

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No. 817 of 2016 and
CMP No.594 of 2016

S.Shanmugam .. Appellant

Vs.

1. The Registrar,
O/o The Registrar of Societies,
Central Chennai,
Royapettah,
Chennai-600 014.

2. M/s.The Suguna Vilasa Sabha (SVS),
rep. by its Secretary,
No.57, Anna Salai,
Chennai-600 002. ...Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 29.4.2016 passed in W.P.No.33516 of 2015 by the learned single Judge of this Court.

Writ petition has been filed under Article 226 of the constitution of India praying for the issuance of a writ of Declaration Declare 2nd respondent election dated 26.10.2014 as Ultra Virus Null and Void.

For Appellant : Mr. Haja Mohideen Gisthi

For Respondents : Mr.P.S.Sivashanmuga Sundaram,
Spl.G.P. for R1
Mr.L.N.Pragasam for
Mr.A.Thiagarajan for R2

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge passed in W.P.No.33516 of 2015 dated 29.04.2016 dismissing the writ petition filed by the appellant herein, seeking to declare 2nd respondent's election dated 26.10.2014 as ultra virus, null and void.

2. Being a member of M/s.The Suguna Vilasa Sabha (hereinafter referred to "the SVS")/2nd respondent, the appellant herein, had raised objections as regards the amended bye-laws of the SVS, in and by which, the strength of its governing body came to be reduced from 29 members to 20, by making the number of Vice Presidents as 2 from 5 and Executive Committee members as 5 from 12 and as such, based on the said by-laws, the SVS conducted the election on 26.10.2014. According to the appellant, even though the first respondent has not approved the amended by-laws, the SVS has proceeded to conduct the election on 26.10.2014 based on the amended by-laws, and therefore, the said election is per se illegal and liable to be declared as null and void.

3. It appears that in the extraordinary general body meeting held by the SVS on 24.08.2014 after issuing the notices to all the members including the appellant herein, who also attended the meeting, the so-called amended by-laws were unanimously approved by the members and it was decided to place the same before the Registrar of Societies for approval and consequently, the SVS also placed the amended by-laws before the first respondent/Registrar of Societies on 15.09.2014 for approval. It is to be noted that after placing the amended by-laws before the first respondent for approval on 15.09.2014, the SVS had conducted the elections as per the amended by-laws on 26.10.2014.

4. The learned Judge, having adverted to the rival contentions, by a detailed order, held that since the amended by-laws were approved by passing a resolution by the overwhelming majority, it is binding on all the members including the appellant herein, since he, being a member of the SVS. As regards the approval of the amended by-laws by the first respondent, the learned Judge has held that as per the provisions of the Tamil Nadu Co-operative Societies Act,

once the Registrar is satisfied that any amendment of memorandum or the by-laws is not contrary to the provisions of the Act or Rules, he can register the amendment and such registration shall take effect from the date of passing of the special resolution and therefore, there was no obligation on the SVS to proceed with in accordance with the amended by-laws only after their registration. Admittedly, on receipt of the so-called amended by-laws for registration, the Registrar of Societies/1st respondent had not raised any objection with regard to the proposed amended by-laws that the said by-laws are contrary to the provisions of the Act. In fact, the Societies Act did not prescribe any time limit for disposal of application for registration of a society or application for registration of amendment of bylaws of a society. In such, circumstances, we are of the view that the so-called amended by-laws are deemed to have been approved. Accordingly, the election so held on 26.10.2014 based on the amended by-laws, is also not illegal or arbitrary. It is to be noted that as on date, elected executive body is functioning and as per the amended by-laws, the period of elected body is only for two years, which might have come to an end. Therefore, at this stage, it would not be appropriate to probe the issue as regards the validity of election conducted by the SVS. However, it is to be noted that as on date, the first respondent/Registrar of Societies, has not taken any action in regard to the approval of the amended by-laws. Due to such inaction of the first respondent, we are constrained to take the view that the amended by-laws are deemed to have been approved, however, the appellant raised the question regarding non-approval of the amended by-laws by the first respondent. In this regard, it appears that the appellant made a representation to the first respondent on 24.10.2014, requesting to stop the illegal acts of the elections dated 26.10.2014. In the said circumstances, it is for the first respondent/Registrar of Societies to take necessary action in the matter pertaining to the approval of the amended by-laws in accordance with law, after affording an opportunity to the concerned parties and pass appropriate orders in accordance with law, within a period of two months from the date of receipt of a copy of this order.

With the above observation, the Writ Appeal is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Suk

To

The Registrar,
O/o The Registrar of Societies,
Central Chennai,
Royapettah,
Chennai-600 014.

1 cc to Mr. Haja mohideen gisthi, Advocate, Sr. 60689
2 ccs to MR.A.Thiagarajan, Advocate, Sr. 60867
1 cc to Government Pleader, Sr. 61001

W.A. No.817 of 2016

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