

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.02.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.1678/2015 & MP.Nos.1 & 2/2015

M/s.Jawahar Colony Welfare
Association rep.by its
President, Block No.167, 168,
169, IV Avenue, 12th Main Road
Anna Nagar, Chennai 600 040.

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Petitioner

Versus

1.The Inspector General of Registration
Chennai 600 028.

2.The District Registrar of Central Chennai
Chennai.

3.M/s.Block No.168 of Jawahar Colony Welfare
Association rep.by its
Secretary, Block No.168,
IV Avenue,
Anna Nagar, Chennai 600 040.

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Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the proceedings of the 1st respondent in Na.Ka.No.37638/I1/2011 dated 27.08.2011 to quash the same and consequently direct the 1st respondent to pass an order to the 2nd respondent to cancel the Registration Certificate issued to the 3rd respondent in S.I.No.180/2011 dated 05.09.2011.

For Petitioner : Mr.C.Deivasigamani
For RR1 & 2 : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader
For R3 : Mr.R.G.Annamalai

ORDER

Heard Mr.C.Deivasigamani, learned counsel for the petitioner ;
Mr.V.Jayaprakash Narayanan, learned Special Government Pleader
appearing for the respondent 1 and 2 and Mr.R.G.Annamalai, learned

counsel appearing for the 3rd respondent and perused the materials available on record.

2.The petitioner has filed this writ petition challenging the order passed by the 1st respondent/Inspector General of Registration dated 27.08.2011. By the said order, the application filed by the 3rd respondent has been accepted and the Inspector General of Registration has permitted the registration of the 3rd respondent / Association treating it as a separate entity, not forming part of the writ petitioner's Association.

3.Admittedly, the 3rd respondent / Association has filed a suit on the strength of the registration obtained and has sought for a decree to direct the petitioner herein to pay 1/3rd share of the Common Reserve Fund which has been collected from the owners/tenants in Block No.168 and a decree has been sought for, seeking mandatory injunction to direct the petitioner herein to replace the stones demarcating the area of Block No.168 which was removed by one Rajendran, the Executive Secretary of the writ petitioner's Association and to pay the cost. Further, the relief of permanent injunction has also been sought for to restrain the petitioner/Association from accepting subscription or maintenance charges from the flat owners/tenants in Block No.168 in Jawahar Colony and for an injunction from encroaching or using the land in and around Block No.168.

4.In this writ petition, this Court is not concerned about the civil dispute pending between the parties and it is up to the petitioner and the 3rd respondent to agitate the same before the Civil Court. The short issue which falls for consideration in this writ petition is as to whether the 1st respondent has passed the impugned order contrary to the powers conferred u/s.36 of the Tamil Nadu Societies Registration Act. Admittedly, the residents who are said to be the members of the 3rd respondent/Association, were all the members of the petitioner/Association. It appears that the Association consists members who are residents of three blocks, viz., Block Nos.167, 168 and 169. Now, the 3rd respondent has formed a separate Association for themselves, viz., Block No.168. They appear to have filed an application before the District Registrar, Central Chennai, which was rejected by the order dated 02.08.2011. The copy of the said order has not been annexed in the typed set of papers. Be that as it may, aggrieved by such order, the 3rd respondent appeared to have filed an appeal before the 1st respondent. The appeal was presented on 10.08.2011. It is submitted by the learned counsel for the 3rd respondent that notice of hearing was issued in the said appeal on 11.08.2011. A copy of the said notice finds place in the typed set of papers filed by the 3rd respondent, from which it is seen that the notice was issued for enquiry to the 3rd respondent/Association alone and not to the petitioner/Association.

The 3rd respondent now seeks to form a separate Association for Block No.168. It is their case that it is not a bifurcation or division of the petitioner/Association ; but a new Association. Nevertheless, initially the members of the 3rd respondent/Association also were the members of the petitioner/Association and a suit is pending at the instance of the 3rd respondent on the file of the City Civil Court in OS.No.3269/2013.

5. Therefore, the 1st respondent before passing the impugned order, ought to have heard the writ petitioner. Learned counsel for the 3rd respondent asserts that the petitioner was issued a notice in the matter. However, on a reading of the impugned proceedings, it is seen that there is no discussion as to whether the petitioner/Association was heard. Therefore, when the 1st respondent seeks to pass an order based on the appeal filed by the 3rd respondent, the petitioner was entitled to be heard, more so, when the 2nd respondent has rejected the 3rd respondent's application. Hence, this Court is of the view that the matter requires to be reconsidered by the 1st respondent.

6. Learned counsel for the 3rd respondent would submit that if the Registration Certificate is cancelled at this juncture, it will have serious repercussions on the civil suit which is pending before the appropriate forum. That apart, the impugned proceedings has been passed in the year 2011 and it has been challenged in the year 2014 only.

7. It is seen that the order impugned in this writ petition was not communicated to the petitioner/Association; but appears to have been marked as a document before the City Civil Court from where a certified copy has been obtained by the petitioner and the petitioner has challenged the same. In such circumstances, this Court is of the view that it would be appropriate that the status quo prevailing as on date to be maintained, till the enquiry is conducted by the 1st respondent afresh.

8. Accordingly, without setting aside the impugned order passed by the 1st respondent dated 27.08.2011 while directing status quo to be maintained with regard to the registration granted to the 3rd respondent, the petitioner is directed to treat the impugned order as a show cause notice and submit their objection in writing to the 1st respondent within four weeks from the date of receipt of a copy of this order. On receipt of the objection from the petitioner, the 1st respondent is directed to issue notice to the petitioner as well as to the 3rd respondent, hear the parties and pass fresh and speaking orders on merits and in accordance with law. However, under the strength of the Registration Certificate obtained pursuant to the impugned proceedings, the 3rd respondent shall not initiate any fresh proceedings or precipitate the matter further and shall await the

decision of the 1st respondent. The above direction shall be complied with by the 1st respondent within a period of three months from the date of receipt of a copy of this order.

9.The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Inspector General of Registration
Chennai 600 028.

2.The District Registrar of Central Chennai
Chennai.

3.The Secretary
M/s.Block No.168 of Jawahar Colony Welfare
Association, Block No.168,
IV Avenue,
Anna Nagar, Chennai 600 040.

2 cc to Mr. R.G.Annamalai, Advocate, SR.No.8660/15

1 cc to Mr.C.Deivasigamani, Advocate, SR.No.8930/15

1 cc to Government Pleader, Sr.No8782/15

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