

(1998) 11 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6211 of 1998

CSR Estates, Flat Owners Welfare Association, Kothapet, RR Dist. APPELLANT

Vs

Hyderabad Urban Development Authority, Secunderabad and others RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 —
Section 14, 14(1), 14(2), 3, 32
Contract Act, 1872 — Section 23

Citation : AIR 1999 AP 61 : (1998) 6 ALD 547 : (1998) 6 ALT 540

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. Vedula Srinivas, for the Appellant; Mr. T. Niranjanreddy, SC for HUDA, Mr. G. Chandriah, Sc for Municipalities and Mr. C. Nageswara Rao, for the Respondent

Judgement

1. The petitioner, CSR Estates Flat Owners" Welfare Association, Kothapet, Ranga Reddy District, has filed this writ petition for a writ of Mandamus or any other appropriate writ, order or direction declaring the action of respondent No.1 i.e., Hyderabad Urban Development Authority, in granting modification in building permission vide proceedings No.696/P4/H/94datcd2-l-1988, in favour of respondent No.3, as illegal, arbitrary and contrary to law. By the impugned proceedings, the respondent No. 1 has permitted certain modifications and alterations in the original sanctioned plan dated 19-7-1991 in favour of the respondent No-3, who is a builder. This action of respondent No. 1 is now being challenged by the petitioners" Association.

2. In the affidavit filed in support of the writ petition it is alleged by the petitioners" Association that it is a registered Association under the Societies Registration Act and the petitioners" association consists of all the flat owners residing in the apartments known as CSR Estates, situated at Kothapet, Ranga

Reddy District. The respondent No.3 is the builder of the said apartment. It is further stated that the respondent No. 1 - Hyderabad Urban Development Authority notified certain sites for apartment housing at Saroomagar in the year 1989, inviting buildings to purchase plots of 1,200 Sq.Mts, each, in public auction for the purpose of building residential complexes in 48 plots. The said notification issued by respondent No.1 further stated that the purchaser of plots will be permitted to build ground floor, plus three storeys or ground floor plus four storeys, in case they decide to leave ground floor for parking, in case the purchaser chooses the second alternative, a minimum of 1/3rd of the parking area will have to be kept for open parking and it shall not be sold to any prospective purchaser of flats. The writ affidavit further states that in pursuance of the said notification, the respondent No.3 applied for allotment of plot and he was successful in getting plot No.42, admeasuring 1,280 sq.mts. at Kothapet. He applied for permission to construct apartment complex consisting of stilt and four floors. Accordingly, this plan was sanctioned by respondent No. 1 on 19-7-1991 and according to such plan, the stilt area consists of generator room, A.C. plant, electrical cabin, watchman room, store room, office room and open parking area of flat owners, which will be a common area. The construction was started in the year 1991 and it was completed by 1993 and in all 42 flats were built. Immediately thereafter, the members of the petitioners' association purchase the flats by entering into agreements with the respondent No.3 and accordingly, the sale deeds were also executed in favour of some of the flat owners and they are yet to be executed in case of some other flat owners. The respondent No.3 has charged Rs.20,000/- extra for each flat owner towards open parking in the stilt. They further contended that each flat owner became the owner of undivided land approximately at 16.7 sq.mts., out of the total land. The respondent No.3 being a greedy builder did not complete the construction in time in all respects and he did not put up the compound wall. When the flat owners wanted to put up a compound wall, he went to the Civil Court and obtained an injunction against them in OS No.444 of 1997 and on the application filed by the members of the petitioners' association, the said injunction was vacated and ultimately the petitioners constructed the compound wall. The respondent No.3 thereafter planned to convert the stilt area into closed malgics, so that he could lease them out to various parties for running shops, which the petitioners were opposing. But the respondent No.3 was harassing the petitioners by filing police complaint, criminal cases etc. The respondent No.3, in order to achieve his object, has applied to respondent No.1 for sanctioning closed parking in the stilt area, for conversion of four flats in the ground floor for commercial area and to construct further floor on the terrace. The respondent No.1 without any notice and opportunity to the petitioners has sanctioned on 2-1-1998 such modifications sought by the respondent No.3. Immediately thereafter, the respondent No.3 filed a suit in OS No. 135 of 1998 before the Principal Junior Judge, East and North, Ranga Reddy District and obtained an ex parte injunction against the members of the petitioners' Association, restraining them from interfering with the constructions he would make in the building. Under the strength of the ex parte

order of the Court, he hurriedly constructed closed mulgies in the stilt and also started construction of an additional floor on the terrace. He also converted four flats in the ground floor for commercial purpose as per the modified plan. Even in the area shown for electrical cabin, watchman room, store room and office room in the stilt, he built mulgies for commercial purpose.

