



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 7<sup>TH</sup> DAY OF AUGUST, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE R. NATARAJ**

**WRIT PETITION NO. 2881 OF 2016 (GM-RES)**

**BETWEEN:**

1. MR. M.J. MATHEW  
S/O LATE M. JACOB,  
AGED ABOUT 64 YEARS,  
RESIDING AT VILLA 81, PRESTIGE OASIS,  
BEHIND ANGASANA SPA AND RESORT,  
RAJANKUTE P.O,  
BENGALURU NORTH-560064.
2. MRS. MAYA SHENOI  
W/O SHRI A.V. SHENOI,  
AGED ABOUT 46 YEARS,  
RESIDING AT E-802,  
ROSE GARDEN APARTMENTS,  
AREKERE GATE,  
BANNERGHATTA ROAD,  
BENGALURU-560076
3. MR. DARPAN KULSHRESHTHA  
S/O DAMON KR KULSHRESHTHA  
AGED ABOUT 44 YEARS,  
RESIDING AT IC 903  
DIVYASREE ELAN,  
SARJAPUR ROAD,  
OPP. TOTAL MALL,  
BENGALURU-560035
4. MR. VISWANATH HARIHAR  
S/O LATE P. VISWANATHAN,  
AGED ABOUT 73 YEARS,  
RESIDING AT B34, SYCAMORE,  
SHERWOOD APARTMENTS,  
BASAVANAGAR,  
BENGALURU-560037



5. MR. ALOK SHARMA  
S/O V.K. SHARMA,  
AGED ABOUT 44 YEARS,  
RESIDING AT A-803,  
ADARSH PALM RETREAT, TOWER-1,  
BELLANDUR CROSS,  
OUTER RING ROAD,  
NEAR INTEL OFFICE,  
BENGALURU-560 103.
6. MR. E.P. SURESH MENON  
APARTMENT NO.A704,  
S/O M. SHEKHARA MENON  
AGED ABOUT 61 YEARS,  
RESIDING AT 44/A  
KAMGAR NAGAR, SG BARVE MARG  
KURLA EAST, MUMBAI-400024.

...PETITIONERS

(BY SMT. SHREYA S. KUMAR, ADVOCATE FOR  
SRI. SIJI MALAYIL, ADVOCATE)

**AND:**

1. PRESTIGE ST. JOHNS WOOD  
APARTMENT OWNERS ASSOCIATION,  
PRESTIGE ST. JOHNS WOOD,  
NO.80, ST. JOHNS CROSS ROAD,  
BENGALURU-560029  
REPRESENTED BY ITS SECRETARY
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
OFFICE OF THE REGISTRAR OF  
CO-OPERATIVE SOCIETIES,  
ALI ASKER ROAD, VASANTH NAGAR,  
BENGALURU-560 001.

...RESPONDENTS

(BY SMT. PRIYA KALE, ADVOCATE FOR SRI. RAYAPPA T.H.,  
ADVOCATE FOR RESPONDENT NO.1;

SMT. RASHMI PATEL, HIGH COURT GOVERNMENT PLEADER  
FOR RESPONDENT NO.2)



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO RESTRAIN FROM IMPOSING SUCH LEVY OF CHARGES AS IT IS VIOLATIVE OF FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA AND ETC.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners are before this Court seeking for the following reliefs:

*"(i) Issue a Writ in the nature of Mandamus directing the respondents to restrain from imposing such levy of charges as it is violative of fundamental rights under the Constitution of India.*

*(ii) To set aside the proposed amendment to the bye-laws dated 13.12.2015 at Annexure "B" passed by the 1<sup>st</sup> Respondent;*

*(iii) Issue any other appropriate writ or order or direction to the Respondents as deemed fit in the circumstances of the case, in the interest of justice and equity."*

2. The petitioners claim to be the owners of certain apartments in respect of which an Apartment Owners' Association, namely, respondent No.1 is



constituted under the provisions of the Karnataka Apartment Ownership Act, 1972 (for short, 'the Act of 1972'). The petitioners allege that the respondent No.1 introduced a few amendments to the bye-laws by inserting 'Facilitation Charge' that was collectible from the owners of the apartments who had let them out on lease, licence, tenancy or otherwise. The petitioners contend that this levy of facilitation charges is arbitrary and against the principles of law and cannot stand the scrutiny of the law of the land. The petitioners have raised several grounds in support of their contention that the amendment of the bye-law of the respondent No.1 to insert necessary 'Facilitation Charge' are all illegal.

3. It is relevant to note that respondent No.1 is a private association of owners of apartments and therefore, does not qualify to be a 'State' under Article 12 of the Constitution of India. It is also not performing any public duty and hence its activities are not amenable to be scrutinized by this Court in a proceeding for issuance of a



prerogative writ. If the petitioners have any grievance against the respondent No.1 in amending the bye-laws or in collecting the facilitation charge or if the respondent No.1 has introduced a charge, which is not permitted under the Act of 1972, the only remedy available to the petitioners is to challenge the amendment of the bye-laws of the respondent No.1 before the competent Civil Court.

4. In that view of the matter, this Writ Petition is not maintainable and therefore, is dismissed.

Any observations made herein shall not affect any proceedings pending before any other Court of law on the same set of facts.

**Sd/-**  
**JUDGE**