



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.3779 OF 2023 (CS-RES)

BETWEEN:

1. MRS SARASWATHI PRAKASH
W/O. KADUR SUBBAKRISHNA,
AGE 72 YEARS,
2. MR. KADUR SUBBAKRISHNA
JAI PRAKASH
S/O. LATE K.T. SUBBAKRISHNA,
AGE 74 YEARS,

PETITIONER NOS.1 & 2 R/AT FLAT NO.610,
PARKSIDE RETIREMENT HOMES
BRIGADE ORCHARDS,
DEVANAHALLI, BENGALURU-562110.

3. MR. RANGARAJAN SRINIVASN
S/O. LATE JUSTICE S. RANGARAJAN,
AGE 81 YEARS,
4. MRS. VATSALA SRINIVASAN
W/O. RANGARAJAN SRINIVASAN
AGE 77 YEARS,

PETITIONER NOS.3 & 4
R/AT FLAT NO.218,
PARKSIDE RETIREMENT HOMES
BRIGADE ORCHARDS, DEVANAHALLI,
BENGALURU-562110.

... PETITIONERS

(BY SMT. BEENA P.K., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
DEPARTMENT OF CO-OPERATIVE SOCIETIES,





VIKASA SOUDHA, AMBEDKAR VEEDHI,
BENGALURU-560001
REP. BY ITS SECRETARY.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF ASSISTANT REGISTRAR,
CO-OPERATIVE SOCIETIES,
DODDABALLAPURA SUB-DIVISION,
DODDABALLAPURA,
BENGALURU RURAL DISTRICT-561203.
3. PROPOSED BRIGADE PARKSIDE
RETIREMENT HOMES HOUSING
COOPERATIVE SOCIETY LTD.
(BPRHHCSL) (UNREGISTERED)
BRIGADE ORCHIDS, BUDIGER ROAD,
DEVANAHALLI, BENGALURU-562110
REPRESENTED BY V. SREENIVAS,
CHIEF PROMOTER, BPRHHCSL.
4. BRIGADE ORCHARDS PARKSIDE APARTMENTS
OWNERS ASSOCIATION (R)
(REGISTERED ASSOCIATION UNDER
KARNATAKA APARTMENT OWNERS
ASSOCIATION ACT, 1972)
R/AT PARKSIDE RETIREMENT HOMES
BRIGADE ORCHIDS, BUDIGERE ROAD,
DEVANAHALLI, BENGALURU-562110
REPRESENTED BY ITS SECRETARY
MR. S. SHIVASWAMY.
5. BCV DEVELOPERS PVT. LTD.,
29TH FLOOR, WORLD TRADE CENTRE
BRIGADE GATEWAY CAMPUS,
26/1, DR RAJKUMAR ROAD,
MALLESWARAM- RAJAJINAGAR
BENGALURU-560055.
REP. BY ITS DIRECTOR'S.

... RESPONDENTS

(BY SRI YOGESH D. NAIK, AGA FOR R-1 & R-2;
SRI SAMEER SHARMA, ADVOCATE FOR R-3;
SMT. NIMMY K.S., ADVOCATE FOR R-4;
SRI P. CHINNAPPA & SRI HARSH GUPTA, ADVOCATE FOR R-5)



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO RESTRAIN THE RESPONDENT NO.3 FROM REGISTERING THE PROPOSED BRIGADE ORCHARDS PARKSIDE RETIREMENT HOUSING CO-OPERATIVE SOCIETY LTD., (BPRHHCSL) AND THE PROPOSED BYE-LAWS BEFORE THE JURISDICTIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES, DODDABALLAPURA SUB-DIVISION, DODDABALLAPURA, BENGALURU RURAL DISTRICT; ISSUE A WRIT OF MANDAMUS TO THE REGISTRAR OF THE CO-OPERATIVE SOCIETY/RESPONDENT NO.2 TO CONSIDER THE OBJECTIONS/LETTER FILED BY THE PETITIONER VIDE ANNEXURE-J AND TO REJECT THE RESPONDENT NO.3'S APPLICATION DATED 21.11.2022 VIDE ANNEXURE-E FILED UNDER THE KARNATAKA CO-OPERATIVE SOCIETIES ACT (DATE 21/11/22 TAKEN FROM REMINDER LETTER SENT BY R3 ANNEXED HERE AS ANNEXURE-G).

