide to utilise the common area for their respective exclusive purpose would that be in contravention to the conditions of the covenants. However, this aspect of the matter had not come up for consideration before the earlier Division Bench. The other grievance expressed by the Appellant-Board is that the original Allottees have joined together and applied for demolition of all the Flats and have sought for building permit for putting up new construction and in the proposed new construction, the number of dwelling units has been increased. These additional dwelling units/Flats are sold and such sale proceeds appropriated by the original Allottees or given to the developer, who constructs the Flats for the Allottees as well as the additional Flats. Whether this would be permissible in the light of the conditions of allotment and the covenants in the Sale Deed, more so when, the land on which, the Flats were constructed were acquired by the State Government by the power of compulsory acquisition, citing the need that the lands are required for a public purpose. It that be so, should the public purpose continue to survive despite efflux of time ? This issue also did not come up for consideration before the earlier Division Bench.

11. The other issue would be if the original Allottees having found that their building has become old took a decision to pull down the building and put up a new construction without increasing the number of Flats, with an increased built up area, then will it be permissible under the Planning Rules. The question would be whether even in such cases, where the number of dwelling units has not been increased, yet it would require the No Objection from the Appellant-Board. This question has also not come up before the earlier Division Bench."

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2. Thus, the Division Bench deemed it fit to refer the matter to a Larger Bench to decide the following questions:

(i) Whether the Allottees of Flats in a Scheme evolved and implemented by the Housing Board, after execution of Sale Deeds in their favour by the Housing Board would be entitled to demolish the building and construct a new Apartment complex with additional dwelling units and sell such additional dwelling units to third parties without obtaining 'No Objection Certificate' from the Housing Board.

(ii) Whether the restrictive covenants contained in the Deed of Sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall be required to keep the common areas as such without claiming any exclusive right over the same.

(iii) Whether the Housing Board is justified in contending that such restrictive covenants are valid and enforceable in the light of the fact that the land on which the Apartment complex had been constructed, had been acquired from the public by invoking the provisions of the Land Acquisition Act on the ground that the lands are required for a public purpose.

(iv) Whether if all the Allottees in an Apartment complex join together and decide to pull down the existing structure and raise new construction by increasing the number of dwelling units/Flats by putting to use the land area which was initially earmarked as common area and required to be retained as such in the covenants contained in the Deed of Sale.

(v) Whether the Allottees by joining together decide to demolish the Apartment complex and construct a new Apartment complex with larger built up area without increasing the number of dwelling units, would still be required to obtain No Objection Certificate from the Housing Board.

(vi) Whether the Housing Board has power to levy charges at the rate of 10% of the market value on the additional floor/eligible FSI and whether such power is traceable to any Act, Rule or Regulation and what is the basis of such levy/demand."

3. In these cases, the Allottees or the Subsequent Purchasers from the Allottees, with an intention to demolish the existing superstructure (their Flats) and put up new construction have sought permission from the authorities. Their demolition plan before the Corporation Authorities and building permission sought for from the CMDA Authorities are not processed on the ground that they shall obtain "No Objection Certificate" from the Tamil Nadu Housing Board. However, the Writ Petitions filed by the Allottees or the Subsequent Purchasers from the Allottees have been allowed and the Corporation Authorities were directed to grant approval for

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the demolition of the existing structure and the CMDA authorities were directed to process their Applications for putting up new construction. The Tamil Nadu Housing Board, challenging the said orders have come up with the present Writ Appeals. As stated already, the then Hon'ble First Bench deemed it fit to refer the matter to a Larger Bench and hence, these Appeals are listed before us.

4. The question that arises for consideration is whether such "No Objection Certificate" has to be obtained from the Tamil Nadu Housing Board before demolition of existing Flats and reconstruction of new one. The learned Advocate General strenuously contended that what has been conveyed to the Allottees by the Tamil Nadu Housing Board is only the Flats and the land appurtenant therein are the land kept in common and have not been conveyed to the Allottees.

5. Before dealing with the said question, it would be appropriate to note the covenants in the Sale Deed between the Tamil Nadu Housing Board and the Allottees.

(i) Paragraph 8 of the Sale Deed dated 13.7.1992 in Writ Appeal No.952 of 2011 reads as follows:

> "*8.* Now this deed witnesseth that in pursuance of the abovesaid Agreement for Sale and in consideration of the sum of ₹76,320/- (Rupees Seventy Six Thousand Three Hundred and Twenty only) only paid by the Purchaser to the Vendor as mentioned in paragraph 6 above, the construction cost of the Flat together with the proportionate cost of land on which the building has been erected the receipt of which the vendor doth hereby acknowledge and of the monthly service, or maintenance charges, hereinafter reserved and of the covenants of the Purchaser hereinafter contained the Vendor does by way of absolute sale hereby Grant, Convey, Transfer and assign unto the Purchaser the in divided interest in all that piece of land where the building stands as shown in the plan annexed hereto and thereon coloured red together with the Flat No.4 in the Block No.M.34 in Ms City fully described in the First Schedule hereto."

(ii) The property that has been covered in the Sale Deed is set out in the first schedule to the Sale Deed which reads as follows:

> "*First Schedule Property:*
>
> All that Piece and portion of the Flat No.4 in the First floor of the Building in Block No. M.34 erected on the land in T. Survey No.1 part/Block 41 Vrvr village at Besant Nagar in Madras City Flat measuring 852 sq.feet and the land being bounded on —
>
> the North by : Block L-37
>
> the East by : 40' 0" Road
>
> the South by : Flat No. M.34/3
>
> and

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the West by : Plots

Within the Sub-Registration District of Adayar and Registration District of Madras."

(iii) With regard to the Easements, Rights and Privileges to the Allottees, they are set out in the Third Schedule to the Sale Deed which is usefully extracted here under:

"*Third Schedule:*

Easements, Rights and Privileges included in the transfer:

1. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitle to the like right) at all times by day or by night and for all purposes to go, pass and repass over and along the forecourt shown on the plan annexed hereto through and along the main entrances of the Building and the passages, landings and staircases leading to the Flat.

2. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitled to the like right) with or without motor cars and other vehicles at all time by day or by night for all purposes to go, pass and repass over and along the way shown on the Plan annexed hereto.

3. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitled to the like right) to use the fore Court and garden shown on the Plan annexed hereto and for the purpose of recreation and (as to the areas marked 'Parking' on the said plan for the parking of private motor-cars and motor-cycles only (but not for the purpose of playing games or for any other purpose): provided that any vehicle parked in the areas marked 'Parking' may only be parked for temporary period not exceeding three hours continuously at any one time.

4. The right (in common, with all other persons entitled to the like right) to use the part of the premises for the purpose of drying clothes.

5. The right (in common, with all other persons entitled to the like right) to use the part of the premises for keeping a dust-pin.

6. The right to subjacent and lateral support and to shelter and protection from the other parts of the building and from the site and roof thereof.

7. The free and uninterrupted passage and running of water and soil and electricity from and to the Flat through the sewers, drains, and water courses, cables, pipes, and wires which now are/or may at any time hereafter be in, under or passing through the Building or any part thereof.

8. The right to the Purchaser with servants, workmen and others at all reasonable times on notice (except in the case of emergency.)

(a) to enter into and upon other parts of the Building for the purpose of repairing cleaning, maintaining or renewing any such sewers, drains,

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watercourses, cables and wires with as little disturbance as possible and making good any damage caused; and

(b) to enter into and upon other part of the building for the purpose of repairing maintaining renewing, altering or rebuilding the Flat or any part of the building subjacent or lateral support, shelter or protection to the Flat.

9. The benefit of the restrictians contained in the transfer and leases of the other Flats comprised in the Building granted or to be granted.

10. All the above easements, rights and priveleges are subject to and conditional upon the Purchaser's contributing and paying as provided in Clause 13(c) of the Deed and the Fifth Schedule to this transfer.

11. The right (object to the Purchaser's contributing and paying his proper share to the cost of erection, maintenance and running of the television serial hereafter referred) to such share to be determined by the Vendor to connect a radio or television set in the Flat with an aerial erected by or on behalf of the Vendor provided that nothing herein contained shall oblige the Vendor to erect any such aerial.

12. Every internal separating the Flat from an adjoining Flats shall be a Party wall served medially."

(iv) The above covenants in the Sale Deed executed by the Tamil Nadu Housing Board to the Allottees would amply establish that what has been conveyed to the Allottees are not only the Flats but also the land appurtenant thereto. How common areas have to be utilised by all the Allottees have also been set out in the Third Schedule to the Sale Deed extracted above. Hence, the contention raised by the learned Advocate General that even after the allotment was made to the Allottees in respect of the Flats constructed by the Tamil Nadu Housing Board, the land appurtenant/common area have been retained by the Tamil Nadu Housing Board and it has got control over it, may not be correct.

(v) Further, a reading of the entire Sale Deed will disclose that the Tamil Nadu Housing Board has not retained any portion of the land.

6. The next question that has to be answered is whether the Allottees or the Subsequent Purchasers from the Allottees have to obtain "No Objection Certificate" from the Tamil Nadu Housing Board for demolishing the existing superstructure and to put up new construction over therein.

7. (i) Both sides relied on the provisions of the Tamil Nadu Apartment Ownership Act, 1994.

(ii) The Tamil Nadu Apartment Ownership Act, 1994 was enacted with an intention to provide for the ownership of an individual Apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such Apartment and to make such Apartment and interest heritable and transferable immovable property.

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(iii) The purpose for enacting the Act was set out in preamble to the Act which reads as follows:

"Whereas with a view to securing that the ownership and control of the material resources of the community are so distributed as to subserve the common good, it is expedient to provide for the ownership of an individual Apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such Apartment and to make such Apartment and interest heritable and transferable immovable property and to provide for matters connected therewith or incidental thereto"

(iv) Section 2 of the Act contemplates that it shall apply to every Apartment constructed before or after the Act. It reads as follows:

"*2. Application of this Act.*— This Act shall apply to every Apartment in a building constructed whether before or after the date of commencement of this Act:

Provided that such building shall contain five or more Apartments or three or more floors and construction of such building has been made in accordance with a planning permit and also a Building Plan duly sanctioned by the Appropriate Authority concerned under the relevant law for the time being in force."

(v) "Common areas and facilities" which is defined in Clause (h) of Section 3 of the Act reads as follows:

"*3. Definitions.*—

(h) "common areas and facilities" unless otherwise provided in the Deed of Apartment, means—

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells and sumps and entrances and exits of buildings;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;"

(vi) The term "property" is defined in Clause (q) of Section 3 of the Act which is reproduced hereunder:

"*3.* Definitions.—

(q) "property" means the land, the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto."

(vii) Section 4 of the Act provides for transfer of Apartment ownership by an individual with undivided interest in the common area and facilities.

(viii) Section 6 contemplates that:

(a) each Apartment owner is entitled to an undivided interest in the common areas and facilities.

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(b) common area and facilities shall not be altered without the consent of all Apartment owners.

(c) common area and facilities shall remain in common and no Apartment owner can seek for partition and division of the same.

(d) Maintenance, repairs and replacement of the common areas and facilities, addition and improvements thereof shall be carried out in accordance with the provisions of Act and Bye-laws.

(ix) Section 8 of the Act provides that no Apartment owner shall add any material structure without consent from other Apartment owners. Section 8 is usefully reproduced here under:

"*8. Certain works prohibited.*— No Apartment owner shall do any work or put the Apartment to any other use which would jeopardise the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament nor shall any Apartment owner add any material structure or excavate any additional basement or cellar without previously obtaining the unanimous consent of all the other Apartment owners."

(x) Section 12 provides for forming Society or an Association of Apartment owners for maintaining common areas and facilities.

(xi) Section 13 of the Act provides for framing of Bye-laws of such Society or Association formed as per Section 12 of the Act. As per Clause (2) of Section 13, the Bye-laws shall provide for the following matters, namely—

"the percentage of the votes which shall constitute the quorum;

the maintenance, repairs and replacement of the common areas and facilities and the limited common areas and facilities and payment thereof;

the appointment and removal of persons employed for the maintenance, repairs and replacement of the common areas and facilities and the limited common areas and facilities;

the restrictions on the requirements respecting the use and maintenance of the Apartments and the use of the common areas and facilities and the limited common areas and facilities not set forth in the Deed of Apartment, as are designed to prevent unreasonable interference with the use of their respective Apartments and of the common areas and facilities and the limited common areas and facilities by the several Apartment owners;

the terms and conditions subject to which transfer of any Apartment and percentage of undivided interest in the common areas and facilities and the limited common areas and facilities of such Apartments may be effected;"

(xii) Section 16 of the Act contemplates that the Apartment owners shall own in common the undivided interest in the property in the event of damage or if the same is destroyed in entirety or in part, and if Society or Association

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has not taken any repair or reconstruct or rebuild the property. Section 16 of the Act is reproduced here under:

> "*16. Disposition of property on destruction or damage.*— Where in the event of the property, either in the entirety or in part being damaged or destroyed and the Society or the Association of Apartment Owners has not undertaken to repair, reconstruct or rebuild within a period of ninety days or such further period as may be specified by the Competent Authority from the date of damage or destruction—
>
> *(a)* the property shall be deemed to be owned in common by all the Apartment owners in the same percentage as the percentage of the undivided interest specified in the Deed of Apartment;
>
> *(b)* the undivided interest in the property owned in common which shall appertain to each Apartment Owners shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities and the limited common areas and facilities;"

(xiii) Section 17 of the Act provides for an action by Society or Association relating to common area and facilities, which is usefully extracted here under:

> "*17. Action by Society or Association of Apartment Owners on behalf of the Apartment Owners.*— Without limiting the rights of any Apartment Owner, action may be brought by the Society or the Association of Apartment Owners on behalf of any Apartment Owner as his respective interest may appear; with respect to any cause of action relating to the common areas and facilities and the limited common areas and facilities of more than one Apartment."

(xiv) Section 18 of the Act provides for the right of the Society or Association to maintain repair or replace any of the common areas and facilities and the said provision is reproduced here under:

> "*18. Right of Society or Association of Apartment Owners to maintain, repair and replace any of the common areas and facilities, etc.*— The Society or the Association of Apartment Owners shall have the irrevocable right to be exercised by its Secretary or by any other person authorised in this behalf by the Committee to have access to every Apartment from time to time during reasonable hours as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities and the limited common areas and facilities therein or accessible from such Apartment or for making emergency repairs therein necessary to prevent damage to the common areas and facilities and the limited common areas and facilities or to another Apartment or Apartments."

(xv) Clause (1) of Section 19 of the Act deals with the sharing of common profits and expenses in common areas and facilities and the same is reproduced here under:

> "*19. Common profits and expenses.*— *(1)* The common profits shall be distributed among and the common expenses shall be charged to, the Apartment

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owners according to the percentage of the undivided interest of the Apartment owners in the common areas and facilities specified in the Deed of Apartment."

(xvi) Thus various provisions of the Act extracted above clearly stipulates that—

(1) The Apartment owners shall form a Society or Association,—

(a) with the object to maintain all common areas and facilities, to provide amenities in the common interest of all Apartment owners;

(b) to maintain, repair and replacement of common areas and facilities.

(c) to impose restrictions regarding the usage and maintenance of Apartments and the use of the common areas and facilities.

(d) to frame terms and conditions for transfer of any Apartment and percentage of undivided interest in common areas and facilities.

(e) to take action relating to common areas and facilities.

2. The percentage of the undivided interest of each Apartment owner in the common areas and facilities shall not be altered without the consent of all the Apartment owners and in accordance with the provisions of the Act and the Bye-laws.

3. In case of destruction or damage to the Apartment and if the society or Association fails to carry out the repair or reconstruct or rebuild the same, the property shall be owned in common by all Apartment owners in the same percentage as specified in the deed of the Apartment.

8. Thus, a reading of the various provisions of the Act clearly demonstrate that the Society or the Association formed under the Act alone is in control over the common areas and facilities available in the Apartments and it alone shall deal with the same. It can also frame Rules and Regulations for transfer of any Apartment and percentage of undivided interest in the common areas and facilities. The preamble of the Act which is extracted above clearly spells out that the Act is enacted to provide for ownership of an individual Apartment in a building, undivided interest in common areas and facilities pertaining to the transfer of Apartment.

9. While that being so, it cannot be urged, still, on behalf of the Tamil Nadu Housing Board that it has got control over the Apartments put up by it and the common areas available for the Apartment owners. Even assuming that the Tamil Nadu Housing Board has retained its power, even after selling the individual Apartments, the provisions of the Tamil Nadu Apartment Ownership Act, 1994 will prevail over and above the rights of the Tamil Nadu Housing Board, if any.

10. In this connection, it will be useful to consider Section 25 of the Act which provides that this Act will override other laws. Section 25 of the Act is usefully extracted here under:

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"*25. Act to override other laws.— (1)* The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or agreement or decree or order of a Court, Tribunal or other Authority.

(2) Save as otherwise provided in sub-section (1), the provisions of this Act, shall be in addition to and not in derogation of, any other law for the time being in force."

11. Mr. P.S. Raman, the learned Senior Counsel appearing for one of the Allottees relied on Section 11 of the Transfer of Property Act, 1882 and contended that once absolute right has been conferred on the property, no rider can be put to the enjoyment of the property. Section 11 of the Act is thus reproduced hereunder:

"*11. Restriction repugnant to interest created.*— Where, on a transfer of property, an interest therein is created absolutely in favour of the any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction."

In the case on hand, the Tamil Nadu Housing Board has executed Sale Deed in favour of the Allottees not only in respect of the Flats, but also the land appurtenant thereto. Even with regard to the common areas, the same vest with the Society or an Association formed by the Allottees. Further, it has been found that the Tamil Nadu Housing Board has not retained any right even over the common area. In such circumstances, Section 11 of the Transfer of Property Act comes to the rescue of the Allottees. Therefore, in our considered view, even if condition has been imposed in the Sale Deed, Section 11 of the Transfer of Property Act will come into play which will be in support of the Allottees.

