



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON:17.08.2015

ORDERS DELIVERED ON:28.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P. (MD) No.12299 of 2015

and

M.P. (MD) .Nos.1 and 2 of 2015

Madurai District

Badminton Association,
rep.by its President,
Siraj Kasim,
Madurai-625 002.

... Petitioner

Vs.

1.The District Registrar,
Madurai North, Madurai District.

2.P.A.N.Raajmohan

3.S.Ramakrishnan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent herein to take appropriate action on the basis of the representation of the petitioner's association dated 10.07.2015.

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel
for Mr.S.Karthikei Balan

For R.1 : Mr.M.Rajaraman
Government Advocate

For R.2&3 : Mr.G.R.Swaminathan for
Mr.F.Deepak

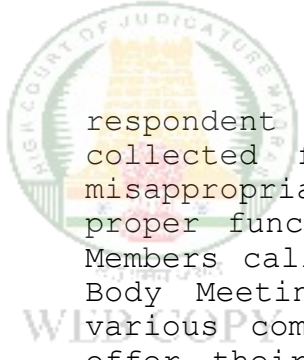
ORDER

This Writ Petition has been filed praying for a Writ of Mandamus to direct the first respondent herein to take appropriate action on the basis of the representation of the petitioner's association dated 10.07.2015. By the said representation, the petitioner has requested the first respondent to take action against the second and third respondents for their illegal activities, while they were in office as Secretary and Treasurer respectively.

2. The case of the petitioner is that the petitioner association is a registered association vide Reg.No.61 of 1997 under the Tamil Nadu Societies Registration Act, 1975 and the petitioner is the elected President of the Madurai District Badminton Association. (for short 'the Association'). The Association is affiliated to the Tamil Nadu Badminton Association and selection of players and allocation of funds are vested with the Tamil Nadu Badminton Association. The Association meeting is conducted every three months to discuss about the areas of concern in promoting Badminton and encouraging players through scholarship in this regard.

<https://hcservices.ecourts.gov.in/hcservices/>

2.1. While the situation stood thus, during the meeting, it was pointed out that there were several allegations against the second



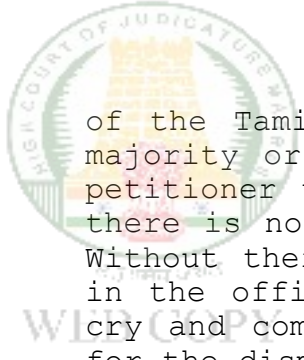
respondent and the third respondent herein. The said two members had collected funds from the member clubs of the association and had misappropriated the same and acted in dereliction of duty towards the proper functioning of the Association. Therefore, the Executive Council Members called for explanation from the above-said members and a General Body Meeting was convened in this behalf on 18.05.2015. Even after various communications were sent to them, the said members failed to offer their explanation and hence, they were removed by a Resolution dated 18.05.2015 and it was communicated to them and also to the Tamil Nadu Badminton Association on 01.06.2015. It is alleged that even after the removal from the membership, the second and the third respondent continued to stall the smooth functioning of the Association by not handing over the minutes book and started to mislead the General Public and other Member Clubs.

2.2. In the meanwhile, those two members started issuing a notice in the name of the Association by forging the letter heads of the Association as if the petitioner had called for an election of the Madurai District Badminton Association, on 21.07.2015. Therefore, the petitioner submitted an application on 10.07.2015 to the first respondent under Section 36 of the Tamil Nadu Societies Registration Act, 1975 to take action against the respondents 2 and 3 and to stay the operation of the meeting to be held on 21.07.2015 and also to refrain them from conducting any illegal meetings of election of the petitioner association. Since the said representation did not evoke any response, the petitioner is before this Court praying for the relief stated earlier.

3. A vacate stay application has been filed on behalf of the second and the third respondents in which it is stated that the question of invoking Section 36 will come into play only if there is majority or an application of not less than one third of the members of the registered Society invoke the said power. Such is not the case in the present Writ Petition. The petitioner is continuing in the office without any general election being conducted. In the case on hand, nobody has authorised to institute this writ proceedings. Therefore, the Writ Petition itself is not maintainable. Since there are lot of disputed questions of fact, the petitioner should have approached the civil court, instead, he filed the present Writ Petition and got injunction against the private respondents, which is unsustainable in the eye of law. Therefore, he prayed for the dismissal of this Writ Petition.