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL ORDER

Petitioners are the apartment owners of a Multi Storied Apartment Complex known as "Parkside Retirement Homes Brigade Orchards Apartment Complex", respondent No.4-Brigade Orchards Parkside Apartments Owners' Association (ownership association) (hereinafter referred to as 'Association' for short) was registered under the Karnataka Apartment Ownership Act, 1972 ('KAO Act' for short) by the petitioners on the strength of a deed of declaration dated 15.02.2021 registered under the Registration Act, 1908.



2. The petitioners are seeking for the following reliefs:

"a) *Restrain the Respondent No.3 from registering the Proposed Brigade Orchards Parkside Retirement Housing Co-operative Society Ltd., (BPRHHCSL) and the Proposed Bye-laws before the Jurisdictional Registrar of Co-operative societies, Doddaballapura Sub-Division, Doddaballapura, Bengaluru Rural District.*

b) *Issue a writ of mandamus to the Registrar of the Co-operative Society/Respondent No.2 to consider the objections/letter filed by the Petitioner at Annexure-J and to reject the Respondent No.3's application dated 21/11/2022 vide (Annexure-E) filed under the Karnataka Co-operative Societies Act [date 21/11/22 taken from reminder letter sent by R3 annexed here as Annexure-G).*

c) *Grant such other reliefs that this Hon'ble court deems fit to grant in the circumstances of the case, to the Petitioners, in the interest of justice."*

3. Respondent No.3 preferred an application on 21.11.2022 before respondent No.2 for formation of a cooperative society under the Karnataka Co-operative Societies Act, 1959 ('Act, 1959' for short). Respondent



No.2 issued an order dated 23.02.2023 by which, the Chief promoter of respondent No.3 (the proposed society) was permitted to collect share capital contributions from those residents / owners in the project desirous of being part of such society.

4. The contention of the petitioners are in two folds:

i. That there already exists an association registered under the KAO Act on the strength of the deed of declaration, and the apartment owners are registered under the KAO Act, therefore, there cannot be a society formed under the Act, 1959. It is submitted that the validity of KAO Act has been upheld in the case of ***Shantharam Prabhu and others Vs. K. Dayanand Rai and others***¹ (*Shantharam Prabhu*), wherein it has held that "once an apartment is subjected to KAO Act, Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972

¹ CRP No.96/2021 D.D. 08.09.2021



(hereinafter referred to as 'KOFA' for short) would cease to apply and it is only the KAO Act, by duly executing and registering a declaration, deed of apartment and bylaws which would be applicable."

ii. That no cooperative society can be formed in a project where the units are purely residential in nature.

5. Placing reliance on the decision of the Coordinate Bench of this Court in the case of **Arunkumar .R and others Vs. State of Karnataka and others**² (*Arunkumar*) confirmed in the case of **Proposed Starnest Apartment Owners Co-operative Society Ltd. Vs. State of Karnataka and others**³ (*Starnest Apartment*) and the decision of the Coordinate Bench of this Court in the case of **Shantharam Prabhu**, it is her contention that the persons having purchased the flats in a residential apartments are governed by the provisions of the KAO Act and the flat owners cannot form a cooperative society

² WP No.25528/2023 D.D. 23.02.2024

³ WA NO.564/2024 D.D 18.06.2024



under the provisions of the Act, 1959 to manage and maintain the apartment.

6. *Per contra*, learned counsel appearing for respondent No.3 controverts the grounds urged by the petitioners, contending that a cooperative society is a project and can be very well formed under the Act, 1959, as the basic requirement of Section 2 of the KAO Act has not been met. Emphasizing his submission, it is submitted that as on the date of deed of declaration, there were 150 units in the project, however, only 90 owners have signed the deed of declaration, so the total number of owners who are signatory to the deed of declaration is woefully lesser.