12. (i) Mr. Sankaran, the learned Counsel appearing for one of the Respondents in W.A. No.783 of 2011 relied on the "No Objection Certificate" issued to one R. Ganesan and others for demolishing the existing building and to reconstruct new Apartments. While according permission for issuance of No Objection, conditions have been imposed which is set out in the annexure therein which is reproduced hereunder:

ANNEXURE

Conditions:

(1) The Planning Permission should be obtained from the local body (*i.e.* CMDA and Corporation) and the construction activities should be taken up after/as per the approval of local body.

(2)(a) The title of land, its boundary and extent has to be confirmed by the local body.

(b) in case of any dispute between the original Allottees and Subsequent Purchasers the TNHB will not take any responsibility.

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(3) The CMDA is the authority for permitting the eligible construction activities as per the D.C.R and the Tamil Nadu Housing Board will not object such activities, if they are accommodated within the boundary of undivided share of land pertaining to this block as shown in the enclosed orientation sketch, to be presented to CMDA.

(4) If any changed are required in the proposed building design, it is subject to the approval of CMDA.

(5) The proposed building, car park, open spaces and other service amenities should be accommodated (as per the DCR of CMDA) within the boundary of undivided share of land pertaining to this block, without affecting the adjacent blocks.

(6) If any dispute arises between the Petitioners and Association and other Allottees, in respect of construction of new building, the Tamil Nadu Housing Board will not take any responsibility."

However, the matter was directed to be placed before the Board for approval for issuance of No Objection Certificate to them.

(ii) As rightly contended by the learned Counsel appearing for the Allottees, the above permission has been granted by the Chairman stipulating certain conditions wherein, the Tamil Nadu Housing Board has made it very clear that if any dispute arose between the original Allottees and the Subsequent Purchasers regarding the putting up of new construction, the Tamil Nadu Housing Board will not take any responsibility. Further, it has made clear therein that the CMDA is the authority for permitting the eligible construction activities as per the D.C.R and the Tamil Nadu Housing Board will not object such activities as long as the same is within the boundary of undivided share of land pertaining to the said block, wherein the demolition and construction are sought to be made. Further, the conditions stipulates that if any changes are required in the proposed building design, it is subject to the approval of the CMDA. The said proposal sent by the Chairman, Tamil Nadu Housing Board for approval of the demolition of the existing Flats and construction of new Flats will amply establish that the Tamil Nadu Housing Board do not want to enter into the dispute pertaining to demolition of the existing structure and putting up new structure. It also made it very clear that as long as the construction are made within the boundary of the undivided share of land pertaining to the block, where the demolition and reconstruction are made, the Tamil Nadu Housing Board will have no say over the matter. It has further made it very clear that the CMDA is the authority for permitting the eligible construction activities as per the Rules made by it.

(iii) By pointing out the conditions while according permission for issuance of "No Objection Certificate", the learned Counsel appearing for one of the respondents in W.A. No.783 of 2011 contended that the Tamil Nadu Housing Board will have no say either at the time of demolition of the

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existing structure or at the time of putting up new one. The Tamil Nadu Housing Board has made it very clear that it will not take any responsibility, if any dispute arises while putting up construction of a new building. It also made it very clear that if any changes are required in the proposed building design, it is subject to the approval of the CMDA. This strengthens the case of the respondents that "No Objection Certificate" need not be obtained from the Tamil Nadu Housing Board, either for demolition of the existing structure or for putting up new construction.

13. (i) Mr. Mohan, the learned Counsel appearing for some of the Respondents in W.A. No.784 of 2011, relied on the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of one K.S. Kalyanasundaram, one of the Respondent in the said Appeal which is extracted hereunder:

> "*11.* The Vendor hereby further covenants with the Purchaser as follows:
>
> *(i)* ...
>
> *(ii)* ...
>
> *(iii)* ...
>
> *(iv)* That the Vendor, as already agreed between the parties, agrees to vest the land on which the Building consisting of the Flat described in the First Schedule hereunder is contained to a Housing Co-operative Society as and when such a Society is formed by the owners of all the Flats and it is hereby agreed to by both the parties that such Co-operative Society shall held the land jointly on behalf of all its members to protect their rights and privileges."

(ii) By relying on the said clause in the Sale Deed, the learned Counsel contended that as soon as the Tamil Nadu Housing Board execute the Sale Deed in favour of the Allottees, a Housing Co-operative Society shall be formed by the Allottees and the land on which the building consisting of the Flats is raised shall vest with the society and the society shall held the land jointly on behalf of all its members to protect their rights and privileges. Therefore, according to him, the land do not vest with the Tamil Nadu Housing Board after the same is sold in favour of the Allottees.

(iii) The learned Counsel further contended that after the sale of the Flats and the land appurtenant there to, the Rules framed under the Tamil Nadu Apartment Ownership Rules, 1997 alone will prevail. Much emphasis was placed on Rule 17 of the said Rules which is extracted hereunder:

> "*17.* That the undivided interest in the general and/or restricted common areas and facilities shall not be separated from the Apartment to which it appertains and shall be deemed conveyed or encumbered with the Apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument."

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(iv) The above extracted Rule would amply establish that the undivided interest over the common areas cannot be separated from the Apartment and shall be deemed to have been conveyed along with the Apartment, even assuming that such interest is not expressly mentioned or described in the conveyance. The said Rule further strengthens the case of the Flat owners and the contention raised on behalf of the Tamil Nadu Housing Board that the common areas vest with the Tamil Nadu Housing Board and hence, it shall be approached for getting "No Objection Certificate" in the event demolition of the existing Flats and construction of new Flats therein, cannot hold good.

(v) The learned Counsel also relied on the judgment reported in ***R & M Trust v. Koramangala Residents Vigilance Group and others,*** 2005 (3) SCC 91. That is the case where one Koramangala Residents Vigilance Group has filed a Public Interest Petition challenging the building license issued for construction of multi-storeyed/multi-Apartments at Koramangala Layout, Bangalore on the ground that it is illegal, void and prayed for quashing of the license and direction to demolish the building already constructed on the site.

That is the case where the learned Single Judge of the Karnataka High Court held that the license granted to the Appellant who was the Fourth Respondent in the Writ Petition are contrary to law, but however felt that the Writ Petition suffered from latches and delay and therefore, dismissed the Writ Petition. After the same, Writ Appeal has been filed by the Association. The Division Bench, wherein the Writ Appeal was filed, concluded that the view taken by the learned Single Judge that the license granted in favour of the Respondents 4 & 5 in the Writ Petition is contrary to law and liable to be quashed was right but however disagreed with the finding of the learned Single Judge that the Writ Petition suffered from delay and latches. Thus, the Appeal was allowed. Aggrieved over the said order, Special Leave Petition was filed before the Hon'ble Apex Court and the leave was granted. The Hon'ble Apex Court in such circumstances held that looking to the scheme of the Act, the Rules and the terms and conditions of the lease-*cum*-Sale Agreement, it transpires that once an allotment is made to the lessee and he makes all payments and fulfils all conditions of the agreement, then at the end of the stipulated period of ten years outright Agreement of Sale shall be executed by the lessor/vendor with the lessee/purchaser and the lessee will have absolute right. The Lease Agreement also says that during the currency of the lease, the lessee/purchaser shall abide by the terms and conditions of the lease. The only condition that he will construct only one dwelling house is contained in Condition 4 of the Lease-*cum*-Sale Agreement and so long as the full rights are not transferred to the lessee-purchaser, this condition would survive and, after the sale is made, this condition will no longer survive and conditions contained in absolute Sale Deed will govern. If the lessee or his successor wants to raise a construction, then the provisions of the Karnataka Municipal Corporation Act will come into play and he has to

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obtain prior sanction for construction of the building. As soon as the permission is granted by the Corporation, then he is to abide by those conditions along with the condition laid down in the absolute Sale Deed.

(vi) Paragraphs 19 & 21 of the Judgment referred above are usefully extracted hereunder:

> "*19.* The conditions, which have been set out in the Lease Agreement and which is relevant for our purpose is Condition 4. Condition 4 has already been reproduced above which provides that lessee/purchaser shall not subdivide the property or construct more than one dwelling house. Condition 12 says that if the lessee/ purchaser has performed all the conditions mentioned herein and committed no breach thereof the lessor/vendor shall, at the end of ten years referred to in Clause 1, sell the property to the lessee/purchaser and all attendant expenses in connection with such sale such as stamp duty, registration charges, etc., shall be borne by the lessee/purchaser. Condition 13 says that on complying with the terms and conditions of this agreement in the manner stated above but not otherwise the lessor/vendor shall be obliged to execute the Sale Deed in favour of the lessee/purchaser. Therefore, looking to the scheme of the Act, the Rules and the terms and conditions of the Lease-*cum*-Sale Agreement, it transpires that once an allotment is made to the lessee and he makes all payments then after the payment the lessor/vendor shall at the end of ten years sell the property to the lessee/purchaser and the lessee/purchaser will get the Sale Deed registered. Therefore, if all the conditions of the Lease Agreement are fulfilled, at the end of the stipulated period of ten years, then outright Agreement of Sale shall be executed by the lessor/vendor with the lessee/purchaser and the lessee will have absolute right. The Lease Agreement also says that during the currency of the lease, the lessee/purchaser shall abide by the terms and conditions of the lease. As per Condition 17(7) reproduced above, the lessee/purchaser shall not alienate the property during the period of tenancy. Once all the payments have been fulfilled by the lessee, then the land is registered in favour of the lessee by the lessor and the lessee becomes absolute owner of the land. So long as the building is not constructed under Condition 4 of the agreement, the lessee is neither entitled to alienate the property under Condition 17(7), nor shall he sub-divide the property or construct more than one dwelling house on it. These restrictions are there so long as the complete Sale Agreement is not executed under condition 12 of the Lease-*cum*-Sale Agreement. As soon as the Lease Agreement is executed confirming full title to the lessee, then the conditions of the Lease-*cum*-Sale Agreement come to an end and the lessee acquires full right to deal with the said property in accordance with the Act and the Rules bearing on the subject. After acquiring this full right the lessee has right to alienate the property or whenever either the lessee or his successor wants to construct a building thereon he can do so in accordance with the provisions of law. Condition 4 of the Lease Agreement was only to survive so long as the lessee continued to be a lessee as his rights of lessee are restricted, *i.e.* he cannot alienate the property nor can he subdivide the property and he has to construct one dwelling house. The moment the Lease-*cum*-Sale Agreement is executed after following the conditions of the lease as laid down, then there is no further hurdle or condition like not to construct multi-storeyed building or multi-dwelling house. The only condition that he will construct only one dwelling

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house is contained in Condition 4 of the Lease-*cum*-Sale Agreement and so long as the full rights are not transferred to the lessee-purchaser, this condition would survive and, after the sale is made, this condition will no longer survive and conditions contained in absolute Sale Deed will govern. If the lessee or his successor wants to raise a construction, then the provisions of the Karnataka Municipal Corporation Act will come into play and he has to obtain prior sanction for construction of the building. As soon as the permission is granted by the Corporation, then he is to abide by those conditions along with the condition laid down in the absolute Sale Deed.

20. ...

21. Learned Counsel for the Respondents has tried to raise certain objections that in the final agreement the expression "Apartment" has been used which shows that there cannot be more than one dwelling house. We regret to say that this interpretation does not bear out in the face of the language used in Clause 2 of the Final Agreement, which says that the building to be constructed shall be used wholly for human habitation and shall not include any Apartments to the building whether attached thereto or not for shop or warehouse or manufacturing purposes but that does not make out a case for prohibition of raising of the multi-storeyed building. Once the Municipal Corporation has permitted to raise construction more than three floors then this condition for construction will hold good and they are not contrary to any of the provisions of the Act. Section 505 of the Karnataka Municipal Corporation Act, 1976 only says that the Corporation shall exercise power in conformity with the provisions of the Karnataka Town and Country planning Act, 1961. Therefore, the Corporation at the time of granting permission has to keep in mind the provisions of the Karnataka Town and Country planning Act, 1961. But we have not been able to find any provisions of the Karnataka Municipal Corporation Act or the Karnataka Town and Country Planning Act, 1961 where any ceiling has been applied on the construction of the multi-storeyed building. Therefore, we do not find that the Municipal Corporation has committed any illegality in granting permission to the Appellant for raising construction up to third floor."

(vii) The Hon'ble Apex Court thus held once an allotment is made to the lessee and he makes all payment and fulfils all conditions of the Agreement, the lessee/purchaser will have absolute right and the terms and conditions of the lease will exist till the full rights are not transferred to the lessee/ purchaser and once the sale is made, the conditions therein will no longer survive. The only requirement as per the said judgment of the Hon'ble Apex Court is that the provisions of the Karnataka Municipal Corporation Act will come into play and sanction has to be obtained from the Corporation for construction of the building. The said judgment in our considered view is squarely applicable to the case on hand.

14. (i) Mr. V. Raghavachari, the learned Counsel, who supports the case of the Tamil Nadu Housing Board submitted that the scheme has been framed by the Government, funded by the Government and approved by the Government. Therefore, according to him, the conditions imposed in the Sale Deed shall be binding on all and if any demolition of the existing

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structure are sought to be made and new construction are sought to be put up, the Tamil Nadu Housing Board will have a say over the same. He relied on Sections 37, 39 to 47, 49, 54 & 56 of the Tamil Nadu State Housing Board Act, 1961. In our considered view, none of the provisions of the said Act envisages on the rights of the Allottees or the Subsequent Purchasers from the Allottees to put up new Apartment after demolition of all Apartments and on the common area.

(ii) That apart, We have already held that the Tamil Nadu Apartment Ownership Act, 1994 will alone prevail over the Tamil Nadu State Housing Board Act, 1961, in view of Section 25 of the Tamil Nadu Apartment Ownership Act, 1994 which was extracted above. Hence, the argument made by Mr. V. Raghavachari will have to be rejected.

15. Thus, the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994, the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining "No Objection Certificate" from the Tamil Nadu Housing Board will not arise. In such circumstances, the Allottees of the Flats, after execution of the Sale Deed in their favour have got every right to demolish the existing building and construct new Apartment blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the Rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got not say, even if additional dwelling units are constructed after demolishing the existing Flats. As stated already, the Tamil Nadu Housing Board looses its rights as soon as it executes Sale Deed in respect of the Flats, appurtenant land and even in the areas earmarked for the common enjoyment of the Flat owners. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the Rules and Regulations of the CMDA. Even assuming that there are restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes Sale Deed in favour of the Allottees, it looses all its rights on the property and it cannot any more question the action of the Allottees by saying that the Allottees have violated the conditions enumerated in the Sale Deed.

16. Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are

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required for public purpose, the public purpose ends with the construction of the Housing Board Flats and handing over the same to the Allottees, after execution of the Sale Deed.

17. The various provisions of the Tamil Nadu Apartment Ownership Act, 1994 which was extracted above deals with the common areas and who shall have the right to maintain common areas and utilisation of the same. At the risk of repetition, it has to be pointed out that Section 13 of the Act provides for framing of bye-laws of the Society or Association by the Flat owners not only for maintenance and repairs of existing Flats but also for "replacement of common areas". The Society or Association so formed shall take action relating to "common areas and facilities". Right of the Society or Association to maintain, repair and replacement of common areas is provided under Section 18 of the Act. Thus, the Act takes care of the common areas and facilities. Therefore, the Tamil Nadu Housing Board may not have any right over the common areas.

18. Thus, after elaborately considering the facts and circumstances of the case, relevant provisions and the case laws, we answer the reference in the following manner.

Reference i:

Whether the Allottees of Flats in a Scheme evolved and implemented by the Housing Board, after execution of Sale Deeds in their favour by the Housing Board would be entitled to demolish the building and construct a new Apartment complex with additional dwelling units and sell such additional dwelling units to third parties without obtaining 'No Objection Certificate' from the Housing Board.

Answer:

In view of the discussions made above, We hold that the Allottees of the Flats in a scheme implemented by the Tamil Nadu Housing Board, after execution of the Sale Deed in their favour by the Tamil Nadu Housing Board are entitled to demolish the existing the superstructure and put up new Apartment blocks with additional dwelling units and sell the same to the third parties without obtaining 'No Objection Certificate' from the Tamil Nadu Housing Board, as long as the construction are within the parameters of the rules and regulations of the CMDA.

Reference ii:

Whether the restrictive covenants contained in the Deed of Sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall be required to keep the common areas as such without claiming any exclusive right over the same.

Answer:

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The restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will not prevent the Allottees or the Subsequent Purchasers from the Allottees, in utilising the common areas, so long as the Society or Association which have been formed by the Allottees gives consent for the same and no doubt, that the construction are within the parameters of the Rules and Regulations of the CMDA

Reference iii:

Whether the Housing Board is justified in contending that such restrictive covenants are valid and enforceable in the light of the fact that the land on which the Apartment complex had been constructed, had been acquired from the public by invoking the provisions of the Land Acquisition Act on the ground that the lands are required for a public purpose.

Answer:

Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose ends with the construction of the Housing Board Flats and handing over the same to the Allottees after execution of the Sale Deed. When once the scheme is implemented, the Housing Board looses its rights and the scheme does not come into play.

Reference iv:

Whether if all the Allottees in an Apartment complex join together and decide to pull down the existing structure and raise new construction by increasing the number of dwelling units/Flats by putting to use the land area which was initially earmarked as common area and required to be retained as such in the covenants contained in the Deed of Sale.

Answer:

Some areas have been earmarked for the common enjoyment of the Flat owners. The common areas have to be enjoyed in common by the Flat owners and if a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without 'No Objection Certificate' from the Tamil Nadu Housing Board. The various provisions extracted from the Tamil Nadu Apartment Ownership Act, 1994 will amply establish that if all the Allottees who have formed the Society or Association decides to pull up the existing structure and raise a new construction with additional dwelling units even in the common areas, they can do so, provided such construction is in consonance with the Rules and Regulations of the CMDA.

Reference v:

Whether the Allottees by joining together decide to demolish the Apartment complex and construct a new Apartment complex with larger

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built up area without increasing the number of dwelling units, would still be required to obtain 'No Objection Certificate' from the Housing Board.