3. With the above allegations, the petitioners' Association contended that the modified plan sanctioned by respondent No. 1 dated 2-1-1998 was without notice to the flat owners and the same was illegal, arbitrary and prejudicial to the interests of the flat owners. Therefore, the impugned proceedings are liable to be set aside.

4. The learned Counsel appearing for the petitioners' Association by relying upon the pleadings raised in the writ petition contended that respondent No.1 could not permit the modifications to the original plan, and according to the original plan, there can be only ground floor plus four storeys and 1/3rd of the ground floor must be left open for parking area and it shall not be sold to any purchaser. And if that is so, neither the respondent No. 1 could permit nor respondent No.3 could effect modifications to the building. He further contended that the complex in question is a residential complex and respondent No.3 cannot use it for commercial purpose. He further submitted that under A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 (in short "the Act"), after the plans, specifications and the nature of the fixtures, fittings, amenities and common areas as sanctioned by the appropriate authority and after builder enters into agreement with the flat purchasers, such builder is not entitled to make any additions or alterations, without the previous consent of the flat owners. He further submitted that flat owners have not consented for any such modifications and as such respondent No.3 is not entitled to effect any modifications. He further contended that this Act has been made to have overriding effect on all other law and if such modifications are permitted as sought by respondent No.3, interests of such flat owners would be seriously affected and the very object of the Act and the Rules framed thereunder would be defeated. In support of his contentions, he took me through the various provisions of the Act and submitted that this is a fit case for this Court to issue appropriate writ or direction as prayed for. The Counsel for the petitioners has also filed affidavits of eight flat owners as directed by this Court vide order dated 11-8-1998, in view of the objection of the Counsel for the respondents that the person who has filed affidavit in support of the writ petition does not own any flat.

5. The respondent No.3 filed a vacate petition/counter denying the allegations made by the petitioners' Association. It is stated in the counter that while determining F.S.I, ratio, the height of the building formulated by the Government was wrongly applied by respondent No.1 while granting the original plan and in those circumstances, the respondent No.3 applied to the Government for amendment of the plan and accordingly, the Government vide G.O.Rt. No.689 M.A. dated 26-8-1997 considered the representation of the respondent No.3 and

accepted the case that regarding plot No.42 Urban Development Authority had included balcony area also for the calculation of the F.A.R. and accordingly relaxed zoning regulations in favour of C.S.R. Estates in plot No.42, to the extent that balcony area be excluded for the calculation of F.S.I, upto 0.90 mts of width of balcony, In view of this relaxation by the Government, respondent No.3 applied for amendment of the plan to the respondent No. 1 for modification of the original plan to the extent the respondent No.3 is eligible to put up construction under F.A.R. and accordingly by the impugned proceedings, the respondent No.1 has permitted and according to this modified plan, respondent No.3 is effecting the modifications in the building. It is further contended that the consent of the petitioners' Association was not necessary, since the members of the petitioners' Association have permitted as per the clause in the sale deed that the vendor/ respondent No.3 shall have right to construct further floors above the terrace of the building and the purchasers shall not have any objection for the additional construction and in view of the said clause, the petitioners cannot complain against the construction according to the modified plan, since this respondent No.3 is at liberty to undertake construction activity over the terrace. It is further alleged that the construction undertaken as per the amended plan does not affect the individual flats, which were constructed as per the original sanctioned plan and the apartment owners are not affected in any way by such construction. In these circumstances, the allegations of the petitioners' Association that a notice is required u/s 6 of the Act, cannot be sustained and the said Section would not be applicable to the facts of this case, since there is no material alteration to the plan, which was disclosed to the purchasers in relation to the individual flats and subsequent amended plan is nothing but the continuation of the earlier sanctioned plan. Moreover, there are about eight unfinished flats in the entire building which are not sold yet, of which this respondent No.3 continues to be the owner. With these allegations, the respondent No.3 requested this Court to dismiss the writ petition.