7. It is submitted that the deed of declaration executed and registered is not in terms of Section 2 of the KAO Act. It is further submitted that the decisions placed reliance by the petitioners have no application to the present facts, as the said orders were rendered only in the context of KOFA. It is submitted that the said orders



cannot be extrapolated to take away respondent No.3's rights to form a society, which is a fundamental right to form a cooperative society, does not stem from KOFA, but instead stems from constitution.

8. Learned counsel for the petitioners apart from relying upon the various decisions stated *supra*, further submits that the issue in the *lis* is also squarely covered by the decisions in the case of ***Praveen Prakash and others Vs. The State of Karnataka and others***⁴ (*Praveen Prakash*) and in the case of ***VDB Celadon Apartment Owners Association Vs. Mr. Praveen Prakash***⁵ (*VDB Celadon*) confirming the order in the case of ***Praveen Prakash***.

9. The said proposition of law is vehemently disputed by the respondent.

⁴ W.P.Nos.34660/2017 & 35719-35724/2017 D.D. 15.02.2019

⁵ WA No.974/2019 & W.A.Nos.1206-1211/2019 D.D. 06.11.2019



10. This Court has carefully considered the contention urged by the learned counsel for the parties and perused the material on record.

11. Section 2 of KAO Act deals with the application of the Act. The proviso to Section 2 of the KAO Act specifies that, no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used for residential purposes, clearly indicating that KAO Act would only apply to an apartment where it is used for residential purposes. The project referred above is for the residential units. The petitioners are purchasers of the apartments and a deed of declaration is duly executed and registered by the petitioners along with the other apartment owners has undertaken to subject themselves to the provisions of the KAO Act. Even assuming, as per the contention raised by the respondents, that the deed of declaration is not signed by all the owners and deed of declaration was only executed after various sale deeds conveying the units in favour of the allottees, the deed of



declaration is with an intent to form association to be registered under the KAO Act.

12. Section 5 of KAO Act deals with ownership of apartments, which reads as under:

"5. Ownership of apartments.-(1) *Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.*

(2) *Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose."*

13. Section 5 emphasizes that each apartment owner shall be entitled for exclusive ownership and possession of his apartment. Sub-clause 2 of Section 5 states that each apartment owner shall execute a deed of declaration that he submits his apartment to the provisions of this Act and a deed of apartment in relation to his apartment in the manner prescribed for the purpose. The deed of declaration is executed by the apartment



owners subjecting the apartments to the provisions of this Act.

14. The deed of declaration which is registered by the petitioners is an act to say that the KAO Act applies. In ***Shantharam Prabhu's*** case, the Coordinate Bench of this Court at para No.23 held as under:

"23. *To Summarise:*

23.1. KAOA would only apply to an apartment where it is used for residential purposes. A flat or an apartment which is used for an office or showroom or shop or godown (and includes garage) cannot be subjected to KAOA and would always continue to be governed by KOFA.

23.2. When an apartment is proposed to be constructed or under construction and agreements are entered into, KOFA would apply insofar as the relationship and/or dispute between the purchaser and the Promoter.

23.3. KOFA would continue to apply if the Apartment is not subjected to KAOA as afore detailed.

23.4. Once an apartment is subjected to KAOA, KOFA would cease to apply and it is only the KAOA,



Declaration, Deed of Apartment and bye-laws which would be applicable.

23.5. In the event of an apartment being removed from the provisions of KAOA in terms of Section 14 of KAOA, KOFA would come into operation.

23.6. Essentially KAOA, Declaration, Deed of Apartment and bye-laws would be the provisions under which the relationship between an apartment owner and Association of the Apartment, building, property, which would be governed.

23.7. KOFA would apply insofar as the relationship and/or dispute between the purchaser of an apartment and Promoter and any defaults on part of the Promoter. The other enactments like RERA would also be applicable.