Answer:

The answer for Reference No.iv could be the answer for this reference also. If there can be an increase in the number of dwelling units/Flats, equally new Apartment blocks with larger built up area can also be put up, subject to the approval of all the Allottees who have joined together to start a Society or an Association and if it is not in violative of the Rules and Regulations of the CMDA.

Reference vi:

Whether the Housing Board has power to levy charges at the rate of 10% of the market value on the additional floor/eligible FSI and whether such power is traceable to any Act, Rule or Regulation and what is the basis of such levy/demand.

Answer:

As regards this reference, even the learned Advocate General fairly submitted that there is no rules which permit the Tamil Nadu Housing Board to collect 10% of the market value after registration of the Sale Deed by the Tamil Nadu Housing Board in favour of the Allottees. While so, there is no rhyme or reason for the Tamil Nadu Housing Board to insist for 10% of the market value for issuance of 'No Objection Certificate'. When the Tamil Nadu Housing Board need not be approached for obtaining 'No Objection Certificate' for demolition of the existing Flats and putting up new construction, the collection of charges at the rate of 10% of the market value on the additional floor area/eligible FSI which is not traceable to any Act or Rules cannot be levied.

19. However, We may add that the Allottees or the Subsequent Purchasers from the Allottees shall not convert the residential blocks into commercial one. Further, there cannot be any demolition of the existing Flats and construction of new Flats without concurrence or acceptance of all the Allottees or the Subsequent Purchasers of the said block where there is a proposal to demolish the existing superstructure and put up new construction.

20. With the above directions, the issues referred before us are answered accordingly. The Writ Appeals filed by the Tamil Nadu Housing Board therefore, fail and are dismissed. Consequently, all the connected Miscellaneous Petitions are closed. However, no order as to costs.

In view of the order passed in W.A. Nos.783 of 2011, etc. batch, all the Condone Delay Petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2013

CORAM

THE HONOURABLE MR.R.K.AGRAWAL, The Acting Chief Justice,

THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.VENKATARAMAN

Writ Appeal Nos.783, 784, 1394, 1395, 1396, 1771, 1772, 1952 of 2011
and
W.A.SR.Nos.41390, 41394, 41398, 41406, 41410, 41414, 41418, 41422, 41426, 41430, 41434, 41438, 41442, 41445, 41447, 41450, 41453, 100308, 100351, 100354, 100360, 107783, 107787, 107791, 107795, 107799, 107803, 107807, 107811, 111788, 111794, 111805 of 2011.

1.The Tamil Nadu Housing Board
rep.by its Managing Director/Chairman,
Anna Salai, Nandanam,
Chennai-600035. .. Appellants in all Writ Appeals and all Writ Appeals S.Rs

[R3 in W.P.No.29387/2010
R3 in W.P.No.670/2011
R3 in W.P.No.29277/2010
R3 in W.P.No.325/2011
R3 in W.P.No.176/2011
R3 in W.P.No.23411/2010
R3 in W.P.No.23412/2010
R3 in W.P.No.15170/2010
R3 in all W.P.Nos.]

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4884 of 2009, 27812 of 2010.

R3 IN W.P.NOS.5347, 5551, 1379, 1654, 5783, 5614, 4706, 2363, 5616, 5527/2011, 27812/10, 7547, 7214, 17009, 9112, 9724,17649, 14748, 9577, 15678, 16165, 6140/2011.

R2 IN W.P.NOS.4739, 5659, 16164, 15677, 15852/2011.

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R1 IN W.P.NOS.4884/09, 7164/11, 11966, 8651, 8652/11.

2.THE EXECUTIVE ENGINEER
TNHB, BESANT NAGAR DIVISION,
NO.48, DR.MUTHULAKSHMI NAGAR,
ADYAR, CHENNAI-20. ..R4 IN W.P.11966/2011

1.Mrs.Mary Rani Immanual

2.N.Sankara Pandian

3.K.L.Dhandapaani

4.M.Veerabadran

5.A.Samson Alexander

6.V.Ramakrishnan

7.Mohammed Ibrahim

8.V.Premkumar

9.V.K.Jayachandran

10.Meena Manickam

11.N.Manjula

12.Badgar Welfare Association,
All are rep.by their
General Power of Attorney,
P.Kurthivas
R-28, 12th Street, Anna Nagar
Chennai - 600 040 ...Respondents 1 to 12 in W.A.No. 783/2011 (Petitioners in W.P.No. 29387/2010)

13.The Chennai Metropolitan Development
Authority, Rep. By its Member Secretary
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ...R13 in W.A.783/2011
R9 in W.A.784/2011
R14 in W.A.1394/2011
R7 in W.A.1395 & 1396/2011
R27 in W.A.1771/2011
R5 in W.A.1772/2011
R2 in W.A.1952/2011

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(R2 in W.P.29387/2010 R1 in all W.Ps.670, 12011, 29227/10, 325/11, 176/11, 23411 & 23412/10 & 15170 of 2010).

R7 IN W.A.SR.41390/11(R2 IN W.P.5347/11)
R7 IN W.A.SR.41394/11(R1 IN W.P.5551/11)
R9 IN W.A.SR.41398/11(R1 IN W.P.1379/11)
R14 IN W.A.SR.41406/11(R1 IN W.P.4739/11)
R14 IN W.A.SR.41410/11(R1 IN W.P.1654/11)
R9 IN W.A.SR.41414/11(R1 IN W.P.5783/11)
R3 IN W.A.SR.41422/11(R2 IN W.P.4706/11)
R7 IN W.A.SR.41430/11(R2 IN W.P.2363/11)
R14 IN W.A.SR.41434/11(R1 IN W.P.5616/11)
R41 IN W.A.SR.41438/11(R1 IN W.P.5527/11)
R8 IN W.A.SR.41442/11(R2 IN W.P.5659/11)
R2 IN W.A.SR.41445/11(R1 IN W.P.27812/10)
R4 IN W.A.SR.41447/11(R2 IN W.P.7547/11)
R3 IN W.A.SR.41450/11(R1 IN W.P.7214/11)
R8 IN W.A.SR.41453/11(R2 IN W.P.7164/11)
R7 IN W.A.SR.100351/11(R1 IN W.P.17009/11)
R13 IN W.A.SR.100308/11(R1 IN W.P.16164/11)
R35 IN W.A.SR.100354/11(R2 IN W.P.11966/11)
R6 IN W.A.SR.100360/11(R1 IN W.P.9112/11)
R12 IN W.A.SR.107783/11(R2 IN W.P.8651/11)
R9 IN W.A.SR.107787/11(R1 IN W.P.9724/11)
R8 IN W.A.SR.107791/11(R2 IN W.P.17649/11)
R5 IN W.A.SR.107795/11(R1 IN W.P.14748/11)
R27 IN W.A.SR.107799/11(R1 IN W.P.15677/11)
R2 IN SR.107803/11(R2 IN W.P.8652/11)
R12 IN W.A.SR.107807/11(R1 IN W.P.9577/11)
R26 IN W.A.SR.107811/11(R1 IN W.P.15852/11)
R32 IN W.A.SR.111788/11(R1 IN W.P.15678/11)
R5 IN W.A.SR.111794/11(R1 IN W.P.16165/11)
R2 IN W.A.SR.111805/11(R1 IN W.P.6140/11)

14.The Corporation of Chennai
Rep by its Commissioner
Rippon Buildings
Chennai - 600 003. ...R14 in W.A.783/2011
R10 in W.A.784/2011
R15 in W.A.1394/2011
R8 in W.A.1395 & 1396/2011
R28 in W.A.1771/2011
R6 in W.A.1772/2011
R3 in W.A.1952/2011

(R1 in W.P.29387/2010 & R2 in all W.Ps.670, 12011, 29227/10, 325/11, 176/11, 23411 & 23412/10 & 15170 of 2010).

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R6 IN W.A.SR.41390/11(R1 IN W.P.5347/11)
R10 IN W.A.SR.41398/11(R2 IN W.P.1379/11)
R10 IN W.A.SR.41414/11(R2 IN W.P.5783/11)
R7 IN W.A.SR.41418/11(R2 IN W.P.5614/11)
R2 IN W.A.SR.41422/11(R1 IN W.P.4706/11)
R2 IN W.A.SR.41426/11(R2 IN W.P.4884/09)
R6 IN W.A.SR.41430/11(R1 IN W.P.2363/11)
R42 IN W.A.SR.41438/11(R2 IN W.P.5527/10)
R3 IN W.A.SR.41445/11(R2 IN W.P.27812/10)
R3 IN W.A.SR.41447/11(R1 IN W.P.7547/11)
R4 IN W.A.SR.41450/11(R2 IN W.P.7214/11)
R9 IN W.A.SR.41453/11(R3 IN W.P.7164/11)
R8 IN W.A.SR.100351/11(R2 IN W.P.17009/11)
R36 IN W.A.SR.100354/11(R3 IN W.P.11966/11)
R13 IN W.A.SR.107783/11(R3 IN W.P.8651/11)
R7 IN W.A.SR.107791/11(R1 IN W.P.17649/11)
R6 IN W.A.SR.107795/11(R2 IN W.P.14748/11)
R3 IN W.A.SR.107803/11(R2 IN W.P.8652/11)
R13 IN W.A.SR.107807/11(R2 IN W.P.9577/11)
R33 IN W.A.SR.111788/11(R2 IN W.P.15678/11)
R6 IN SR.111794/11(R2 IN W.P.16165/11)
R3 IN W.A.SR.111805/11(R2 IN W.P.6140/11)

1 MR.K.S.KALYANASUNDARAM

2 V.CHANDRA

3 M.BHASKAR ALSO CALLED AS
M.BHASKARAIAH.

4 MRS.R.DHANALAKSHMI

5 S.RAMANATHAN

6 M.ARUMUGAM

7 M.NATARAJAN

8 MRS.LAKSHMI RADHAKRISHNAN
ALL THE APPELLANTS ARE REP.BY THEIR
POWER OF ATTORNEY M.JOHN AND N.
N.DEVANAND DIRECTORS M/S.JD CONSTRUCTIONS &
PROMOTERS PVT.LTD NO.103 DR.LAKSHMANASWAMY
RD K.K.NAGAR CH-78. ..RESPONDENTS 1 TO 8 IN W.A.
784/2011 (WRIT PETITIONER IN
W.P.670/2011)

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1 MR.MANICKAM

2 MRS.JANAKI ARUNKUMAR

3 MR.RAMASAMY

4 MR.A.KRISHNADEV

5 MR.VINAYAGAN

6 PROF.R.SRINIVASAN

7 MRS.PADMAVATHY

8 MRS.CHARULATHA VANKAT

9 MR.D.SRIDHARAN

10 MR.P.KRISHNAN

11 MRS.SARALA KRISHNAN

12 MR.GOVINDHAN

13 MR.NEELAKANTHAN .. RESPONDENTS 1 TO 13 IN W.A. 1394/2011 (WRIT PETITIONERS IN W.P.29227/2010).

1 MR. A.SELVARAJ CARVALINO

2 MR. R.GOPALAN

3 MR. A.SWAMINATHAN

4 MRS. S.LALITHA

5 MR. S.BALAKRISHNAN

6 MR.M.VISHWANATHA RAI
PETITIONERS 1 TO 6 REP. BY POWER OF ATTORNEY M.CHANDRU. .. RESPONDENTS 1 TO 6 IN W.A. NO.1395/2011 (WRIT PETITIONERS IN W.P.NO.325/2011).

1 MR. L.MEENAKSHI SUNDARAM

2 MRS. P.MEENAKSHI

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3 MRS. GEETHA NAYAK

4 MR. A.JAFFAR HUSSAIN

5 MRS. S.CHELLAMMAL

6 MS.NAUSHEEN.J

PETITIONERS 1 TO 6 REP.BY
POWER OF ATTORNEY MR.M.CHANDRAN .. RESPONDENTS 1 TO 6 IN W.A. NO.1396/2011 (WRIT PETITIONERS IN W.P.NO.176/2011)

1 N.SANKARAN

2 C.SRI LALITH ARUNA

3 V.R.RATHANA JOTHI

4 V.R.RAGHU

5 V.R.RAMESH S/O.V.R.RAVI
PETITIONERS 1 TO 5 ARE REP.BY
POWER OF ATTORNEY A.MOHAMMED JAFFER

6 T.GOPINATH
REP.BY POWER OF ATTORNEY N.SANKARAN

7 R.NAGARAJAN

8 R.RANGANATHAN

9 S.LAKSHMI

10 S.NIRMALA

11 K.P.GANESAN

12 R.VASANTHA

13 E.PADMINI

14 NIRUPAMA SHARMA

15 K.BALAKRISHNAN

16 C.K.VENKATARAMAN

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17 R.SUBRAMANIAN

18 T.KRISHNA AYYAR

19 R.CHELLAM S/O.S.RAMASWAMY
REP.BY POWER OF ATTORNEY N.SANKARAN

20 J.VAIJAYANTHIMALA

21 R.JANAKI

22 P.V.BALACHANDER

23 CHELLAMAL NARAYANASWAMY

24 K.RAMARATHNAM
REP.BY POWER OF ATTORNEY
TK.SESHADRI

25 MRS.GEETHA SEETHARAMAN
REP.BY POWER OF ATTORNEY
V.S.SEETHARAMAN FLAT NO.H 4E

26 MRS. VISALAKSHI MOHAN .. RESPONDENTS 1 TO 26 IN W.A. NO.1771/2011 (WRIT PETITIONERS IN W.P.23411/2010)

1 R.JAYARAMAN

2 MITHUN JAYARAMAN
REP.BY POWER OF ATTORNEY
V.JAGGANNATHAN

3 V.JAGGANNATHAN

4 MRS. GITA JAGGANNATHAN
REP.BY POWER OF ATTORNEY
V.JAGGANNATHAN ..RESPONDENTS 1 TO 4 IN W.A. 1772/2011(WRIT PETITIONERS IN W.P.23412/2010)

1.M/S.CLASSIC RAMANIYAM,
REAL ESTATE REP BY ITS
DIRECTOR. ..1ST RESPONDENT IN W.A.1952 OF 2011 (PETITIONER IN W.P.NO. 15170/2010)

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THE AMBATTUR MUNICIPALITY
REP.BY ITS COMMISSIONER
AMBATTUR, CHENNAI. ..R8 IN W.A.SR.41394/2011
(R2 IN W.P.5551/2011)
R15 IN W.A.SR.41410/2011 &
41434/2011
(R2 IN W.P.1654/11 & 5616/11)
R7 IN W.A.SR.100360/11
(R2 IN W.P.9112/2011)
R10 IN W.A.SR.107787/2011
(R2 IN W.P.9724/2011)

MR.R.VENKATACHARY ..R3 IN W.A.SR.41426/2011
(R3 IN W.P.4884/2009)

1 R.GANESAN

2 MRS.R.MYTHILI

3 MRS.KRIPAVATHI KUMAR

4 DR.S.PARTHIBAN

5 MRS.P.ANANTHALAKSHMI ..RR 1 TO 5 IN W.A.SR.No.41390
OF 2011 (WRIT PETITIONERS IN
W.P.5347/2011)

1 P.MURALIDARAN

2 T.S.GOPINATHAN

3 V.RAMADOSS

4 K.SUBRAMANIAN

5 G.SUJITH

6 M.N.CHANDRASEKAR
ALL ARE REP. BY THEIR
POWER AGENT K.BALACHANDAR ..RR 1 TO 6 IN W.A.SR.No.41394
OF 2011 (WRIT PETITIONERS IN
W.P.5551/2011)

1 MRS.VIJAYA KRISHNAMOORTHY

2 MRS.CHITRA MURALI

3 N.AMBALAVANAN

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4 N.ANANDHKUMAR

5 N.ARAVINDHKUMAR
3 TO 5 REP. BY POWER AGENT DR.S.PREMALATHA

6 B.PREMCHAND

7 V.B.RAJENDRA RAJA

8 D.VAIDYANATHAN ..RR 1 TO 8 IN W.A.SR.No.41398 OF 2011 (WRIT PETITIONERS IN W.P.1379/2011)

1 P.SUNDAR RAMAN

2 S.SHANMUNDEESWARI

3 K.YUVARANI

4 S.K.SRIDHAR

5 G.RAJAMANI

6 R.NATARAJAN

7 M.SHEK MOHAIDEEN

8 MOHAMMED USMAN

9 BHOOPATHY

10 SHOBA KITHARI

11 ASHOK KUMAR

12 RAMANATHAN

13 MANJULA PETITIONER 1 TO 13 ARE
REP. BY THEIR P.O.A. M.JOHN AND N.DEVANAND
DIRECTORS M/S.JD CONSTRUCTION & PROMOTERS
PVT.LTD. 103 DR.LAKSHMANASWAMY ROAD K.K.
NAGAR CHENNAI-600 078 ..RR 1 TO 13 IN W.A.SR.No. 41406 OF 2011 (WRIT PETITIONERS IN W.P.4739/2011)

1 J.CHANDRA GOWRI

2 MRS.EVA SUHASINI VINCENT

3 P.SHANKAR

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4 MRS.PAMELA RAJA RAO

5 K.NAGENDRAN

6 SRIRAM BALASUBRAMANIAM

7 J.HEMALATHA

8 N.GOPALAKRISHNAN NAIR

9 D.BHUVANESWARI SURENDRAN

10 K.S.KRISHNAMURTHY

11 MRS.K.VIJI

12 MRS.AMUTHA KANNIAH

13 S.NATARAJAN
REP. BY THEIR AGENT S.RAMASAMY PROPRIETOR BHAGGYAM CONSTRUCTIONS NO.2 SARANGAPANI STREET T.NAGAR CHENNAI-17. ..RR 1 TO 13 IN W.A.SR.No. 41410 OF 2011 (WRIT PETITIONERS IN W.P.1654/2011)

1 G.GEETHA

2 B.LEELADHAR

3 T.MANGAYARKARASI

4 K.SIVANANTHAKRISHNAN

5 K.ANURADHA

6 S.SATYAMURTHI

7 G.BALASUBRAMANIAN
3 TO 7 REP BY POA T.UDAYAKUMAR SOLE PROPRIETOR LANDMARK CONSTRUCTION NO.27 SARAVANA ST T. NAGAR CHENNAI 17

8 SUNDARAVATHANAM
REP BY POA K. BALACHANDAR NO.27 SARAVANA ST T.NAGAR CHENNAI 17 ALL THE PETRS 1 TO 8 RESI AT BLOCK NO.82 P.T.RAJAN SALAI K.K. NAGAR CHENNAI 78. ..RR 1 TO 8 IN W.A.SR.No. 41414 OF 2011 (WRIT PETITIONERS IN W.P.5783/2011)

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1 R.SRINIVASAN

2 REVATHY SRINIVASAN

3 S. GOVINDARAJAN

4 MRS.SUSY CHERIAN

5 MRS.RAMANUJAM KASINI VENTHINI

6 MR.SWAMINATHAN RAJU ..RR 1 TO 6 IN W.A.SR.No. 41418 OF 2011 (WRIT PETITIONERS IN W.P.5614/2011)

1.MR.G.SAMBANDAN
REP.BY ITS POWER AGENT
MR.S.RAMAKRISHNAN ..R1 IN W.A.SR.No.41422/2011 (WRIT PETITIONER IN W.P.4706 OF 2011)

1.SMT.LEELA DEVARAJAN ..R1 IN W.A.SR.No.41426/2011 (WRIT PETITIONER IN W.P.4884 OF 2009)

1.K.PREMA

2.K.RAGHUNATH
REP.BY HIS POWER OF ATTORNEY
K.PREMA.