6. The Hyderabad Urban Development Authority respondent No.1 filed a separate counter and stated that in view of the relaxation granted by the Government vide G.O. Rt. No.689 M.A., dated 26-8-1997, this respondent approved the modified plan. In fact, Government granted relaxation of zoning regulations exempting balcony area for the purpose of calculation of F.S.I. Basing on that relaxation, the respondent No. 1 processed the application of the respondent No.3 and granted permission for construction of two units (flats) on fourth floor and two units of fifth floor, which would come to a total area of 165.58 sq.mts. along with four covered garages in stilt floor. It further stated that after granting the permission, as per the amended plan, the height of the building and the F.S.I, used are within permissible limits. However, it stated that this authority has not granted any "no objection certificate" for conversion of four flats for commercial purpose i.e., for the use of commencing Vysya Bank and the same is not being used for Vysya Bank as on today and, therefore, there is no change in the use of the plan and consequently there is no alteration in the plan and the contention of the flat

owners is untenable, as their individual flats would not be affected by change in the plan. On these grounds, this respondent No. 1 also prayed for the dismissal of the writ petition.

7. Respondent No.2 - Municipality has not filed any counter. But the Counsel appearing for this respondent contended that the alleged modified plan is illegal.

8. The Counsels for the respondents 1 and 3 contended that the modified plan was issued to the respondent No.3 only within the area the respondent No.3 was eligible to put up certain constructions on the site in question as per the F.S.I. They contended that respondent No. 1 wrongly included balcony area also for the calculation of the F.A.R. and, therefore, after excluding the same, whatever the area over which respondent No.3 was entitled to put up construction, the same has been permitted. The learned Counsels for the respondents also relied upon clause 4 of the sale deeds, contending that for such construction over the terrace floor, all the flat owners have agreed in the sale deeds and whatever the open area they were entitled to according to the sale-deeds, all the flat owners possess it and the same is not affected. Therefore, the present writ petition is misconceived and the same is liable to be dismissed. The learned Counsels submitted that the petitioners' Association has not challenged the G.O. issued by the Government relaxing zoning regulations in favour of respondent No.3 and consequently, they could not challenge the impugned proceedings for approving the modified plan. They also contended that the petitioners are not affected and Section 6 of the Act would not be applicable to the facts of this case and the petitioners are not entitled to any notice before issuing the modified plan. Moreover, now the four flats in the first floor approved for commercial purpose is with the consent of the flat owners and therefore, it cannot be said that such use of flats for starting bank in the building was violative of any law, and it cannot be said that housing of bank is for commercial purpose. Consequently, they requested that the writ petition may be dismissed.

9. On the stand taken by both the sides in their pleadings and also in their arguments, I find that there are few facts which are clearly undisputed. It is not in dispute that the original plan approved provided stilt/ ground floor plus four floors (second alternative mode), with a minimum of 1/3rd of the parking area, which has to be kept for open parking and it shall not be sold to any prospective purchaser of the flats. It is also not in dispute that no notice was issued to the members of the petitioners' Association before sanctioning the modified plan by the impugned proceedings dated 2-1-1998. But the case of the respondents is that, such modified plan does not effect any substantial alteration in the original plan and the area of the flat owners would not be affected and as such the petitioners cannot make any grievance. The further case of the respondents is that the modified plan has been issued as per the relaxation granted by the Government. But it is not the case of the respondents that Government at least issued a notice to the flat owners before issuing the G.O. Rt. No.689 MA, dated 26-8-1997. With this background in view, I have to consider whether the

impugned proceedings approving the modified plan of respondent No.3 is permissible or not under the Act.

10. I scanned through the entire Act in order to appreciate the rival contentions. The preamble of the Act states that in view of the Eighteenth Report of the Andhra Pradesh State Law Commission and on the lines of the Maharashtra Act, a legislation is necessary to regulate the promotion of construction and sale of apartments in multi-storied buildings on ownership basis and also to provide "for the transferability and heritability by the individual purchaser of not only the particular apartment but also the fractional interest to it in the common areas and facilities". u/s 3(d) of the Act, "Common areas and facilities" are defined as under:

"(d) "Common areas and facilities" unless otherwise provided in the declaration, means:

- (i) the land on which the building is located;
- (ii) foundation, columns, girders, beams, supporters, main walls, roofs including terraces, halls, corridors, stairs, stairways, fire-escapes and entrances and exists of the building;
- (iii) basements, cellars, yards, gardens, parking areas, children's playground and storage spaces;
- (iv) the premises of the loading of janitors, or caretakers or persons employed for the management of the property;
- (v) installations of general services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
- (vi) elevators, tanks, wells and bore-wells, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
- (vii) such other community and commercial facilities as may be provided for in the building plan and Declaration;
- (viii) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;"