23.8. Even when an Apartment is not subjected to KAOA and KOFA applies, the dispute and the relationship between the apartment owner and the Association would be governed in terms of the rules and regulations under the Co-operative Society under which the said Association is registered or the terms of articles and memorandum of Association of company under which the said Association is registered.

23.9. If the Association is formed under KOFA, registration of the Association would be required



under the Karnataka Co-operative Societies Registration Act and/or the Companies Act depending on whether it is a Co-operative Society or a Company which is to be registered.

23.10. In the event of a declaration, Deed Apartment and byelaws being executed and the Apartment, building, property is subjected to KAOA, the said documents would have to be registered before the jurisdictional Sub-Registrar and the same be informed to the Registrar of the Co-operative Societies.

23.11. There would be no requirement for registration of the Declaration, Deed of Apartment and/or bye-laws with the Registrar of the Co-operative Societies.

23.12. If the property is subjected to KAOA, the proceedings if any would have to be filed before the Civil Court of competent jurisdiction.

23.13. If a Co-operative Society or a Company is formed to manage the property, and the provision of KOFA being applicable the proceedings would have to be filed in terms of Section 13(5) before a Small Causes Court where a Small Causes Court is established, in the absence thereof, before a Civil Court of competent jurisdiction.



23.14. All the apartment owners are not required to sign and execute the Declaration, Deed of Apartment and bye-laws. The Promoter before registration of a sale deed can execute and register the Declaration, Deed of Apartment and bye-laws with the jurisdictional Sub-Registrar being the owner of the Apartment, building and property. If there is a joint development agreement, the owner of the property would also have to join the execution of the registration of the above documents. Suffice it to say, it is only the persons or entities who have registered title in respect of the property who are required to execute and register the above documents.

23.15. On the purchase of the property and registration of the sale deed, the purchaser or apartment taker would have to execute necessary Declaration under Form B of KAOR agreeing to be bound by the said Declaration, Deed of Apartment and bye-laws. The Association when formed could always amend the same in terms of the provisions applicable thereto.”

15. The Division Bench of this Court in **VDB Celadon Apartment Owners Association** has held at paragraph Nos.6 to 11 as under:



"6. *Section 3 of the said Act of 1960 reads thus:*

3. Societies to which the Act applies.-

The following societies may be registered under this Act,-

Societies established for,-

- (a) the promotion of charity;*
- (b) the promotion of education, science, literature, or the fine arts;*
- (c) the promotion of sports;*
- (d) the instruction and the diffusion of knowledge relating to commerce or industry or of any other useful knowledge:*
- (e) the diffusion of political education;*
- (f) the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or of public museums and galleries of painting and other works of art:*
- (ff) the promotion of conservation and proper use of natural resources and scarce Infrastructural facilities like land, power, water, forest and such other resources and infrastructural facilities, as may be notified by the State Government from time to time.*
- (g) the collection of natural history, mechanical and philosophical inventions Or designs and*

Which intend to apply their profits, if any, or other income in promoting their objects and



prohibit the payment of any dividend or distribution of any income or profits among their members."

Even according to the case of the appellant, the dominant object for the formation of the appellant Association is to administer, maintain and run the building and apartments. Clauses 5.1 and 5.2 are, even according to the learned counsel for the appellant, the dominant objects of the Association, and they read thus:

5.1 To administer, maintain and run the building and apartments known as VDB Celadon No.23/3, 23/4, 26/1, Shivanahalli Hobli, Jakkur Road, Yelahanka, Bangalore -560064.

5.2 To Carry on the Day-to-day work relating to all aspects of the building, apartments, common areas, common facilities and common services therein;

7. On a plain reading of Section 3 of the said Act of 1960, it is clear that the object of administering, maintaining and running the buildings and apartments and to carry on the day-to-day work relating to all the aspects of the buildings/apartments, common areas and common facilities will not be covered by any of the clauses (a) to (g) of Section 3 of the said Act of 1960. Even according to the case of the appellant, Clauses 5.1 and 5.2 are its dominant objects. In fact, on the earlier date, we had granted time to the appellant to



take instructions whether it proposes to apply for deletion of certain objects which are a part of the bye-laws of the appellant Association.