3.S.THYAGARAJAN

4.C.R.SHYAM SUNDAR

5.L.V.NATARAJAN ..RR 1 TO 5 IN W.A.SR.No.41430 OF 2011 (WRIT PETITIONERS IN W.P.2363 OF 2011)

1 V.MOHAN

2 MRS. SARADA GANESAN

3 V.RAMACHANDRAN

4 A.VIJAYKUMAR

5 D.RUKMANI

6 T.K.RAMABADRAN

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7 HEMA BASKARAN

8 ALAGAMMAI

9 K.SHANKAR

10 S.SELVARAJAN

11 J.JAYAKUMAR

12 B.RAJALAKSHMI

13 M.DHANASEKARAN
ALL REP. BY GPA HOLDER
T.UDAYKUMAR ..RR 1 TO 13 IN W.A.SR.No. 41434 OF 2011 (WRIT PETITIONER IN W.P.5616/2011)

1 K.LAKSHMANAN

2 R.KUMAR

3 MRS.KAVITHA SUKUMAR

4 MRS.V.S.INDUMATHI

5 R.KALAISELVI

6 C.I.SIVASUBRAMANIAN

7 A.SUBRAMANIAN

8 P.S.KRISHNAMOORTHY

9 MRS.P.S.VASANTHA BAI

10 MRS.KASTURI SANTHANAM

11 R.NARAYANAN

12 S.RAMAN

13 K.SIVAKUMAR

14 MRS.K.MALATHY

15 R.SUBRAMANIAN

16 N.SUBRAMANIAM

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17 K.SIVAKUMAR

18 R.NARAYANAN

19 MRS.JANAKY SUNDARARAJAN

20 C.STEPHEN BALASUNDARAM

21 R.SUBRAMANIAN

22 MRS.AMIRTHA GOWRI

23 K.R.VARADARAJAN

24 T.KHYOOM BASHA

25 S.R.VISWANATHAN

26 J.C.SAMUEL

27 MRS.MANGALA NAGARAJAN

28 V.LAKSHMINARAYANAN

29 R.NARASIMHAN

30 S.RAJESWARI

31 S.SUBRAMANIAN

32 S.VENKATRAMAN

33 S.GANESH

34 K.VENUGOPALAN

35 J.AROKIASAMY

36 MRS.MARGARET SHEELA

37 K.S.RAKESH

38 UMAKANTH NATARAJAN

39 R.KANNAN

40 MRS.N.INDRANI
ALL ARE REP.BY THEIR POWER OF
ATTORNEY AGENT R.GOPAL

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S/O MR.K.RAJAM,
MANAGING PARTNER,
M/S.ACCHYUTHAN HUILDERS & CO.,
A PARTNERSHIP FIRM. ..RR 1 TO 40 IN W.A.SR.No. 41438 OF 2011 (WRIT PETITIONERS IN W.P.5527/2011)

1 R.G.NAGAMMAL

2 S.PARVATHY

3 MRS.SOUNDARAM

4 N.THIAGARAJAN

5 K.RENGANATHAN

6 S.KIRPA

7 H.SATHYA MOORTHY
(FOR HIMSELF AND AS THE POWER AGENT OF 1 TO 6 RESPONDENTS) ..RR 1 TO 7 IN W.A.SR.No. 41442 OF 2011 (WRIT PETITIONERS IN W.P.5658/2011)

1.P.R.EARNARST
S/O MR.D.I.PAUL,
MANAGING DIRECTOR OF
M/S GREEN PEACE CONSTRUCTION
PVT., LTD., ..R1 IN W.A.SR.No.41445/2011 (WRIT PETITIONERS IN W.P.27812 OF 2010)

1.R.KRISHNAMURTHY

2.MRS.K.SARASWATHY ..RR 1 & 2 IN W.A.SR.No. 41447 OF 2011 (WRIT PETITIONERS IN W.P.7547/2011)

1.MR.R.ANBAN

2.MRS.YAMUNA BAI ANBAN ..RR 1 & 2 IN W.A.SR.No. 41450 OF 2011 (WRIT PETITIONERS IN W.P.7214/2011)

1.C.VENKATESH PRABHU

2.MRS.LAKSHMI

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3.H.R.MURALIDHAR PRASATH

4.K.PADMANABHAN

5.R.VENKATRAMANAN

6.MRS.S.MEENAKSHI

7.MRS.BINITA SASI ..RR 1 TO 7 IN W.A.SR.No. 41453 OF 2011 (WRIT PETITIONERS IN W.P.7164/2011)

1.MR.SIDDARTHAN UDAYAMURTHY,
S/O M.S.UDAYAMURTHY,
REP.BY POA, V.JAGADESAN.

2.MR.S.SAMBANDAN

3.MR.SYED GYAS HUSSAIN BAHMONY

4.MR.A.MOHAMMED EQBAL

5.HAFSAH RIIYAZ @ M.S.JANAKI

6 MRS.SHABEERA SYED IRSHAD @ SHABEERA IRSHAD

7 MR.ASHISH PHILIP ZACHARIAH

8 MR.G.SUBRAMANIAN

9 MRS.KARPAGAM

10 MR.B.SANKAR

11 MR.R.RAMAMURTHY

12 MR.S.VINODH ..RR 1 TO 12 IN W.A.SR.No. 100308 OF 2011 (WRIT PETITIONERS IN W.P.16164/2011)

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1.A.SRINIVASAN

2.R.PRASANNAM

3.L.VALLIAPPAN

4.L.R.NARAYANAMURTHY

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5.S.SYED ABDUL SAMED

6.P.BALAJI ..RR 1 TO 6 IN W.A.SR.No. 100351 OF 2011 (WRIT PETITIONERS IN W.P.17009/2011)

1 DR. MRS. S.LAKSHMI

2 MRS. SUNITHA M.A. PERIERA

3 MR.NATHAN HAROLD PERIERA

4 MR.GAELEN STANISLAUS PERIERA

5 MR. V.DORAIRAJ

6 MR. M.G.NAGESWARAN

7 MR. T.S.VENKATESAN

8 MR. ASHWIN VENKATESAN

9 MR. RAMAKRISHNAN VENKATESAN

10 MRS. APARNA SWAMINATHAN

11 MR. V.SUNDER RAJAN

12 MR. S.SUBRAMANIAN

13 MR. M.R.HUSSAIN

14 MR. FELIX PEREIRA

15 MR. S.VISWANATHAN

16 MR. G.R.RAMAKRISHNAN

17 MRS. VISALAM RAMAKRISHNAN

18 MRS. KAMALA RAGHAVAN

19 MRS. LALITHA NAGARAJAN

20 MR. D.V.S.SUBRAMANIAM

21 MRS. D.PADMA SHASRI

22 MRS. DURGA VANI KALLE

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23 MR. SURYA SUDHAKAR

24 MRS. BHUVANESWARI RATHNAKUMAR

25 MRS. MYTHILI MURALI

26 MRS. MEKALA

27 MRS. MADHURI SATHYANARAYANAN

28 MR. VIJAYAKRISHNAN

29 MRS. SARASWATHI VASAN

30 MR. R.SATHYANARAYANAN

31 MR. P.K.RAGHU

32 MR. T.V.SRINIVASAN

33 MR. P.NARAYANAN

34 DR. B.R.RAMANI ..RR 1 TO 34 IN W.A.SR.No. 100354/2011 (WRIT PETITIONERS IN W.P.NO.11966/2011.

1.D.RAMESH

2.R.BALAMURALI

3.A.P.ANANTHA SUBRAMANIAM

4.N.SUNDAR

5.S.THIRUNAVUKARASU ..RR 1 TO 5 IN W.A.SR.No. 100360/2011 (WRIT PETITIONERS IN W.P.NO.9112/2011)

1 M/S.KGEYES RESIDENCY PVT.LTD
REP.BY ITS EXECUTIVE DIRECTOR
S.VENKATASUBRAMANIAN,
HAVING OFFICE AT NO.10, SRUSHTISSTHAL
POWER OF ATTORNEY AGENT OF

1.MRS.L.VANAJA

2.K.VAIDYANATHAN

3.MRS.USHALINI SIVANANDAN

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4.K.SHANMUGAM

5.T.ELUMALAI

6.R.SIVARAMAKRISHNAN

7.V.GOVINDARAJAN

8.M.K.SANKARAN

9.C.S.JAYARAM

10.P.RAGHAVAN

11.SMT.KANTHIMATHI ..RR 1 TO 11 IN W.A.SR.No. 107783/2011 (WRIT PETITIONERS IN W.P.8651/2011)

1 SABANAYAGAM

2 TMT.KANCHANADEVI

3 S.LAKSHMI NARAYANAN

4 BANUMATHI

5 EMANATHAN

6 SHANTHAKUMARI

7 USHA RANI

8 BALASHANKAR ..RR 1 TO 8 IN W.A.SR.No. 107787/2011 (WRIT PETITIONERS IN W.P.9724/2011)

1 DR.R.RAJALAKSHMI

2 V. SWAMINATHAN

3 SOFIA SEBASTIAN

4 KRIPA SANKAR RAJAPPA

5 A. LAKSHMANAN

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6 P.RAMASUBRAMANIAM
ALL 1 TO 6 ARE RESIDING AT BLOCK NO.H-16
THIRUVANMIYUR HOUSING BOARD SCHEME
THIRUVANMIYUR CHENNAI 41 ..RR 1 TO 8 IN W.A.SR.No. 107791/2011 (WRIT PETITIONERS IN W.P.17649/2011)

1.K.NATARAJAN

2.T.RAMASWAMY

3.K.KALAYANA RAMAN

4.N.BUCHAMMAL ..RR 1 TO 4 IN W.A.SR.No. 107795/2011 (WRIT PETITIONERS IN W.P.14748/2011)

1 DR.S.VADIVEL

2 K.SREEJITH

3 R.SURESH

4 K.M.SAM KUTTY

5 HONEY SAM KUTTY

6 J.RAMESH KUMAR

7 T.KAMESWARAN

8 M.VELU

9 AROKIA PETER

10 NAGARAJAN

11 VIMALA

12 J.POULINE

13 K.DAVID THANGARAJ

14 V.BALAKRISHNAN

15 A.PAULRAJ

16 A.R.ALAMELU

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17 R.LAKSHMI

18 ALLIRANI THIYAGARAJAN

19 K.SUMATHI

20 RENUGA MURALIDHARAN

21 R.S.SAMPATH

22 RAJASEKARAN NAIR

23 G.KUYELAN

24 D.GAJENDRAN

25 DR.P.MURUGAN

26 W.REGINA
(1 TO 26 ARE REP BY THEIR
POWER OF ATTORNEY
M.JOHN AND N.DEVANAND ..RR 1 TO 4 IN W.A.SR.No. 107799/2011 (WRIT PETITIONERS IN W.P.15677/2011)

1.V.K.SHRINIVASAN
POWER OF ATTORNEY AGENT OF THE
PRINCIPAL DR.S.SUBBULAKSHMI @
S.S.LAKSHMI ..R1 IN W.A.SR.No.107803/2011 (WRIT PETITIONER IN W.P.NO. 8652/2011)

1 K. JAYARAMAN

2 R. VISWESWARAN

3 R.CHANDRASEKARAN

4 K.VASANTHI

5 R.SUBRAMANIAN

6 K.MURALI

7 USHA RANGANATHAN

8 M.R. SUSEENDRAN

9 P.LAKSHMIKUMARI

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10 M.R. KARTHICK

11 M.R.REEMA ..R 1 TO 11 IN W.A.SR.No. 107807/2011 (WRIT PETITIONERS IN W.P.NO.9577/2011)

1 NIRMALA RAMADAS

2 DR.TAMILARASI

3 V.JAGANATHAN

4 A.R.GURURAJA RAO

5 BHOOPATHY

6 M.JAYAPRAKASH

7 ABDUL AZEEZ

8 SHAMSAD BEGUM

9 M.BHARATH KUMAR

10 P.R.SOLAIAPPAN

11 C.JAYAPAUL

12 T.KISHIN

13 NAGARAJAN

14 S.RAJA

15 MRS.ANANDAREEJA

16 M.PADMANABHA PILLAI

17 N.KRISHNAMURTHI

18 B.GIRINATH

19 M.GOVINDARAJ

20 S.PRABAVATHY

21 R.ASHOKAN

22 B.RAMAMURTHY

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23 ALEXANDER MATHEW

24 MRS.C.C.VIJI JANARDLIN

25 MRS.P.JOTHI SWARNALATHA
(1 TO 25 ARE REP.BY THEIR
POWER OF ATTORNEY M.JOHN
AND N.DEVANAND

..RR 1 TO 25 IN W.A.SR.NO.
107811/11 IN (WRIT PETITIONERS
IN W.P.15852/2011)

1 S. ARAVINDAN

2 S.SURESH

3 V.SHANMUGASUNDARAM

4 M.PALAVESAM

5 P.SARASWATHI

6 O.A. VARADARAJAN

7 S.RAMJI

8 S. VANAJA

9 NITYASUKUMAR

10 P.K.SUKUMAR

11 R. RAMACHANDRAN

12 P.N.SAIKUMAR

13 M.J. VISWANATHAN

14 R.NARAYANAN

15 SHANTHA VASUDEVAN

16 V. BALACHANDRAN

17 K.SUNDAR

18 V.M.VASUDEVAN

19 P.S. PRAMEELA

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20 V. SUBHULAKSHMI

21 R.JANARDHANAN
22 K.SIMHAN

23 V.JAYASHREE

24 VISALAKSHI VARADHARAJAN

25 V. SESHADRI

26 A.R. VENKATACHALAPATHI

27 SRINIVASA RAGHAVACHARI

28 R.SWARNAMBAL

29 C.R.RAMESH

30 C.R. GANESH

31 C.R.MAHESH
(PETITIONERRS 1 TO 31 ARE
REP BY THEIR POWER OF ATTORNEY
M.JOHN AND N. DEVANAND DIRECTORS ..RR 1 TO 31 IN W.A.SR.NO. 111788/11 (WRIT PETITIONERS IN 15678/11)

1.K.S.MAHADEVAN

2.GEETHA RAMKUMAR

3.RAMA RANGANATHAN

4.RANGANATHAN ..RR 1 TO 4 IN W.A.SR.NO. 111794/11 (WRIT PETITIONERS IN 16165/2011)

1.GREEN PEACE CONSTRUCTION PVT., LTD.,
NO.10, NATESAN ROAD, ASHOK NAGAR,
CHENNAI-83, REP.BY ITS MANAGING DIRECTOR,
MR.P.R.EARNARST. ..RR 1 IN W.A.SR.NO.111805/11 (WRIT PETITIONER IN W.P.NO. 6140/2011)

WRIT APPEAL PRAYERS:

Writ Appeals have been filed under clause 15 of the letters patent preferred agaisnt the order dated 12.1.2011, 18.1.2011, 7.1.2011, 7.1.2011, 7.1.2011, 16.11.2010, 23.12.2010 and 20.7.2010,

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respectively made in W.P.No.29387/2010, W.P.NO.670/2011, W.P.NO.29227/2010, W.P.NO.325/2011, W.P.NO.176/2011, W.P.NO.23411/2010, W.P.NO.23412/2010, AND W.P.NO.15170/2010, respectively, filed Under Article 226 of the Constitution of India,

1.Praying to issue a writ of mandamus directing Directing the respondents 1 and 2 to forthwith receive, consider and grant approval for the planning permission, planning permit and building permit for the new construction at Block No.304 and 305 Belly Area Anna Nagar West, Chennai-40, comprised in Survey No.207 part of Thirumangalam Village measuring 4 grounds and 1339 sq.ft. jointly owned by the petitioners without insisting upon the No Objection Certificate from the 3rd respondent herein or any other authority, so long as the proposed new construction activities are in accordance with the Development Control Rules and pass such further orders; (in W.P.NO.29387/2010).

2.Praying to issue a writ of mandamus, directing the respondents 1 and 2 to receive consider process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block No. 97A to F Sowbagya Colony Anna Main Road (Ashok Pillar Salai) K.K. Nagar Chennai-78 comprised in S.No. 394/1 (part) in Kodambakkam Village Mambalam-Guindy Taluk Chennai District without insisting or production of No Objection Certificate from the 3rd respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously; (in W.P.NO.670/2011).