Section 4 of the Act determines the duties and liabilities of the promoters, so as to make full disclosure in writing of his title to the land and the building, in which the apartments are to be constructed, all encumbrances, plans and specifications approved by the local authority, including the particulars of the designs and materials proposed to be used etc. I think it appropriate to extract the relevant portion of Section 4 as under:

"4. General Liabilities of Promoter ;--

(1) Any promoter who intends to sell an apartment, shall, on being so required by an intending transferee, make a full and true disclosure in writing of-

- (a) his title to the land on and the building, in which the apartments are, or are to be constructed;
- (b) all encumbrances, if any, on such land or building and any right, title, interest or claim or any person in or over such land or building;
- (c) the plans and specifications approved by the local authority as the case may be or the Urban Development Authority of the entire building of which the apartments form part;
- (d) the nature of fixtures, fittings and amenities which have been or are proposed to be provided;
- (e) the particulars in respect of the designs and materials which have been or are proposed to be used in the construction of the building, together with the details of all agreement entered into by him with the Architects. Engineers and Contractors;
- (f) all outgoings, including ground rent if any, municipal or other local taxes, taxes on income, water and electricity charges, revenue assessment, interest of any mortgage or other encumbrances, if any, in respect of the land, building and apartments;
- (g) such other information and documents as may be prescribed.

(2) Such promoter shall also-

- (a) specify in writing the date by which possession of the apartments is to be handed over to such transferee.
- (b) supply in writing a list of all the apartments which have already been taken or agreed to be taken, together with their distinctive numbers, names and addresses of the transferees, either actually or intended, the prices paid or agreed to be paid therefore and any other particulars as may be prescribed.
- (c) transfer the open space earmarked for parks, play grounds, market places and for other common use free of cost to the Government through a registered gift deed."

Under Section 7 of the Act, it is further provided that the promoter shall, on payment of price, execute a proper conveyance of the apartment in accordance with the agreement executed in terms of Section 5 of the Act and give possession of the apartment to the transferee after discharging all encumbrances unless the apartment is sold subject to certain encumbrances. From the above relevant provisions (which I have noticed for the purpose of this case), it is clear that apart from the building sold under the agreement by the promoter/builder, certain other common areas and facilities also such owners would be entitled to under law. u/s 4 of the Act, before selling the flats as per the agreement contemplated u/s 5, the builder should make full disclosure of his title, entire plan, specifications, fittings, designs etc. u/s 6 it is further mandated that after

the plans, specifications and the nature of the fixtures, fittings, amenities and common areas as sanctioned by the local authorities, which are disclosed to the intending transferees u/s 4 of the Act, the promoter shall not make any additions and alterations therein, if it affects any apartment, without the previous consent in writing and if it affects more than one apartment, without the previous consent in writing of all the transferees who intend to take those apartments and all other additions or alterations shall necessarily be carried out only with the prior approval of the local authority. In the instant case, it is no doubt true that as contemplated u/s 6(2) of the Act, the approval of the local authority has been taken, but the previous consent of transferees are not taken for additions and alterations sought under the modified plan. But the case of the respondent No. 1 and 3 is that there is no material alteration in the building as per the modified plan and what has been permitted, is the construction within the permissible area as per the F.S.I./F.A.R., since earlier balcony area was computed in the F.S.I./F.A.R., and the same has been permitted. But in my opinion, the stand taken by respondent Nos. 1 and 3 is not acceptable for more than one reason.

11. As per the modified plan, respondent No.3 is now permitted for construction of two units (flats) on the fourth floor, two units on fifth floor and four covered garages in stilt floor. The modified plan also has permitted the respondent No.3 for the use of four flats for commercial purpose, for utilising the same for commencing Vysya Bank in the first floor. These modifications are material modifications to the building in all sense of the term and the same cannot be done contrary to the declaration or disclosure already made u/s 4 of the Act. As I have already noted above, before any flat is sold, the builder or promoter is required to make full disclosure in writing to the intending transferees of his title to the land, all encumbrances, the plans and specifications approved by the local authority or the Urban Development Authority. He shall also disclose the nature of fixtures, fittings, and amenities which have been or are proposed to be provided etc., and u/s 4(2) of the Act, he shall transfer the open space earmarked for parks, playgrounds, market places and for other common use free of cost to the Government through a registered gift deed. In other words, once the builder constructs the building as per the disclosure of the plan u/s 4, he shall complete the building according to such plan, if some construction is yet to be done according to the plan after selling of all the flats, he shall have to simply complete those constructions and leave the building and go. Whatever the remaining common areas and facilities which are provided as per the plan approved and all other amenities, as contemplated under the definition of "common areas and facilities", it is the flat owners who shall be entitled to the same to the extent of their percentage of undivided interest as per Section 9 of the Act and the said "common areas and facilities" as expressed in the declaration duly executed and registered as provided in this Act shall not be altered without the consent of all the flat owners. Instead of noting the substance of Section 9 of the Act, I think it appropriate to extract relevant portion of Section 9 as under:

"9. Common areas and facilities :-- Each apartment owner shall be entitled to the percentage of undivided interest in the common areas facilities as expressed in the Declaration. Such percentage shall be computed by taking as basic the value of the apartment in relation to the value of the property, and such percentage shall also reflect the limited common areas and facilities.

(2) The percentage of undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. The percentage of undivided interests in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or either instrument."

From the above Section it is clear that after the declaration of the plan by the builder u/s 4 of the Act, the builder has no right to touch the plan or the declaration plan, as provided for whatever the reasons. If he has left more vacant space than what is permitted by F.S.I./F.A.R., he has left as per the plan voluntarily. Assuming for the sake of argument that there is a mistake, that mistake becomes final, the moment the plan is approved. In this view of the matter, it follows that now the builder cannot say that he was seeking amendment of the original plan because in the original plan balcony area was also included in the F.S.I./F.A.R. and the same could not have been included and, therefore, to the extent of area covered by balcony he was entitled to put up farther construction. If there is to be any modification to the original building as per the plan, it shall be with the consent of all the flat owners expressed in an amended declaration duly executed and registered as provided in this Act. Therefore, there cannot be any other mode of amending the plan, except as per the "amended declaration duly executed and registered"". In fact, u/s 14 of the Act, such declaration is made a statutory declaration and u/s 14(b) it shall contain the "description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed". u/s 14(d), such declaration also shall consist "description of the common areas and facilities". Section 14(2) of the Act, further directs that the declaration referred to u/s 14(1) may be amended under such circumstances and only in such manner as may be prescribed. In the instant case, it is not the case of the respondents that the original declaration contemplated u/s 4 read with Section 14 of the Act was amended by duly executed and registered, as provided in this Act. From this it follows that according to the approved plan whatever space is left for car parking in the stilt floor and whatever the space left in other floors as per the plan, the same cannot be modified at all. Any other interpretation would lead to a disastrous conclusion. If it were to be said that builders can make use of the unsold flats or any common areas in any way they like, it would lead to clearly breach of provisions of this Act and the very spirit of the Act. By the impugned proceedings and

(amended plan) the respondent No.3 is permitted now to put up an additional flats over and above the building already constructed. He is permitted to put up two flats in the fourth floor and two flats in the fifth floor and he was also permitted to convert the stilt floor into four covered garages. This modified plan is consequently contrary to Sections 4, 6 and 14 of the Act. It should be made clear that if after selling some flats, if there remains some more flats to be sold by the builder, such builder would be just like any other co-owner, as if he has also purchased those flats by himself. When once the first flat is purchased by any person, for the first time, such purchaser and the builder become common owners for all the amenities and facilities that are provided or to be provided, only according to the plan approved. As I have already stated above, if some more construction is to be made according to the plan approved, he could only complete the same and nothing more. The object of the Act is to protect such poor and middle class flat owners as against the builders, so as to see that the purchaser should know what is the flat he has purchased and what are the facilities in that apartment area. Suppose beautiful parks and lakes are provided in the plan approved, for the purpose of apartment, they vest with the apartment owner as common facilities as "deemed to be conveyed with the apartment" in terms of Section 9(2) of the Act, even though such right or interest is not specifically mentioned in the conveyance or in the instrument. With regard to this position of law, the contention of the respondents cannot be accepted.

12. u/s 11 of the Act it is further provided that "no apartment owner shall add any material structure or excavate any additional basement or cellar or do any other work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement of hereditament". From this it follows that even the owner of the apartment also cannot take up any work, which would be prejudicial to the soundness and safety of the building. In the instant case, respondent No.3 now proposed to put up two additional flats over the top of the building and the same he cannot do. In all probability, the foundation that is provided as per the original plan takes only the building as per the plan. Whatever it may be, the impugned proceedings permitting the respondent No.3 to construct certain constructions as per the modified plan is illegal.

13. However, the learned Counsel for the respondent No.3 heavily relies on clause (4) included in all the sale deeds, which reads as under:

"That it is specifically agreed that the Vendor shall have a right to construct further floors over and above the terrace of the building and the Purchaser/ Purchasers shall have no objection for the proposed additional construction."