8. *Today, the learned counsel appearing for the appellant, on instructions, states that if the said two objects are deleted, the registration of the appellant under the said Act of 1960 cannot be maintained.*

9. *Thus, the main object of the appellant was to do something which could have been done by an Association formed in accordance with the provisions of the said Act of 1972. In fact, the documents of sale executed by the developer in respect of the flat/apartment contain a stipulation that the purchasers of the flats shall form an Association/Society/Condominium in accordance with the provisions of the said Act of 1972. That is how the learned Single Judge by modifying the impugned order dated 15th February, 2019, has clarified that steps can be taken to register the appellant Association under the provisions of the said Act of 1972.*

10. *Thus, after having perused the dominant objects of the appellant Association, we find that the said objects are not covered by Section 3 of the said Act of 1960, and therefore, the appellant could not have been registered under the said Act. We find no*



error in the view taken by the learned Single Judge when he had proceeded to cancel registration of the appellant.

11. As observed by the learned Single Judge, the impugned order as well as this order will not prevent the persons who are members of the appellant Association from taking steps for formation and registration of an Association/Condominium under the provisions of the said Act of 1972 inasmuch as the sale deeds executed in favour of the apartment owners contemplate formation of such Association.”

16. The Coordinate Bench of this Court in the case of **Arunkumar** following the decision of the Coordinate Bench of this Court in **Shantaram Prabhu’s** case has held at para Nos.15 and 16 as under:

“15. Having gone through the aforementioned judgments, this Court is of the view that the petitioners are justified in raising the dispute contending that the 4th respondent Society cannot have a Society registered under the Act of 1959 for the purpose of maintaining and managing the Property in which the petitioners have purchased certain units. Submission is made at the bar that 83 members who are willing to be the members of



proposed 4th respondent Society are also willing to form an association under the Act of 1972 by joining the petitioners. Hence, the direction be issued to the 3rd respondent builder/owner to cooperate in having the association of flat owners in the Property registered under the provisions of the Act of 1972.

16. Under these circumstances, the 3rd prayer is made praying for an appropriate direction against the 3rd respondent builder to cooperate the petitioners in forming the association under the Act of 1972 has to be granted.”

17. In light of the decisions stated supra and considering the provisions of KAO Act, it can be safely held that the *lis* stands covered, that the petitioners and the members of the association are entitled to be registered under the KAO Act and that there cannot be any association registered under the Act, 1959, to form a society to manage and maintain the property comprising of only residential flats. It is also relevant to state here that the KOFA Act, 1972 and the Rules 1975, are applicable, if the property has both commercial and residential units.



18. In the instant case, the project does not include any commercial unit and as such, the KOFA has no application and since the KOFA has no application, the registration under the Act, 1959, is not permissible. It is relevant to state that respondent No.4 is the association of the owners of the flats situated in an apartment for which a specific enactment, *viz.*, the KAO Act has been enacted and therefore, the registration of the association has to be made under the KAO Act.

19. Having perused the aforementioned decisions, this Court is of the considered view that the petitioners are justified in the prayer sought in the petition and the petition needs to be allowed with necessary directions and this Court pass the following order:

ORDER

- i. Writ petition is ***allowed***.
- ii. Respondent No.2 is hereby restrained from registering the proposed respondent No.3- society and proposed bylaws to manage and



maintain the 'Parkside Retirement Homes Brigade Orchards Apartment Complex'.

- iii. As the project does not involve a commercial unit, the registered association-respondent No.4 registered under the KAO Act would maintain and manage the 'Parkside Retirement Homes Brigade Orchards Apartment Complex' and respondent No.3 is directed to cooperate with the petitioners and the members of the registered association-respondent No.4 to manage and maintain the project 'Parkside Retirement Homes Brigade Orchards Apartment Complex.'

Sd/-

JUSTICE K.S. HEMALEKHA

MBM
List No.: 1 Sl No.: 19