3.Praying to issue a writ of mandamus directing the respondents 1 and 2 to receive, consider process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block No.382 and 383 comprised in T.S.No.2 (part) and 37 part Ayanavaram Village Green Gardens Anna Nagar Chennai-40 without insisting or production of No Objection Certificate from the 3rd respondent; (in W.P.NO.29227/2010).

4.Praying to issue a writ of mandamus directing the respondents 1 and 2 to receive and consider and grant approval for the demolition planning permission Planning permit and building permit to the petitioners for putting up new construction in the property situated in Block No.D-113 consisting of 6 flats comprised in S.No.412 Part of Kodambakkam Village measuring 3 Grounds 1852 Sq.ft. situated at Sangeetha Colony, Anna Main Road, K.K.Nagar Chennai-600 078 without insisting upon NOC from the Tamil Nadu Housing Board or any other authority so long as the petitioners construction activities are in accordance with the Development Control Rules; (in W.P.NO.325/2011).

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5.Praying to issue a writ of mandamus, directing the respondents 1 and 2 to receive and consider and grant approval for the demolition planning permission Planning permit and building permit to the petitioners for putting up new construction in the property situated in Block No.D-105 consisting of 6 flats comprised in S.No.416 Part of Kodambakkam Village, measuring 3 Grounds 147 Sq.ft. situated at Sangeetha Colony R.K.Shanmugam Salai, K.K.Nagar Chennai-78 without insisting upon NOC from the Tamil Nadu Housing Board or any other authority so long as the petitioner's construction activities are in accordance with the Development Control Rules; (in W.P.NO.176/2011).

6.Praying to issue a writ of mandamus to direct the 1st and 2nd respondent to receive and consider and grant approval for the demolition, Planning Permission, Planning permit and building permit to the petitioners for putting up new construction in the property situated in Block No.31 comprised in Town Survey No.4 Part as per docuement and in S.No.4/9 as perPatta C.A.No.292/2008 of Kodambakkam Village Guindy-Mambalam Taluk bearing Municipal Door No.27 28 29 & 30 measuring 32945 sq. ft. consisting of 24 flats situated at Ganga Colony 1st Avenue, Ashok Nagar, Chennai-83 without insisting upon NOC from the Tamil Nadu Housing Board or any other authority so long as the petitioners construction activities are in accordance with Development Control Rules; (in W.P.NO.23411/2010).

7.Praying to issue a writ of mandamus directing the respondents 1 and 2 to receive and consider and grant approval for the demolition Planning Permission Planning permit and building permit to the petitioners for putting up new construction in the property comprised in S.No.154 Part T.S.No.82 Block No.53 Thiruvanmiyur Village, situated at T-24 7th Avenue, Besant Nagar Chennai-90, land measuring about 6300 sq. ft. as per document and 6228 sq. ft. as per orientation sketch without insisting upon NOC from the Tamil Nadu Housing Board or any other authority so long as the petitioners' construction activities are in accordance with the Development Control Rules; (in W.P.NO.23412/2010).

8.Praying to issue a writ of mandamus directing the respondents 1 and 2 to receive and consider and grant approval for the planning permision, planning permit and building permit to the petitioners for putting up new construction in the property measuring 14600 sq.ft. situated at Block No.M 34, comprising in Survey No.118 part and 119 part, in Thiruvanmiyur Village, Mylapore-Triplicane Taluk, Kamaraj Nagar, East Avenue, Thiruvanmiyur, Chennai-41 without insisting upon NOC from the Tamilnadu Housing Board or any other authority so long as the petitioners construction activities are in accordance with the Development Control Rules; (in W.P.NO.15170/2010).

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WRIT APPEAL SR PRAYER:

Writ Appeals S.Rs, have been filed under clause 15 of the Letters Patent sought to be preferred against the orders dated 3.3.2011, 7.3.2011, 28.1.2011, 1.3.2011, 28.1.2011, 10.3.2011, 4.3.2011, 1.3.2011, 15.12.2010, 3.2.2011, 4.3.2011, 4.3.2011, 4.3.2011, 1.2.2011, 24.3.2011, 29.3.2011, 22.3.2011, 8.8.2011, 3.8.2011, 29.4.2011, 8.4.2011, 7.4.2011, 18.4.2011, 25.8.2011, 29.6.2011, 30.6.2011, 7.4.2011, 18.4.2011, 1.7.2011, 30.6.2011, 3.8.2011 and 15.3.2011 respectively, made in W.P.Nos.5347/2011, 5551/2011, 1379/2011, 4739/2011, 1654/2011, 5783/2011, 5614/2011, 4706/2011, 4884/2009, 2363/2011, 5616/2011, 5527/2011, 5659/2011, 27812/2010, 7547/2011, 7214/2011, 7164/2011, 17009/2011, 16164/2011, 11966/2011, 9112/2011, 8651/2011, 9724/2011, 17649/11, 14748/2011, 15677/2011, 8652/2011, 9577/2011, 15852/2011, 15678/2011, 16165/2011 and 6140/2011 respectively, filed under article 226 of the Constitution of India to issue a Writ of Mandamus;

1.Directing the 1st and 2nd respondents to forthwith receive process and consider the proposal for demolition and reconstruction and for sanctioning the plan in accordance with the law for the property at Block No. 31/16 Dr P.T Rajan Salai, K.K.Nagar Chennai-78 without insisting on the production of NOC from the 3rd respondent.(IN W.P.NO.5347/2011)

2.Directing the respondents 1 and 2 to entertain consider and grant approval to the Demolition plan, Planning Permission Building permit for developing the lands at Block No.H.25 S.No.1189/2 Part 3A Part and 3B Part Korattur Village, Ambattur Taluk admeasuring about 4 grounds on 1761 sq.ft. for putting up a multistoried residential building without insisting upon No Objection Certificate from the 3rd respondent or any other authority, so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.5551/2011)

3.Directing the 1st and 2nd respondents to entertain, consider and grant approval to the demolition plan planning permission building permit for developing the lands at Block No.D-111, Sangeetha Colony, S.No.412 Part, Kodambakkam Village, K.K.Nagar, Chennai admeasuring about 3 grounds and 1821 Sq.Ft.for putting up a residential building without insisting upon the N.O.C.from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.1379/2011)

4.Directing the first respondent to receive, consider, process and approve the petitioners' application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block Nos.H 69 & 70 at Central Avenue, Korattur, Chennai-80 comprised in S.No.1273/1 part

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and 1272 part in Korattur Village, Ambattur Taluk, Thiruvallur District, without insisting on production of No Objection Certificate from the second respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously. (IN W.P.NO.4739/2011).

5.Directing the 1st and 2nd respondents to entertain consider and grant approval to the demolition Plan Planning Permission building permit for developing the lands at Block No.73 Gem Flats Anna Nagar West Extension, S.No.297/3A Part, and 297/3B Part Mogappair Village, Ambattur Taluk admeasuring about 4 grounds and 1827 Sq.Ft. for putting up a residential building without insisting upon the N.O.C. from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.1654/2011).

6.Directing the 1st and 2nd respondents to entertain, consider and grant approval to the demolition plan, planning permission, building permit for developing the lands at Block No.82 Dr. P.T. Rajan Salai T.S. No.29 K.K. Nagar Kodambakkam Village Mambalam-Guindy Taluk, Chennai, admeasuring about 3 grounds and 0175 sq.ft. for putting up a multistoried residential building without insisting upon the N.O.C. from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.5783/2011).

7.Directing the Respondents 1 and 2 to receive, consider our application for demolition and reconstruction and accord Planning permission for the reconstruction to be put up in the land situated at Block No.D, 107/A, B, C, D, E and F Sangeetha Colony, Anna Main Road, K.K.Nagar, Chennai-600 078, and comprised in Survey No.416 (Part) of Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District and in all measuring a total extent of 4 Grounds and 59 Sq.ft (As per the Orientation sketch issued by The Tamilnadu Housing Board) and situated within the Registration District, Central Chennai and Sub-Registration District of Ashok Nagar in accordance with Law and without insisting upon No Objection Certificate from the third respondent or any other authorities concerned expeditiously. (IN W.P.NO.5614/2011).

8.To issue a writ of mandamus, directing the first respondent to receive and process the petitioner's application for planning permission for the petitioner's property in Door.Nos.129 and 130, Block NO.54, P.V.Rajamannar Salai, K.K.Nagar, Chennai-78, without insisting upon “No Objection Certificate” from the third respondent. (IN W.P.NO.4706/2011).

9.To issue a writ in the nature of a writ ofo mandamus directing the respondents (1) and (2) to cause necessary inspection pursuant to the legal notice dt 14.2.2009 and 16.2.2009 at the

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impugned site Block No.2, 5th Avenue, Anna Nagar, towards the construction sought to be made by the 3rd respondentat Z-282, for additional constructions and restrict the same in accordance with law. (IN W.P.NO.4884/2009).

10. Directing the respondents 1 and 2 receive, process and consider the proposal for demolition and reconstruction and for planning permission in accordance with law of the property at Block No.34, MIG Flats, Dr.P.T.Rajan Salai, K.K.Nagar Chennai-78 without insisting on production of No Objection Certificate from the 3rd respondent. (IN W.P.NO.2363/2011).

11.Directing the 1st and 2nd respondents to entertain consider, consider and grant approval to the demolition plan, planning permission building permit for developing the lands at Block No.H-19 and H-20 S.No.1179 Part 1176/1B and 1187 Part 1179 part 1186/2 and 1187/2 part Korattur Village, Ambattur Municipality admeasuring about 16654 Sq.ft. for putting up a multistories residential building without insisting upon the N.O.C. from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules.(IN W.P.NO.5616/2011).

12.Directing the Respondents 1 & 2 to receive, consider, process and approve the Petitioners application for demolition and reconstruction by issuing Planning Permission to construct residential flats in the property situate at Block Nos. H-25 H-26 H-27 and H-28 in South Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai-41 comprised in Old Survey No.76(part) T.S.No.135 of Block No.31 in Thiruvanmiyur Village, Mylapore-Triplicane Taluk, Chennai District, measuring an extent of 43,400 Sq.ft. without insisting on production of No Objection Certificate from the 3rd Respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously. (IN W.P.NO.5527/2011).

13.Directing the 1st respondent to receive, consider, process and approve the petitioners Revised Plan application for constructions by issuing planning permission to construct residential flats in the property situated at Door No.102 Anna Main Road K.K.Nagar Chennai-600 078 comprised in S.No.416 of Kodambakkam Village Mambalam-Guindy Taluk, without insisting on production of No Objection Certificate from the 2nd respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously.(IN W.P.NO.5659/2011)

14.Directing the respondents 1 and 2 to entertain consider and grant the approval to the demolition and reconstruction, Planning Permit and building approval for the new construction comprised in Survey No.1273/1 Part 1273/2 Part and 1260/1 Part T.S.No.147 and Block No.49 of Ko.Village, Block No.H-71 72 and 73 of Periyar Nagar

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Central Avenue, Korattur Chennai-80 measuring 19947 sq. ft. without insisting the NOC from the third respondent herein or any other authority so long as the proposed New Construction is in accordance with the development Rules.(IN W.P.NO.27812/2010)

15.To issue a writ of mandamus, directing the Respondents 1 and 2 to receive, consider and accord Planning permission for the proposed constructions to be put up in the land situated at Building Block No.80 Indra Colony Ashok Nagar, Chennai-83 in the land measuring One Ground and 2356 Sq.ft. and comprised in T.S.No.2 part Block No.71 of No.111 Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District and situated within the Registration District of Central Chennai and Sub-Registration District of Ashok Nagar in accordance with Law and without insisting upon No Objection Certificate from the 3rd Respondent or any other authorities concerned expeditiously. (IN W.P.NO.7547/2011).

16.Directing the Respondents 1 and 2 to entertain, consider and grant approval to the demolition plan, planning permission, building permit for developing the land at Flat Nos.1 to 4 Old Door No.39 New Door No.59 Plot No.59 Block No.39 Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai-600 083, Block No.71 of Kodambakkam Village, Mambalam Guindy Taluk, Chennai in Survey No.14, Part Block and measuring about 3 Grounds and 605 Square Feet for putting up a residential building without insisting upon the No Objection Certificate from the 3rd Respondent or any other authority, so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.7214/2011).

17.Directing the respondents to entertain consider and grant approval of petitioners planning permission and building permit for putting up a construction on the property situated in Block No.D-112 Sangeetha Colony, K.K.Nagar, Chennai-78, Comprised in S.No.412 part and 413 part Kodambakkam Village, Mambalam Guindy Taluk, Chennai District, No T.S.No.116/2 in block No.139 Kodambakkam Vilage, and in T.S.No.158/4 in Block No.11 in patta No.195/11 dated 25.02.2011 within registration district Mambalam and Sub-Registrar of Ashok Nagar without insisting upon the No Objection Certificate from Tamil Nadu Housing Board, namely the first respondent so long as th proposed new construction activities is in accordance, with development Control Rules and Country Planning Act. (IN W.P.NO.7164/2011)

18.To direct the 1st respondent to receive consider, process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct residential special building in accordance with law of their property at Block-F New No.1 (Old No.7) 55th Street, Ashok Nagar, Chennai-83, comprised in T.S.Nos. 3 & 5 Block Nos. 70 & 71 of Kodambakkam Village, Mambalam-Guindy Taluk without insisting upon production of

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No Objection Certificate from the 3rd respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously. (W.P.NO.17009/2011)

19.To direct the 1st respondent to receive and consider and grant approval for the demolition planning permission planning permit and building permit to the petitioners for putting up new construction in the property situated in Block No. H-17 consisting of 12 flats comprised in T.S. No. 70 part of Thiruvanmiyur Village measuring 1132.73 sq.mtrs. situated in South Avenue, Kamaraj Nagar, Thiruvanmiyur Village, Chennai without insisting upon NOC from the Tamilnadu Housing Board or any other authority so long as the petitioners, construction activities is in accordance with the Development Control Rules.(IN W.P.NO.16164/2011).

20.Directing the 2nd respondent to entertain, consider and grant approval of petitioners planning permission application and building permit application for putting up a construction on the property in Block No.29 and 30 Housing Board Flats, South Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai-40 without insisting upon the No Objection Certificate from the Tamilnadu Housing Board namely the 2nd respondent herein as long as the proposed new construction activities is in accordance with Development Control Rules and Town and Country Planning Act. (IN W.P.NO.11966/2011).

21.Directing the 1st respondent to recieve consider process and approve the petitioners' application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block No.M4 East Avenue, Korattur, Chennai - 600 080, comprised in S.No.1179 (Part) and 1180 (part) of Korattur Village, Ambattur Taluk, Thiruvallur District, without insisting or production of No Objection Certificate from the 3rd respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously.(IN W.P.NO.9112/2011).

22.Directing the respondents 2 and 3 to entertain, receive, process and grant approval of the petitioner companys, application for planning permission and building permit for putting up a new residential construction on the property situated at Block No.H-22 Vaigai Street, Kalakshetra Colony, Besant Nagar, Chennai-600 090, comprised in Old Survey No.171 (Part) T.S.No.220/1, 221, 222, 223, 224, 225, 226, Block No.55, Thiruvanmiyur Village, Mylapore-Triplicane Taluk, in Patta No.SD/400/10-11 dated 09.02.2011, within the Registration District of Chennai South and Registration Sub-District of Saidapet, without insisting upon No Objection Certificate from the 1st respondent namely, the Tamil Nadu Housing Board, so long as the proposed construction activities are in accordance with Development Control Rules and Town and Country Planning Act.(IN W.P.NO.8651/2011).

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23.Directing the 1st respondent to receive consider process and approve the petitioner application for demolition and reconstruction by issuing Planning Permission to construct Residential Flats in the property situated at Block No.H24 East Avenue Korattur Chennai-600 080 comprised in S.No.1189 (Part) 3B (Part) and 6(Part) of Korattur Village, Ambattur Taluk, Thirvallur District, without insisting or production of No Objection Certificate from the 3rd respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously. (IN W.P.NO.9724/2011).

24.To direct the 1st respondent herein to receive and process the petitioner' application for planning permission at Block No. H-16 at Survey No.70 part in Thiruvanmiyur Neighbouring Housing Board, Housing Scheme, Thiruvanmiyur, Chennai 41 under demolition and re-construction without insisting upon No objection Certificate from the 3rd respondent in the circumstances of the case. (IN W.P.NO.17649/2011).

25.Directing the 1st and 2nd respondent to receive the application and consider and grant approval for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block No. M-78 consisting of 4 flats comprised in S.No. 152 part of Thiruvanmiyur Village, measuring 477 sq. mts. situated at 31 st Cross Street, Besant Nagar, Chennai 90, without insisting upon No Objection Certificate from the third respondent or any other authoritiesconcerned and to accord saction for the same in accordance with law expeditiously. (IN W.P.NO.14748/2011).

26.Directing the 1st respondent to receive consider process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct a residential special building in the property situated at Block Nos.A1 B1 C1 and D1 at HIG Goodwill Apartments Dr. J.J. Nagar West Mogappair Chennai 37 comprised in S. Nos. 442 (part) in Mogappair Village Ambattur Taluk Thiruvallur District within the registration district of Chennai North and Sub Registration District of Konnur without insisting on production of No Objection Certificate from the 2nd respondent or any other authorities concered and to accord sanction for the same in accordance with law.(IN W.P.NO.1567/2011).

27.Directing respondents 2 and 3 to entertain receive process and grant approval on the petitioners application for planning permission and building permit for putting up a new residential construction on the property situated at Block No.H-22 Vaigai Street Kalakshetra Colony Besant Nagar Chennai-600 090 comprised in Old Survey No.171 (Part) T.S.No.220/1 221 222 223 224 225 226 Block No.55 Thiruvanmiyur Village Mylapore-Triplicane Taluk in Patta No.SD/400/10-11 dated 09.02.2011 within

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the Registration District of Chennai South and Registration Sub-District of Saidapet without insisting upon No Objection Certificate from the 1st respondent namely, Tamil Nadu Housing Board, so long as the proposed construction activities are in accordance with Development Control Rules and Town and Country Planning Act. (IN W.P.NO.8652/2011).