4. It is the submission of the learned Senior Counsel appearing for the petitioner that as per the Tamil Nadu Societies Registration Act 1975, the first respondent ought to have acted on the representation sent by the petitioner on 10.07.2015 to cull out the irregularities done by the private respondents herein. It is because of the attitude of the private respondents, the reputation of the petitioner association has been brought down to a great extent. Even after their removal, they continued to do misdeeds by forging the letter-heads of the association as if election is going to be conducted for the said association on 21.07.2015 by creating pandemonium in the association. Hence, he prayed this Court that an appropriate directions could be issued to the first respondent.

5. The private respondents submitted that at the instance of the petitioner, virtually, the petitioner wanted to throw away the private respondents from having membership in the Association. First of all, for taking action against the private respondents as per Section 36



of the Tamil Nadu Registration of Societies Act, there should be clear majority or atleast one third of the members should have authorised the petitioner to do an act on their behalf. However, in the case on hand, there is nothing on record to show that the said condition is fulfilled. Without there being an election, the petitioner wants to simply continue in the office. On being questioned, the petitioner has made a hue and cry and come before this Court with false averments. Hence, he prayed for the dismissal of this Writ Petition.

6. The first respondent was put on notice on the above-said submissions made by the petitioner as well as the private respondents.

7. Pending Writ Petition, this Court has granted an order of interim injunction on 16.07.2014.

I heard the submissions made by the parties concerned and perused the materials available on record.

8. Though very many contentions have been raised on either side, the petitioner in the penultimate paragraph of his representation requested the first respondent to stall the meeting conducted by the private respondents on 21.07.2015. On 16.07.2015, this Court granted an order of interim injunction against the private respondents from conducting the meeting on 21.07.2015. Thereafter, the private respondents have not conducted the Meeting as scheduled. Therefore, in a nutshell, this Writ Petition at the most can be treated as infructuous. Further, this Writ Petition is not maintainable since he was not authorised by the Members of the association to pass any resolution so as to enable the petitioner association to take action against the private respondents herein. In this regard, a useful reference could be made in an unreported decision of the Division Bench of this Court made in *W.A. (MD).No.709 of 2014 dated 17.06.2014*, wherein, in paragraph No.13, it has been held as follows:-

"13. We have to point out one more aspect. For filing a Writ Petition in the name of the Society, the Secretary requires an authorisation in terms of the bye-laws. Though the Society may sue or be sued in the name of the Secretary, he would require the authorisation of the Committee to file a Writ Petition on behalf of the Society. We do not see any averment in the affidavit filed by the Secretary to the effect. Therefore, the Writ Petition filed by the first respondent herein, especially, in the name of Society, for preventing an Extraordinary General Body Meeting, is wholly not maintainable'.

9. By way of reply, the learned counsel for the petitioner submitted that in case there was a bye-law of the Society, then an authorisation is required. In the case on hand, the bye-law does not speak of authorisation. In my considered opinion, whether the bye-law requires authorisation or not is totally immaterial. When the President/Secretary or any body files a Writ Petition in the representing capacity of the Association, the authorisation is mandatory, because, the result would be binding on the members of the Society concerned.

10. Apart from the above, it is apt to extract Section 36 of the Tamil Nadu Societies Registration Act, 1975, which is as follows:-

"36.1. The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society, or if so moved by the



District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an enquiry, into the constitution working and financial condition of that registered society."

10.1. From the reading of Section 36 of the Tamil Nadu Societies Registration Act, 1975, it could be seen that the Registrar can make an enquiry only if application is submitted to him by a majority of the members of the Committee of a registered society or on the application of not less than one third of the members of that registered society. Here, the representation was not given to the Registrar either by majority of the members or by its one third of the members of the Association. Hence, on that ground also, this Court cannot give a direction to consider the representation of the petitioner.

11. In view of the foregoing reasons set out as above, this Writ Petition has no merits and it is liable to be dismissed. Thus, it is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To
The District Registrar,
Madurai North, Madurai District.

+1cc to Mr.S.Karthikei Balan, Advocate in SR.No.49820
+1cc to Mr.F.Deepak, Advocate in SR.No.49847
+1CC to the Special Government Pleader, in SR.No.50039

W.P. (MD) No.12299 of 2015
28.08.2015

ssm
PBK/JGB-DP 02/09/2015 ::4P-5C::