This clause is prima facie ultra vires of Sections 4, 6 and 14 of the Act. As I have stated above, unless there is an amended declaration duly executed and registered by all the flat owners, there cannot be any modification to the existing plan and the building constructed according to it. It is a common principle of law that any contract prohibited by law would be a void contract. In fact Section 23

of the Indian Contract Act is to the same effect. Therefore, respondent No.3 - builder cannot rely upon this clause for the purpose of seeking a modified plan to put up further constructions. As I have already stated above, if according to the plan already declared under Sections 4 and 14 of the Act, if some more construction is to be done, at the most he can complete that and he cannot put up any further construction.

14. So far as the allotting of four flats in favour of Vysya Bank is concerned, the serious objection of the petitioners is that the building being for residential purpose, the builder cannot use for commercial purposes. But the builder relied upon one resolution dated 1-2-1993, said to have been passed by Saroornagar Huda Apartments Welfare Association. The learned Counsel for the respondent No.3 further contends that according to this resolution, the Vysya Bank Limited is permitted to open their extension counter in their association. From the reading of the resolution filed at material page No.5, I find that this is not the resolution of the petitioners' Association, which is called C.S.R. Estates Flat Owners' Welfare Association. This is an association pertaining to plot No.42, over which the present multi-storied building is constructed and they are the purchasers and if that is so, the said resolution dated 1-2-1993 is not the one passed by the petitioners' Association. If taking that there is a common association called Saroornagar Huda Apartments Welfare Association, the said resolution does not show in which building such bank should be housed. At any rate, the petitioners are not bound by the said resolution of some other association. It is also pertinent to note at this stage itself that resolution is dated 1-2-1993 and the same is extracted hereunder for ready reference:

"Saroornagar Huda Apartments Welfare Association (Regd. No.698 of 1990)

Flat No.307, Jaya Apartments, HUDA Complex, Saroornagar, Hyderabad.

Date: 1-2-1993

Resolution

1. It is resolved that the Vysya Bank Limited who are our Principal Bankers, be permitted to open their Extension Court in our institution/association/society premises.
2. It is further resolved to provide necessary accommodation to house the Extension Counter proposed at our premises and that we have no objection to the public having access to the extension counter.

In fact in the instant case, the construction of the building is almost completed in the year 1993 and as per the case of the respondents, the builder started selling the flats after 1993 and such flats were sold even till the year 1997-98. From this it follows that the said resolution does not apply to the petitioners' apartment, which is in plot No.42. If this is the position of facts, it follows that without the consent of the owners of the building, the four flats in the first floor could not have been given for the Vysya Bank for commercial purpose. The building in

question is a residential building and without the consent of the flat owners, the same could not have been given for commercial purposes to the Vysya Bank and accordingly, the modified plan providing four flats in the first floor for banking purposes also is illegal.

15. The learned Counsels for respondents 1 and 3 strenuously placed reliance on G.O.Rt. No.689 M.A. dated 26-8-1997, issued by the Government and contended that the Government relaxed the zoning regulations in favour of C.S.R. Estates in plot No.42 to the extent that balcony area be excluded for the calculation of F.S.I, and, therefore, the respondent No.3 is entitled to construct in the balcony area which was wrongly included as per the original plan. This Act has been given overriding effect u/s 32 of the Act and the Government relaxing the zoning regulations cannot come in conflict with Sections 4 and 14 of the Act. The Government also has no power to modify the original declaration along with the plan made or deemed to have been made under Sections 4 and 14 of the Act, unless it is by way of amended declaration by all the flat owners duly executed and registered. If this is the position of law, the petitioners would not be bound by the said G.O.Rt. No.689 M.A. dated 26-8-1997, issued by the Government and the writ petition not challenging the same specifically, would have no consequence.

16. For the above reasons, I am of the opinion that the modified building plan approved by the respondent No.1 vide proceedings No.696/P4/H/94 dated 2-1-1998 is illegal and without jurisdiction and contrary to law and procedure. According, I pass the order as under:

17. The writ petition is allowed. The impugned proceedings are quashed with a further direction to respondent No.3 not to put up any building or any alterations contrary to original sanctioned plan and if any construction is made in pursuance of the amended plan, the same shall be demolished within a period of two months from today. In case of default, the respondent No.2 shall take appropriate steps to demolish the same at the cost of respondent No.3, within a period of two months thereafter. No costs.