28.Directing the respondents 1 and 2 to entertain, consider and grant approval to the demolition plan planning permission building permit for developing the lands at Flats in Block No. 85 P.T. Rajan Salai, S.No.29 Pt K.K. Nagar, Kodambakkam Village, Mambalam-Guindy Taluk, Chennai admeasuring about 2 grounds and 2396 sq.ft. for putting up a residential building without insisting upon the No Objection Certificate from the 3rd respondent or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules. (IN W.P.NO.9577/2011).

29.Directing the 1st Respondent to receive consider process and approve the Petitioners application for demolition and reconstruction by issuing planning permission to construct a residential special building in the property situated at Block Nos. W, X, Y and Z at HIG Goodwill Apartments, Dr.J.J.Nagar West, Mogappair, Chennai-600 037 comprised in S.Nos. 442 (part) in Mogappair Village, Ambattur Taluk, Thiruvallur District, within the Registration District of Chennai North and Sub-Registration District of Konnur without insisting on production of NO Objection Certificate from the 2nd Respondent or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously. (IN W.P.15852/2011).

30.Directing the 1st respondent to receive consider process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct a residential special building in the property situated at Block Nos. M7 to M10 at Ashoka Colony, Anna Main Road, K.K. Nagar, Chennai-78 comprised in S. Nos. 408 (part) and 412 (part) in Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District, without insisting on production of No Objection Certificate from the 3rd respondent or any other authorities concered and to accord sanction for the same in accordance with law. (IN W.P.NO.15678/2011).

31.Directing the respondentS 1 AND 2 to receive and consider and grant approval for the demolition, planning permission, planning permit and building permit to the petitioners for putting up new construction in the property situated in Block No. 49, comprised in Survey No. 419/1B part and 394/1 part of Kodambakkam Village, measuring 2 grounds 2200 sq.ft. together with building consisting of 4 flats situated at Gowtham Colony R.K.Shanmugam Salai, K.K. Nagar, Chennai 78, without insisting upon NOC from the Tamilnadu Housing Board or any other authority so long as the petitioner's construction

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activities is in accordance with the Development Control Rules. (IN W.P.NO.16165/2011).

32.Directing the respondents 1 AND 2 to entertain, consider and grant the approval to the demolition and reconstruction, Planning Permit and building approval for the new construction, Survey Nos.1216/1B Part 1216/2B part and 1216/2B1 and 2B2 T.S.No.14 and Block No.77 of Korattur Village, MIG Block No.M26 and M27 of East Avenue, Korattur, Chennai-600 080, measuring 5 Grounds 2350 square feet without insisting the No Objection Certificate from the third respondent or any other authority so long as the proposed New Construction is in accordance with the development Rules.(IN W.P.NO.6140/2011).

Writ appeal has been filed against the order dated 12.01.2011 made in W.P.No.29387 of 2010.

For appellant in all the W.A's & W.A.SR.NOS. : Mr.A.L.Somayaji, Advocate General, for Mr.C.Kasirajan

For respondents in

W.A.No.783/2011 : Mr.A.Suresh, for R1 to R12
Mr.N.Sampath, for R13
Mr.V.Bharathidasan, for R14

W.A.No.784/2011 : Mr.R.Mohan, for R1 to R8
Mr.N.Sampath, for R9
Mr.V.Bharathidasan, for R10

W.A.No.1394/2011 : Mr.P.S.Raman, Senior Counsel for Mr.Anand Venkatesh, R10
Mr.N.Sampath, for R14
Mr.V.Bharathidasan, for R15

W.A.No.1395/2011 : Mrs.R.Usha Priya, for R1 to R6
Mr.N.Sampath, for R7
Mr.V.Bharathidasan, for R4

W.A.No.1396/2011 : Mrs.R.Usha Priya, for R1 to R6
Mr.N.Sampath, for R7
Mr.V.Bharathidasan, for R8

W.A.No.1771/2011 : Mrs.R.Usha Priya, for R1 to R26
Mr.N.Sampath, for R27
Mr.V.Bharathidasan, for R28

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W.A.No.1772/2011 : Mrs.R.Usha Priya, for R1 to R4
Mr.N.Sampath, for R5
Mr.V.Bharathidasan, for R6

W.A.No.1952/2011 : Mrs.R.Usha Priya, for R1
Mr.N.Sampath, for R2
Mr.V.Bharathidasan, for R3

W.A.SR.APPEARANCE

RR 1 TO 13 IN W.A.SR.41406/2011 :
RR 1 TO 40 IN W.A.SR.41438/2011 :
RR 1 TO 7 IN W.A.SR.41442/2011 :MR.R.MOHAN
RR 1 TO 6, 8 IN W.A.SR.100351/2011 :
RR 1 TO 26 IN W.A.SR.107799, 107811/2011 :
RR 1 TO 33 IN W.A.SR.111788/2011 :

RR 1 TO 6 IN W.A.SR.41430/2011 :MR.D.S.RAJASEKAR
RR 1 TO 6 IN W.A.SR.100360/2011 :

R 1 IN W.A.SR.107791/2011 :MR.V.BHARATHIDASAN

R 2 IN W.A.SR.107791/2011 :MR.N.SAMPATH

R 3 IN W.A.SR.107791/2011 :MR.R.JAYASEELAN

R 1 IN W.A.SR.111805/2011 :MR.S.MUTHAPPAN

R 7 IN W.A.SR.100354, 100351/2011 :MR.K.RAJA SRINIVAS

in all the cases, Mr.V.Raghavachari, Assisted the court.

COMMON JUDGMENT

K.VENKATARAMAN, J

The order of reference was made by the then The Hon'ble The Chief Justice M.Y.Eqbal and Hon'ble Mr.Justice T.S.Sivagnanam. The reference thus reads as follows:

"This batch of appeals filed by the Tamil Nadu Housing Board is directed against the judgment and order passed in W.P.No.29837 of 2010 dated 12.2.2011 and W.P.No.670 of 2011 dated 18.1.2011 respectively.

2. The respondents 1 to 8 in this appeal are the writ petitioners. The writ petition was filed for issuance of a direction upon the Chennai Metropolitan Development

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Authority (CMDA) and Corporation of Chennai to receive, consider, process and approve the writ petitioners application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at block No.97A to F, Sowbackya Colony, Anna Main Road, K.K.Nagar, Chennai 78 comprised in Survey No.394/1(part) in Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District, without insisting or production of no objection certificate from the Tamil Nadu Housing Board/appellant or any other authorities concerned and to accord sanction for the same in accordance with law expeditiously.

3. The learned Single Judge disposed of the writ petition with a direction to CMDA to proceed with the application submitted by the writ petitioners without insisting no objection certificate from the appellate Board subject to the condition that the property will be developed only for residential purpose. The learned Single Judge relied on the decision of a Division Bench of this Court in W.A.No.1052 of 2007 (The Managing Director vs. Lancor G. Corp Properties Ltd., and another). The operative portion of the judgment and order reads as hereunder:-

> "3. Petitioners are owners of the property which was originally developed by Tamil Nadu Housing Board and sold to the individuals. The present owners are either original allottees or
>
> subsequent purchasers. The undisputed fact is that the Tamil Nadu Housing Board has no lien over the property. For the purpose of developing the property, the first respondent orally insisted the petitioners that no objection certificate issued by the Tamil Nadu Housing Board should be submitted along with the application for the purpose of demolition, planning permission and for issuance of planning and building permit to put up new construction.
>
> 4. Similar issue with regard to the insistence of no objection certificate from Tamil Nadu Housing Board was considered by a Division Bench of this Court in W.A.No.1052 of 2007 (The Managing Director - vs. - Lancor G:Crop Properties Limited & another) where it has been clearly held that the Housing Board has no right over property developed and sold to the individual allottees. The petitioners have enclosed sale deeds to show absolute ownership. The only restriction appears to be that the property

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developed for residential purpose should not be commercial use. The petitioners' plea is only for demolition and reconstruction as residential property.

5. Petitioners' counsel states that the development of the property is for residential use only and petitioners are willing to file an affidavit to that effect. Following the Division Bench Judgment as above, several orders have been passed by this Court, viz., W.P.No.15170 of 2010 dated 20.7.2010, W.P.No.14784 of 2008 dated 6.8.2008 where the Chennai Metropolitan Development Authorities were directed to accept the application without insisting on no objection certificate.

6. Since the property in question undisputedly has been sold to the individual allottees by way of proper sale deeds, the Tamil Nadu Housing Board can have no right over the property and therefore, the question of issuing no objection certificate does not arise.

7. In view of the above, the first respondent is directed to proceed with the application submitted by the petitioners without insisting no objecting certificate from the third respondent Tamil Nadu Housing Board subject to condition that the property will be developed only for residential purpose. The petitioners, however, are directed to submit the individual sale deeds of all the land owners to the competent authority to get planning permission. The Writ Petition is ordered as above. No costs."

4. The learned Advocate General appearing for the appellant submitted that certain vital facts and legal position were not placed before the Division Bench while deciding W.A.No.1052 of 2007 and therefore, this Court should permit the appellant Board to contest the matter on merits. It is submitted that the writ petitioners were allottees of flats constructed by the appellant Board and are bound by the terms and conditions of allotment as well as the covenants contained in the deed of conveyance executed in their favour after they had paid the full cost to the Board. It is submitted that absolute ownership was conveyed to the allottees concerned only in respect of built up portion of the flats and not along with other common land and this aspect of the matter requires to be considered. Further, it is submitted that as per the deed

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of conveyance, executed in favour of the allottees one of the condition is that the vacant land around the building and the terrace shall be held in common by the owners of all the flats and the allottee/purchaser shall not be entitled to convert the common land for their personal or exclusive use and in several cases including the present writ petitioners are subsequent purchasers and therefore, they are not entitled to proceed without obtaining no objection certificate from the appellant Board. It is submitted that the deed of conveyance executed in favour of the allottees stipulates that they shall not put up any additional construction to the flat without prior permission of the appellant Board and therefore, the appellant Board is fully justified in enforcing such condition and the requirement to obtain no objection certificate cannot be dispensed with. Further, it is stated that as per Board resolution No.11.05, dated 30.06.2004, the Board shall collect 10% of the market value on the additional floor area/eligible FSI under the Development Control Rules for the proposed reconstruction and the learned Advocate General placed reliance on the following covenants contained in the sale deed executed in favour of the allottees:-

> "The sale deed is only for the cost of construction of the flat and the proportionate cost of land on which building stands".
>
> "The land is hereby conveyed, granted transferred and assigned unto and to the use of the purchaser to be enjoyed by the purchaser for every absolutely, free from all encumbrances and charges whatsoever except the restrictions and under takings given herein", that is Vendor's covenants and purchaser covenants.
>
> The purchaser and the persons deriving title under him shall not put up any additional construction to the flat without prior permission of the Tamil Nadu Housing Board in writing.
>
> The purchaser and the persons deriving title under him shall not put up construction of any sort over or around the space available in an around the flat, without prior permission of the Tamil Nadu Housing Board in writing.
>
> In case of any dispute arising between the parties hereto the same shall be referred to Secretary to the government of Tamil Nadu, Housing Department, whose decision thereon shall all final
>
> The Land should not be converted to commercial purpose, it should remain as residential purpose.

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5. It is further submitted that the Board is enforcing the terms and conditions of allotment and conveyance and therefore, the necessity to frame a rule to insist upon a no objection certificate does not arise. The learned Advocate General prayed that the judgment of the earlier Division Bench requires to be reconsidered and may be referred to a Larger Bench to decide all points.

6. The learned counsel appearing for the respondents/writ petitioners contended that all the points raised by the appellant Board had been dealt with by the earlier Division Bench and the writ petitioners being purchasers of the property and a deed of absolute sale having been executed in their favour, the Housing Board has no right over the property and they cannot insist upon issuance of no objection certificate. The learned counsel placed reliance on the Division Bench judgment of this Court in W.A.No.124 of 1995, dated 25.07.1997, wherein the Division Bench held that the Board having sold the flats in favour of the allottees and the flat owners having formed an association, the entire area belongs to the allottees and the Housing Board has no right to interfere with control, possession and management of the said area.

7. It is on the above rival contentions, it has to first decided as to whether the judgment of the earlier Division Bench of this Court in W.A.No.1052 of 2007, requires reconsideration. The appeal before the earlier Division Bench arose out of an order passed by a learned Single Judge, wherein prayer was made to quash the order passed by the Corporation of Chennai insisting upon production of no objection certificate from the Housing Board for considering their application for demolition of the building and for issuance of building permit. The learned Single Judge in the said case, allowed the writ petition and Housing Board preferred the appeal. At this stage, we may refer to the operative portion of the judgment in W.A.No.1052 of 2007:-

> "6. The writ appeal is filed on the ground that originally the property was acquired by the Tamil nadu Housing Board for housing purposes and after putting up the construction, they were allotted to various allottees and the allottees were conveyed the necessary documents in respect of the built up flat portion and therefore, in respect of the common land, the allottees are expected to keep intact as per the conditions of allotment. According to the appellant, when the original plan lay out consisted of the built up house as well as common land for the common use of

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all occupants, by virtue of the demolition, the occupants cannot be expected to convert the common land for the personal and exclusive use and the first respondent who is a subsequent purchaser is attempting to put up construction in the common space left for the common purpose and that is why the No Objection Certificate is required from the Tamil Nadu Housing Board.

7. The No Objection Certificate is insisted based on the terms of allotment, which is binding upon the first respondent. According to the appellant, on receipt of such application for receipt of No Objection Certificate and on payment of application charges, such No Objection Certificate is issued for demolition and reconstruction. As per S.R.No.11.09 dated 30.6.2004, the Tamil Nadu Housing Board is entitled to collect 10% market value on the Additional floor area/eligible FSI under the DCR proposed for reconstruction and only thereafter, No Objection Certificate is issued.

8. The learned counsel appearing for the appellant Housing Board apart from insisting the above said point would also submit that the first respondent cannot be permitted to use the common area to put up the commercial complexes. When this Court has directed the learned counsel for the appellant to produce the Rules which permit the Tamil Nadu Housing Board to collect 10% of the market value from the occupants after the registered sale deed has been executed, the learned counsel is unable to point out any such rule. Therefore it is clear that there is absolutely no reason for the Tamil Nadu Housing Board to insist for 10% market value for the purpose of issuance of No Objection Certificate. The allotment has been made nearly thirty years ago and admittedly the entire sale consideration and other charges have been paid by the allottees and documentations have been made and therefore the allottees have sold away the properties to the third parties.

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9. In such circumstances, unless there is a statutory rule enabling the Housing Board to make such collections, the Housing Board cannot arbitrarily refuse to issue the No Objection Certificate on the basis that it is entitled to collect 10% market value.

10. As far as the other apprehension raised by

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the learned counsel for the appellant that the common area shown in the flats are sought to be converted by the first respondent for non-residential multi-storied building, Mr.Muthukumarasamy, learned Senior Counsel appearing for the first respondent would fairly submit that the proposed reconstruction is not for non-residential purpose and it is for residential purpose and therefore, there is no need for any apprehension on the part of the Tamil Nadu Housing Board that multi-storied building are sought to be put up for non residential purposes."

8. The Division Bench recorded a finding that there was no statutory rule enabling the appellant Board to collect 10% of the market value for issuing no objection certificate and in the absence of any such rule, the Board is not justified in insisting upon no objection certificate. The Division Bench also noticed the decision of the earlier Division Bench in the case of Ramakrishna Nagar flat allottees, wherein the Division Bench held that the entire area belongs to the allottees and the Board had no control.

9. It is seen that the appellant Board seeks to enforce terms and conditions of allotment as well as the covenants contained in the deed of sale executed in favour of the allottees. Admittedly, the conditions contained in the letter of allotment as well as the covenants in the deed of sale are binding upon the parties. It is contended that the deed of sale is a conveyance in favour of the allottee subject to the conditions contained and it is not a deed of absolute sale simplicitor. Therefore, the question would be whether such covenants and conditions contained in the deed of sale and accepted by the allottee would be binding on the allottee or his successor in interest. The Larger Question would be whether the Board was justified in imposing conditions in the letter of allotment and covenants in the deed of sale so as to ensure that the purpose and object for which the scheme was promoted continuous to remain intact.

10. It is submitted by the learned Advocate General that the deed of transfer was only in respect of the built up area of the flat and the remaining common area shall continue to remain common with no person be entitled to claim any exclusive right over such common area. It that be so, if all the owners of the flats join together and decide to utilise the common area for their respective exclusive purpose would that be in contravention to the conditions of the covenants. However, this aspect of the matter had not

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come up for consideration before the earlier Division Bench. The other grievance expressed by the appellant Board is that the original allottees have joined together and applied for demolition of all the flats and have sought for building permit for putting up new construction and in the proposed new construction, the number of dwelling units has been increased. These additional dwelling units/flats are sold and such sale proceeds appropriated by the original allottees or given to the developer who constructs the flats for the allottees as well as the additional flats. Whether this would be permissible in the light of the conditions of allotment and the covenants in the sale deed, more so when, the land on which, the flats were constructed were acquired by the State Government by the power of compulsory acquisition, citing the need that the lands are required for a public purpose. It that be so, should the public purpose continue to survive despite efflux of time? This issue also did not come up for consideration before the earlier Division Bench.

11. The other issue would be if the original allottees having found that their building has become old took a decision to pull down the building and put up a new construction without increasing the number of flats, with an increased built up area, then will it be permissible under the planning rules. The question would be whether even in such cases, where the number of dwelling units has not been increased, yet it would require the No Objection from the appellant Board. This question has also not come up before the earlier Division Bench."

2. Thus, the Division Bench deemed it fit to refer the matter to a larger bench to decide the following questions:

"(i) Whether the allottees of flats in a Scheme evolved and implemented by the Housing Board, after execution of sale deeds in their favour by the Housing Board would be entitled to demolish the building and construct a new apartment complex with additional dwelling units and sell such additional dwelling units to third parties without obtaining no objection certificate from the Housing Board.

(ii) Whether the restrictive covenants contained in the deed of sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall be required to keep the common areas as such without claiming any exclusive right over the same.

(iii) Whether the Housing Board is justified in

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contending that such restrictive covenants are valid and enforceable in the light of the fact that the land on which the apartment complex had been constructed, had been acquired from the public by invoking the provisions of the Land Acquisition Act on the ground that the lands are required for a public purpose.

(iv) Whether if all the allottees in an apartment complex join together and decide to pull down the existing structure and raise new construction by increasing the number of dwelling units/flats by putting to use the land area which was initially earmarked as common area and required to be retained as such in the covenants contained in the deed of sale.

(v) Whether the allottees by joining together decide to demolish the apartment complex and construct a new apartment complex with larger built up area without increasing the number of dwelling units, would still be required to obtain no objection certificate from the Housing Board.

(vi) Whether the Housing Board has power to levy charges at the rate of 10% of the market value on the additional floor/eligible FSI and whether such power is traceable to any Act, Rule or Regulation and what is the basis of such levy/demand."

3. In these cases, the allottees or the subsequent purchasers from the allottees, with an intention to demolish the existing superstructure (their flats) and put up new construction have sought permission from the authorities. Their demolition plan before the Corporation authorities and building permission sought for from the CMDA authorities are not processed on the ground that they shall obtain "No Objection Certificate" from the Tamil Nadu Housing Board. However, the writ petitions filed by the allottees or the subsequent purchasers from the allottees have been allowed and the corporation authorities were directed to grant approval for the demolition of the existing structure and the CMDA authorities were directed to process their applications for putting up new construction. The Tamil Nadu Housing Board, challenging the said orders have come up with the present writ appeals. As stated already, the then Hon'ble First Bench deemed it fit to refer the matter to a larger bench and hence, these appeals are listed before us.

4. The question that arises for consideration is whether such "No Objection Certificate" has to be obtained from the Tamil Nadu Housing Board before demolition of existing flats and reconstruction of new one. The learned Advocate General strenuously contended that what has been conveyed to the allottees by the Tamil

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Nadu Housing Board is only the flats and the land appurtenant therein are the land kept in common and have not been conveyed to the allottees.

5. Before dealing with the said question, it would be appropriate to note the covenants in the sale deed between the Tamil Nadu Housing Board and the allottees.

(i) Paragraph 8 of the sale deed dated 13.07.1992 in Writ Appeal No.952 of 2011 reads as follows:

> "8. NOW THIS DEED WITNESSETH that in Pursuance of the abovesaid agreement for Sale and in consideration of the sum of Rs.76320/- (Rupees Seventy Six Thousand Three Hundred and Twenty only) only paid by the Purchaser to the Vendor as mentioned in paragraph 6 above, the construction cost of the Flat together with the proportionate cost of land on which the building has been erected the receipt of which the vendor doth hereby acknowledge and of the monthly service, or maintenance charges, hereinafter reserved and of the convenants of the Purchaser hereinafter contained the Vendor does by way of absolute sale hereby Grant, Convey, Transfer and AND ASSIGN unto the Purchaser the individed interest in all that piece of land where the building stands as shown in the plan annexed hereto and thereon coloured red together with the Flat No.4 in the Block No.M.34 in Ms City fully described in the First Schedule hereto."

(ii) The property that has been covered in the sale deed is set out in the first schedule to the sale deed which reads as follows:

> "FIRST SCHEDULE - PROPERTY
>
> All that Piece and portion of the flat No.4 in the First floor of the Building in Block No.M.34 erected on the land in T.Survey No.1 part / Block 41 Vrvr village at Besant Nagar in Madras City flat measuring 852 sq.feet and the land being bounded on
>
> the North by : Block L-37
> the East by : 40' - 0" Road
> the South by : Flat No: M.34/3
> and the West by: Plots
>
> Within the Sub-Registration District of Adayar and Registration District of Madras."

(iii) With regard to the Easements, Rights and Privileges to the allottees, they are set out in the third schedule to the sale deed which is usefully extracted here under:

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THIRD SCHEDULE

"Easements, Rights and Privileges included in the transfer;

1. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitle to the like right) at all times by day or by night and for all purposes to go, pass and repass over and along the forecourt shown on the plan annexed hereto through and along the main entrances of the Building and the passages, landings and staircases leading to the flat.

2. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitled to the like right) with or without motor cars and other vehicles at all time by day or by night for all purposes to go, pass and repass over and along the way shown on the plan annexed hereto.

3. Full right and liberty for the Purchaser and all persons authorised by the Purchaser (in common with all other persons entitled to the like right) to use the fore court and garden shown on the plan annexed hereto and for the purpose of recreation and (as to the areas marked 'Parking' on the said plan for the parking of private motor-cars and motor-cycles only (but not for the purpose of playing games or for any other purpose); provided that any vehicle parked in the areas marked 'Parking' may only be parked for temporary period not exceeding three hours continuously at any one time.

4. The right (in common, with all other persons entitled to the like right) to use the part of the premises for the purpose of drying clothes.

5. The right (in common, with all other persons entitled to the like right) to use the part of the premises for keeping a dust-pin.

6. The right to subjacent and lateral support and to shelter and protection from the other parts of the building and from the site and roof thereof.

7. The free and uninterrupted passage and running of water and soil and electricity from and to the Flat through the sewers, drains, and water courses, cables, pipes, and wires which now are / or may at any time hereafter be in, under or passing through the Building or any part thereof.

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8. The right to the Purchaser with servants, workmen and others at all reasonable times on notice (except in the case of emergency.)

a) to enter into and upon other parts of the Building for the purpose of repairing cleaning, maintaining or renewing any such sewers, drains, watercourses, cables and wires with as little disturbance as possible and making good any damage caused; and

b) to enter into and upon other part of the building for the purpose of repairing maintaining renewing, altering or rebuilding the Flat or any part of the building subjacent or lateral support, shelter or protection to the Flat.

9. The benefit of the restrictians contained in the transfer and leases of the other flats comprised in the Building granted or to be granted.

10. All the above easements, rights and priveleges are subject to and conditional upon the Purchaser's contributing and paying as provided in Clause 13(c) of the Deed and the fifth schedule to this transfer.

11. The right (object to the Purchaser's contributing and paying his proper share to the cost of erection, maintenance and running of the television serial hereafter referred) to such share to be determined by the Vendor to connect a radio or television set in the flat with an aerial erected by or on behalf of the Vendor provided that nothing herein contained shall oblige the Vendor to erect any such aerial.

12. Every internal separating the flat from an adjoining flats shall be a PARTY wall served medially."

(iv) The above covenants in the sale deed executed by the Tamil Nadu Housing Board to the allottees would amply establish that what has been conveyed to the allottees are not only the flats but also the land appurtenant thereto. How common areas have to be utilised by all the allottees have also been set out in the third schedule to the sale deed extracted above. Hence, the contention raised by the learned Advocate General that even after the allotment was made to the allottees in respect of the flats constructed by the Tamil Nadu Housing Board, the land appurtenant / common area have been retained by the Tamil Nadu Housing Board and it has got control over it, may not be correct.

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(v) Further, a reading of the entire sale deed will disclose that the Tamil Nadu Housing Board has not retained any portion of the land.

6. The next question that has to be answered is whether the allottees or the subsequent purchasers from the allottees have to obtain "No Objection Certificate" from the Tamil Nadu Housing Board for demolishing the existing superstructure and to put up new construction over therein.

7. (i) Both sides relied on the provisions of The Tamil Nadu Apartment Ownership Act, 1994.

(ii) The Tamil Nadu Apartment Ownership Act, 1994 was enacted with an intention to provide for the ownership of an individual apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable immovable property.

(iii) The purpose for enacting the Act was set out in preamble to the Act which reads as follows:

> "WHEREAS with a view to securing that the ownership and control of the material resources of the community are so distributed as to subserve the common good, it is expedient to provide for the ownership of an individual apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable immovable property and to provide for matters connected therewith or incidental thereto"

(iv) Section 2 of the Act contemplates that it shall apply to every apartment constructed before or after the Act. It reads as follows:

> "2. Application of this Act.- This Act shall apply to every apartment in a building constructed whether before or after the date of commencement of this Act:
>
> Provided that such building shall contain five or more apartments or three or more floors and construction of such building has been made in accordance with a planning permit and also a building plan duly sanctioned by the Appropriate Authority concerned under the relevant law for the time being in force."

(v) "Common areas and facilities" which is defined in clause (h) of Section 3 of the Act reads as follows:

"3. Definitions.-

(h) "common areas and facilities" unless otherwise

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provided in the Deed of Apartment, means-

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells and sumps and entrances and exits of buildings;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;"

(vi) The term "property" is defined in clause (q) of Section 3 of the Act which is reproduced hereunder:

"3. Definitions.-

(q) "property" means the land, the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto."

(vii) Section 4 of the Act provides for transfer of apartment ownership by an individual with undivided interest in the common area and facilities.

(viii) Section 6 contemplates that

(a) each apartment owner is entitled to an undivided interest in the common areas and facilities.

(b) common area and facilities shall not be altered without the consent of all apartment owners.

(c) common area and facilities shall remain in common and no apartment owner can seek for partition and division of the same.

(d) Maintenance, repairs and replacement of the common areas and facilities, addition and improvements thereof shall be carried out in accordance with the provisions of Act and byelaws.

(ix) Section 8 of the Act provides that no apartment owner shall add any material structure without consent from other apartment owners. Section 8 is usefully reproduced here under:

"8. Certain works prohibited.- No apartment owner shall do any work or put the apartment to any other use which would jeopardise the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament nor shall any apartment owner add any material structure or excavate any additional basement or cellar without previously obtaining the unanimous consent of all the other apartment owners."

(x) Section 12 provides for forming Society or an Association of apartment owners for maintaining common areas and facilities.

(xi) Section 13 of the Act provides for framing of bye-laws of such Society or Association formed as per Section 12 of the Act. As

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per clause (2) of Section 13, the bye-laws shall provide for the following matters, namely,

the percentage of the votes which shall constitute the quorum;

the maintenance, repairs and replacement of the common areas and facilities and the limited common areas and facilities and payment thereof;

the appointment and removal of persons employed for the maintenance, repairs and replacement of the common areas and facilities and the limited common areas and facilities;

the restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities and the limited common areas and facilities not set forth in the Deed of Apartment, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities and the limited common areas and facilities by the several apartment owners;

the terms and conditions subject to which transfer of any apartment and percentage of undivided interest in the common areas and facilities and the limited common areas and facilities of such apartments may be effected;

(xii) Section 16 of the Act contemplates that the apartment owners shall own in common the undivided interest in the property in the event of damage or if the same is destroyed in entirety or in part, and if Society or Association has not taken any repair or reconstruct or rebuild the property. Section 16 of the Act is reproduced here under:

> "16. Disposition of property on destruction or damage.- Where in the event of the property, either in the entirety or in part being damaged or destroyed and the Society or the Association of Apartment Owners has not undertaken to repair, reconstruct or rebuild within a period of ninety days or such further period as may be specified by the Competent Authority from the date of damage or destruction,-
>
> (a) the property shall be deemed to be owned in common by all the Apartment owners in the same percentage as the percentage of the undivided interest specified in the Deed of Apartment;
>
> (b) the undivided interest in the property owned in common which shall appertain to each Apartment Owners shall be the percentage of the undivided interest previously

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owned by such owner in the common areas and facilities and the limited common areas and facilities;"

(xiii) Section 17 of the Act provides for an action by Society or Association relating to common area and facilities, which is usefully extracted here under:

"17. Action by Society or Association of Apartment Owners on behalf of the Apartment Owners.- Without limiting the rights of any Apartment Owner, action may be brought by the Society or the Association of Apartment Owners on behalf of any Apartment Owner as his respective interest may appear; with respect to any cause of action relating to the common areas and facilities and the limited common areas and facilities of more than one apartment."

(xiv) Section 18 of the Act provides for the right of the Society or Association to maintain repair or replace any of the common areas and facilities and the said provision is reproduced here under:

"18.Right of Society or Association of Apartment Owners to maintain, repair and replace any of the common areas and facilities, etc.- The Society or the Association of Apartment Owners shall have the irrevocable right to be exercised by its Secretary or by any other person authorised in this behalf by the Committee to have access to every apartment from time to time during reasonable hours as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities and the limited common areas and facilities therein or accessible from such apartment or for making emergency repairs therein necessary to prevent damage to the common areas and facilities and the limited common areas and facilities or to another apartment or apartments."

(xv) Clause (1) of Section 19 of the Act deals with the sharing of common profits and expenses in common areas and facilities and the same is reproduced here under:

"19. Common profits and expenses.- (1) The common profits shall be distributed among and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas and facilities specified in the Deed of Apartment."

(xvi) Thus various provisions of the Act extracted above clearly stipulates that

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(1) The apartment owners shall form a Society or Association,

(a) with the object to maintain all common areas and facilities, to provide amenities in the common interest of all apartment owners;

(b) to maintain, repair and replacement of common areas and facilities.

(c) to impose restrictions regarding the usage and maintenance of apartments and the use of the common areas and facilities.

(d) to frame terms and conditions for transfer of any apartment and percentage of undivided interest in common areas and facilities.

(e) to take action relating to common areas and facilities.

2. The percentage of the undivided interest of each apartment owner in the common areas and facilities shall not be altered without the consent of all the apartment owners and in accordance with the provisions of the Act and the bye-laws.

3. In case of destruction or damage to the apartment and if the society or Association fails to carry out the repair or reconstruct or rebuild the same, the property shall be owned in common by all apartment owners in the same percentage as specified in the deed of the apartment.

8. Thus, a reading of the various provisions of the Act clearly demonstrate that the Society or the Association formed under the Act alone is in control over the common areas and facilities available in the apartments and it alone shall deal with the same. It can also frame rules and regulations for transfer of any apartment and percentage of undivided interest in the common areas and facilities. The preamble of the Act which is extracted above clearly spells out that the Act is enacted to provide for ownership of an individual apartment in a building, undivided interest in common areas and facilities pertaining to the transfer of apartment.

9. While that being so, it cannot be urged, still, on behalf of the Tamil Nadu Housing Board that it has got control over the apartments put up by it and the common areas available for the apartment owners. Even assuming that the Tamil Nadu Housing Board has retained its power, even after selling the individual apartments, the provisions of the Tamil Nadu Apartment Ownership Act, 1994 will prevail over and above the rights of the Tamil Nadu Housing Board, if any.

10. In this connection, it will be useful to consider Section 25 of the Act which provides that this Act will override other laws. Section 25 of the Act is usefully extracted here under:

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"25. Act to override other laws.- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or agreement or decree or order of a Court, Tribunal or other Authority.

(2) Save as otherwise provided in sub-section (1), the provisions of this Act, shall be in addition to and not in derogation of, any other law for the time being in force."

11. Mr.P.S.Raman, the learned Senior Counsel appearing for one of the allottees relied on Section 11 of the Transfer of Property Act, 1882 and contended that once absolute right has been conferred on the property, no rider can be put to the enjoyment of the property. Section 11 of the Act is thus reproduced here under:

"11. Restriction repugnant to interest created.- Where, on a transfer of property, an interest therein is created absolutely in favour of the any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction."

In the case on hand, the Tamil Nadu Housing Board has executed sale deed in favour of the allottees not only in respect of the flats, but also the land appurtenant thereto. Even with regard to the common areas, the same vest with the Society or an Association formed by the allottees. Further, it has been found that the Tamil Nadu Housing Board has not retained any right even over the common area. In such circumstances, Section 11 of the Transfer of Property Act comes to the rescue of the allottees. Therefore, in our considered view, even if condition has been imposed in the sale deed, Section 11 of the Transfer of Property Act will come into play which will be in support of the allottees.

12. (i) Mr.Sankaran, the learned counsel appearing for one of the respondents in W.A.No.783 of 2011 relied on the "No Objection Certificate" issued to one R.Ganesan and others for demolishing the existing building and to reconstruct new apartments. While according permission for issuance of No Objection, conditions have been imposed which is set out in the annexure therein which is reproduced here under:-

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" ANNEXURE

CONDITIONS:

1) The planning permission should be obtained from the local body (i.e. CMDA and Corporation) and the construction activities should be taken up after/as per the approval of local body.

2) a) The title of land, its boundary and extent has to be confirmed by the local body.

b) in case of any dispute between the original allottees and subsequent purchasers the TNHB will not take any responsibility.

3) The CMDA is the authority for permitting the eligible construction activities as per the D.C.R and the Tamil Nadu Housing Board will not object such activities, if they are accommodated within the boundary of undivided share of land pertaining to this block as shown in the enclosed orientation sketch, to be presented to CMDA.

4) If any changed are required in the proposed building design, it is subject to the approval of CMDA.

5) The proposed building, car park, open spaces and other service amenities should be accommodated (as per the DCR of CMDA) within the boundary of undivided share of land pertaining to this block, without affecting the adjacent blocks.

6) If any dispute arises between the petitioners and Association and other allottees, in respect of construction of new building, the Tamil Nadu Housing Board will not take any responsibility."

However, the matter was directed to be placed before the Board for approval for issuance of No Objection Certificate to them.

(ii) As rightly contended by the learned counsel appearing for the allottees, the above permission has been granted by the Chairman stipulating certain conditions wherein, the Tamil Nadu Housing Board has made it very clear that if any dispute arose between the original allottees and the subsequent purchasers regarding the putting up of new construction, the Tamil Nadu Housing Board will not take any responsibility. Further, it has made clear therein that the CMDA is the authority for permitting the eligible construction activities as per the D.C.R and the Tamil Nadu Housing Board will not object such activities as long as the same is within the boundary of undivided share of land pertaining to the said block, wherein the demolition and construction are sought to be made. Further, the conditions stipulates that if any changes are required in the proposed building design, it is subject to the approval of the CMDA. The said proposal sent by the Chairman, Tamil Nadu Housing Board for approval of the demolition of the existing flats and construction of new flats will amply establish that the Tamil Nadu Housing Board do not want to enter into the dispute pertaining to demolition of the existing structure and putting up new structure. It also made it very clear that as long as the construction are made within the boundary of the

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undivided share of land pertaining to the block where the demolition and reconstruction are made, the Tamil Nadu Housing Board will have no say over the matter. It has further made it very clear that the CMDA is the authority for permitting the eligible construction activities as per the rules made by it.

(iii) By pointing out the conditions while according permission for issuance of "No Objection Certificate", the learned counsel appearing for one of the respondents in W.A.No.783 of 2011 contended that the Tamil Nadu Housing Board will have no say either at the time of demolition of the existing structure or at the time of putting up new one. The Tamil Nadu Housing Board has made it very clear that it will not take any responsibility, if any dispute arises while putting up construction of a new building. It also made it very clear that if any changes are required in the proposed building design, it is subject to the approval of the CMDA. This strengthens the case of the respondents that "No Objection Certificate" need not be obtained from the Tamil Nadu Housing Board, either for demolition of the existing structure or for putting up new construction.

13. (i) Mr.Mohan, the learned counsel appearing for some of the respondents in W.A.No.784 of 2011, relied on the covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of one K.S.Kalyanasundaram, one of the respondent in the said appeal which is extracted here under:

> "11. The Vendor hereby further covenants with the Purchaser as follows:-
>
> (i) ...
>
> (ii) ...
>
> (iii) ...
>
> (iv) That the Vendor, as already agreed between the parties, agrees to vest the land on which the Building consisting of the flat described in the First Schedule hereunder is contained to a Housing Co-operative Society as and when such a Society is formed by the owners of all the flats and it is hereby agreed to by both the parties that such Co-operative Society shall held the land jointly on behalf of all its members to protect their rights and privileges."

(ii) By relying on the said clause in the sale deed, the learned counsel contended that as soon as the Tamil Nadu Housing Board execute the sale deed in favour of the allottees, a housing co-operative society shall be formed by the allottees and the land on which the building consisting of the flats is raised shall vest with the society and the society shall held the land jointly on behalf of all its members to protect their rights and privileges. Therefore, according to him, the land do not vest with the Tamil Nadu Housing Board after the same is sold in favour of the allottees.

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(iii) The learned counsel further contended that after the sale of the flats and the land appurtenant there to, the Rules framed under The Tamil Nadu Apartment Ownership Rules, 1997 alone will prevail. Much emphasis was placed on Rule 17 of the said rules which is extracted here under:-

> "17. That the undivided interest in the general and / or restricted common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument."

(iv) The above extracted Rule would amply establish that the undivided interest over the common areas cannot be separated from the apartment and shall be deemed to have been conveyed along with the apartment, even assuming that such interest is not expressly mentioned or described in the conveyance. The said Rule further strengthens the case of the flat owners and the contention raised on behalf of the Tamil Nadu Housing Board that the common areas vest with the Tamil Nadu Housing Board and hence, it shall be approached for getting "No Objection Certificate" in the event demolition of the existing flats and construction of new flats therein, cannot hold good.

(v) The learned counsel also relied on the judgment reported in (2005) 3 Supreme Court Cases 91, R & M Trust vs. Koramangala Residents Vigilance Group and Others. That is the case where one Koramangala Residents Vigilance Group has filed a Public Interest petition challenging the building license issued for construction of multi-storeyed/multi-apartments at Koramangala Layout, Bangalore on the ground that it is illegal, void and prayed for quashing of the license and direction to demolish the building already constructed on the site.

That is the case where the learned Single Judge of the Karnataka High Court held that the license granted to the appellant who was the fourth respondent in the writ petition are contrary to law, but however felt that the writ petition suffered from latches and delay and therefore, dismissed the writ petition. After the same, writ appeal has been filed by the Association. The Division Bench wherein the writ appeal was filed, concluded that the view taken by the learned Single Judge that the license granted in favour of the respondents 4 and 5 in the writ petition is contrary to law and liable to be quashed was right but however disagreed with the finding of the learned Single Judge that the writ petition suffered from delay and latches. Thus, the appeal was allowed. Aggrieved over the said order, Special Leave Petition was filed before the Hon'ble Apex Court and the leave was granted. The Hon'ble Apex Court in such

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circumstances held that looking to the scheme of the Act, the Rules and the terms and conditions of the lease-cum-sale agreement, it transpires that once an allotment is made to the lessee and he makes all payments and fulfils all conditions of the agreement, then at the end of the stipulated period of ten years outright agreement of sale shall be executed by the lessor/vendor with the lessee/purchaser and the lessee will have absolute right. The lease agreement also says that during the currency of the lease, the lessee/purchaser shall abide by the terms and conditions of the lease. The only condition that he will construct only one dwelling house is contained in condition 4 of the lease-cum-sale agreement and so long as the full rights are not transferred to the lessee-purchaser, this condition would survive and, after the sale is made, this condition will no longer survive and conditions contained in absolute sale deed will govern. If the lessee or his successor wants to raise a construction, then the provisions of the Karnataka Municipal Corporation Act will come into play and he has to obtain prior sanction for construction of the building. As soon as the permission is granted by the Corporation, then he is to abide by those conditions along with the condition laid down in the absolute sale deed.

(vi) Paragraph 19 and 21 of the judgment referred above are usefully extracted here under:

> "19. The conditions which have been set out in the lease agreement and which is relevant for our purpose is condition 4. Condition 4 has already been reproduced above which provides that lessee / purchaser shall not subdivide the property or construct more than one dwelling house. Condition 12 says that if the lessee / purchaser has performed all the conditions mentioned herein and committed no breach thereof the lessor / vendor shall, at the end of ten years referred to in clause 1, sell the property to the lessee / purchaser and all attendant expenses in connection with such sale such as stamp duty, registration charges, etc., shall be borne by the lessee / purchaser. Condition 13 says that on complying with the terms and conditions of this agreement in the manner stated above but not otherwise the lessor / vendor shall be obliged to execute the sale deed in favour of the lessee / purchaser. Therefore, looking to the scheme of the Act, the Rules and the terms and conditions of the lease-cum-sale agreement, it transpires that once an allotment is made to the lessee and he makes all payments then after the payment the lessor / vendor shall at the end of ten years sell the property to the lessee / purchaser and the lessee / purchaser will get the sale deed registered. Therefore, if all the conditions of the lease agreement are fulfilled, at the end of the stipulated period of ten years, then outright agreement of sale shall be executed by the lessor / vendor with the

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lessee / purchaser and the lessee will have absolute right. The lease agreement also says that during the currency of the lease, the lessee / purchaser shall abide by the terms and conditions of the lease. As per condition 17(7) reproduced above, the lessee / purchaser shall not alienate the property during the period of tenancy. Once all the payments have been fulfilled by the lessee, then the land is registered in favour of the lessee by the lessor and the lessee becomes absolute owner of the land. So long as the building is not constructed under condition 4 of the agreement, the lessee is neither entitled to alienate the property under condition 17(7), nor shall he subdivide the property or construct more than one dwelling house on it. These restrictions are there so long as the complete sale agreement is not executed under condition 12 of the lease-cum-sale agreement. As soon as the lease agreement is executed confirming full title to the lessee, then the conditions of the lease-cum-sale agreement come to an end and the lessee acquires full right to deal with the said property in accordance with the Act and the Rules bearing on the subject. After acquiring this full right the lessee has right to alienate the property or whenever either the lessee or his successor wants to construct a building thereon he can do so in accordance with the provisions of law. Condition 4 of the lease agreement was only to survive so long as the lessee continued to be a lessee as his rights of lessee are restricted i.e. he cannot alienate the property nor can he subdivide the property and he has to construct one dwelling house. The moment the lease-cum-sale agreement is executed after following the conditions of the lease as laid down, then there is no further hurdle or condition like not to construct multi-storeyed building or multi-dwelling house. The only condition that he will construct only one dwelling house is contained in condition 4 of the lease-cum-sale agreement and so long as the full rights are not transferred to the lessee-purchaser, this condition would survive and, after the sale is made, this condition will no longer survive and conditions contained in absolute sale deed will govern. If the lessee or his successor wants to raise a construction, then the provisions of the Karnataka Municipal Corporation Act will come into play and he has to obtain prior sanction for construction of the building. As soon as the permission is granted by the Corporation, then he is to abide by those conditions along with the condition laid down in the absolute sale deed.

20. ...

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21. Learned counsel for the respondents has tried to raise certain objections that in the final agreement the expression "apartment" has been used which shows that there cannot be more than one dwelling house. We regret to say that this interpretation does not bear out in the face of the language used in clause 2 of the final agreement which says that the building to be constructed shall be used wholly for human habitation and shall not include any apartments to the building whether attached thereto or not for shop or warehouse or manufacturing purposes but that does not make out a case for prohibition of raising of the multi-storeyed building. Once the Municipal Corporation has permitted to raise construction more than three floors then this condition for construction will hold good and they are not contrary to any of the provisions of the Act. Section 505 of the Karnataka Municipal Corporation Act, 1976 only says that the Corporation shall exercise power in conformity with the provisions of the Karnataka Town and Country planning Act, 1961. Therefore, the Corporation at the time of granting permission has to keep in mind the provisions of the Karnataka Town and Country planning Act, 1961. But we have not been able to find any provisions of the Karnataka Municipal Corporation Act or the Karnataka Town and Country planning Act, 1961 where any ceiling has been applied on the construction of the multi-storeyed building. Therefore, we do not find that the Municipal Corporation has committed any illegality in granting permission to the appellant for raising construction up to third floor."

(vii) The Hon'ble Apex Court thus held once an allotment is made to the lessee and he makes all payment and fulfils all conditions of the agreement, the lessee/purchaser will have absolute right and the terms and conditions of the lease will exist till the full rights are not transferred to the lessee/purchaser and once the sale is made, the conditions therein will no longer survive. The only requirement as per the said judgment of the Hon'ble Apex Court is that the provisions of the Karnataka Municipal Corporation Act will come into play and sanction has to be obtained from the Corporation for construction of the building. The said judgment in our considered view is squarely applicable to the case on hand.

14. (i) Mr.V.Raghavachari, the learned counsel who supports the case of the Tamil Nadu Housing Board submitted that the scheme has been framed by the Government, funded by the Government and approved by the Government. Therefore, according to him, the conditions imposed in the sale deed shall be binding on all and if any demolition of the existing structure are sought to be made and new construction are sought to be put up, the Tamil Nadu Housing

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Board will have a say over the same. He relied on Sections 37, 39 to 47, 49, 54 and 56 of the Tamil Nadu State Housing Board Act, 1961. In our considered view, none of the provisions of the said Act envisages on the rights of the allottees or the subsequent purchasers from the allottees to put up new apartment after demolition of all apartments and on the common area.

(ii) That apart, We have already held that the Tamil Nadu Apartment Ownership Act, 1994 will alone prevail over the Tamil Nadu State Housing Board Act, 1961, in view of Section 25 of the Tamil Nadu Apartment Ownership Act, 1994 which was extracted above. Hence, the argument made by Mr.V.Raghavachari will have to be rejected.

15. Thus the reading of the various provisions of The Tamil Nadu Apartment Ownership Act, 1994, the covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the flats or common area, the question of obtaining "No Objection Certificate" from the Tamil Nadu Housing Board will not arise. In such circumstances, the allottees of the flats, after execution of the sale deed in their favour have got every right to demolish the existing building and construct new apartment blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got not say, even if additional dwelling units are constructed after demolishing the existing flats. As stated already, the Tamil Nadu Housing Board looses its rights as soon as it executes sale deed in respect of the flats, appurtenant land and even in the areas earmarked for the common enjoyment of the flat owners. The common area has to be enjoyed in common by the flat owners. If a consensus is arrived at by all the flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the rules and regulations of the CMDA. Even assuming that there are restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes sale deed in favour of the allottees, it looses all its rights on the property and it cannot any more question the action of the allottees by saying that the allottees have violated the conditions enumerated in the sale deed.

16. Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose

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ends with the construction of the Housing Board flats and handing over the same to the allottees, after execution of the sale deed.

17. The various provisions of The Tamil Nadu Apartment Ownership Act, 1994 which was extracted above deals with the common areas and who shall have the right to maintain common areas and utilisation of the same. At the risk of repetition, it has to be pointed out that Section 13 of the Act provides for framing of bye-laws of the Society or Association by the flat owners not only for maintenance and repairs of existing flats but also for "replacement of common areas". The Society or Association so formed shall take action relating to "common areas and facilities". Right of the Society or Association to maintain, repair and replacement of common areas is provided under Section 18 of the Act. Thus the Act takes care of the common areas and facilities. Therefore, the Tamil Nadu Housing Board may not have any right over the common areas.

18. Thus, after elaborately considering the facts and circumstances of the case, relevant provisions and the case laws, we answer the reference in the following manner.

Reference i:

Whether the allottees of flats in a Scheme evolved and implemented by the Housing Board, after execution of sale deeds in their favour by the Housing Board would be entitled to demolish the building and construct a new apartment complex with additional dwelling units and sell such additional dwelling units to third parties without obtaining no objection certificate from the Housing Board.

Answer:

In view of the discussions made above, We hold that the allottees of the flats in a scheme implemented by the Tamil Nadu Housing Board, after execution of the sale deed in their favour by the Tamil Nadu Housing Board are entitled to demolish the existing the superstructure and put up new apartment blocks with additional dwelling units and sell the same to the third parties without obtaining No Objection Certificate from the Tamil Nadu Housing Board, as long as the construction are within the parameters of the rules and regulations of the CMDA.

Reference ii:

Whether the restrictive covenants contained in the deed of sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall

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be required to keep the common areas as such without claiming any exclusive right over the same.

Answer:

The restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will not prevent the allottees or the subsequent purchasers from the allottees, in utilising the common areas, so long as the Society or Association which have been formed by the allottees gives consent for the same and no doubt, that the construction are within the parameters of the rules and regulations of the CMDA

Reference iii:

Whether the Housing Board is justified in contending that such restrictive covenants are valid and enforceable in the light of the fact that the land on which the apartment complex had been constructed, had been acquired from the public by invoking the provisions of the Land Acquisition Act on the ground that the lands are required for a public purpose.

Answer:

Though, the land have been acquired from the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose ends with the construction of the Housing Board flats and handing over the same to the allottees after execution of the sale deed. When once the scheme is implemented, the Housing Board looses its rights and the scheme does not come into play.

Reference iv:

Whether if all the allottees in an apartment complex join together and decide to pull down the existing structure and raise new construction by increasing the number of dwelling units/flats by putting to use the land area which was initially earmarked as common area and required to be retained as such in the covenants contained in the deed of sale.

Answer:

Some areas have been earmarked for the common enjoyment of the flat owners. The common areas have to be enjoyed in common by the flat owners and if a consensus is arrived at

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by all the flat owners, they can utilize the common land also to put up construction without No Objection Certificate from the Tamil Nadu Housing Board. The various provisions extracted from the Tamil Nadu Apartment Ownership Act, 1994 will amply establish that if all the allottees who have formed the society or association decides to pull up the existing structure and raise a new construction with additional dwelling units even in the common areas, they can do so, provided such construction is in consonance with the rules and regulations of the CMDA.

Reference v:

Whether the allottees by joining together decide to demolish the apartment complex and construct a new apartment complex with larger built up area without increasing the number of dwelling units, would still be required to obtain no objection certificate from the Housing Board.

Answer:

The answer for reference no.4 could be the answer for this reference also. If there can be an increase in the number of dwelling units / flats, equally new apartment blocks with larger built up area can also be put up, subject to the approval of all the allottees who have joined together to start a society or an association and if it is not in violative of the rules and regulations of the CMDA.

Reference vi:

Whether the Housing Board has power to levy charges at the rate of 10% of the market value on the additional floor/eligible FSI and whether such power is traceable to any Act, Rule or Regulation and what is the basis of such levy/demand.

Answer:

As regards this reference, even the learned Advocate General fairly submitted that there is no rules which permit the Tamil Nadu Housing Board to collect 10% of the market value after registration of the sale deed by the Tamil Nadu Housing Board in favour of the allottees. While so, there is no rhyme or reason for the Tamil Nadu Housing Board to insist for 10% of the market value for issuance of No Objection Certificate. When the Tamil Nadu Housing Board need not be approached for obtaining No Objection Certificate for demolition of the existing flats and

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putting up new construction, the collection of charges at the rate of 10% of the market value on the additional floor area / eligible FSI which is not traceable to any Act or Rules cannot be levied.

19. However, We may add that the allottees or the subsequent purchasers from the allottees shall not convert the residential blocks into commercial one. Further, there cannot be any demolition of the existing flats and construction of new flats without concurrence or acceptance of all the allottees or the subsequent purchasers of the said block where there is a proposal to demolish the existing superstructure and put up new construction.

20. With the above directions, the issues referred before us are answered accordingly. The Writ Appeals filed by the Tamil Nadu Housing Board therefore fails and are dismissed. Consequently, all the connected miscellaneous petitions are closed. However, no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub.Asst.Registrar

pgp

To

1.The Managing Director/Chairman,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai-35.

2.The Member Secretary,
The Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

3.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai-3.

4.The Ambattur Municipality, rep.by
its Commissioner, Ambattur, Chennai.

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5.The Executive Engineer,
Tamilnadu Housing Board,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Nagar,
Adyar, Chennai-20.

2 ccs to Mr.A.Suresh, advocate SR.No.25973

3 ccs to Mr.R.Mohan, advocate SR.No.25142

1 cc to Mr.V.Bharathidasan, advocate SR.No.25131

4 ccs to Mrs.R.Usha Priya, advocate SR.No.25378

1 cc to Mr.V.Srikanth, advocate SR.No.25176

1 cc to Mr.C.Kasirajan, advocate SR.No.26159

W.A.Nos.783, 784, 1394, 1395,1396,1771,
1772, 1952 of 2011
and
W.A.SR.Nos.41390, 41394, 41398,41406,
41410, 41414, 41418,41422,41426, 41430,
41434,41438, 41442, 41445, 41447,41450,
41453, 100308, 100351,100354, 100360,
107783, 107787,107791, 107795, 107799,
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