

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.40202 of 2016

Mr.S.N. & K.K.Industries,
Represented by its Proprietor,
Serma Pandian

.. Petitioner

Versus

1. District Registrar of Society, Chennai (South),
No.9, Jeenis Road, 2nd floor,
Saidapet, Chennai-15.

2. Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

3. Tamilnadu Small & Tiny Industries Association,
Post Box No.3166, No.10, G.S.T Road,
Guindy, Chennai-600 032.

Represented by its Office bearers

... Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus directing the 1st and 2nd Respondent to reject and/or not to give effect to the form VII filed by the Third Respondent herein and also forbearing the 1st and 2nd Respondent from accepting or taking on record the Form VII filed by the Third Respondent as the elections and appointments of the Office Bearers of the Third Respondent Association that have taken place on 30.09.2016 is in violation of the Interim Order dated 26.09.2016 passed by the Hon'ble VIII Assistant City Civil Court, Chennai in I.A.No.13103 of 2016 in O.S.No.4990 of 2016.

For Petitioner : Mr.B.Singaravelan
Senior Counsel
for Mr.M.Rajendran

For Respondents : Mr.A.Kumar (R1 and R2)
Special Government Pleader

ORDER

By consent, this Writ Petition is taken up and disposed of at the stage of admission itself.

2. This Writ Petition has been filed seeking for a direction to the 1st and 2nd Respondents to reject and/or not to give effect to the Form VII filed by the third respondent herein and also forbearing the 1st and 2nd respondent from accepting or taking on record the Form VII filed by the Third Respondent as the elections and appointments of the Office Bearers of the Third Respondent Association that have taken place on 30.09.2016 is in violation of the interim Order dated 26.09.2016 passed by the Hon'ble VIII Assistant City Civil Court, Chennai in I.A.No.13103 of 2016 in O.S.No.4990 of 2016.

3. The learned Senior counsel for the petitioner would submit that though the petitioner is an eligible member to contest the election for the membership of Executive Committee, as his nomination form was not accepted by the election officer, he has filed Civil suit in O.S No.4990 of 2016 seeking to declare that the final list of nomination of unit members for the post of Executive Committee Member for the third respondent association Election 2016-2018 dated 24.09.2016 is illegal and void and consequently granting a permanent injunction restraining the Chief Election Officer from conducting the office bearer election on 30.09.2016 or any other subsequent date pursuant to the Election Notification dated 01.09.2016 to the office bearers of Third Respondent Association notified under the Schedule process of nomination in the 50th AGM Agenda Notice, dated 31.08.2016. He has also filed I.A.No.13103 of 2016 for interim injunction and obtained interim order on 29.09.2016, inspite of the same, the election was conducted.

4. The learned Special Government Pleader would contend that in the decision of Full Bench of this Court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal through its Secretary vs. The District Registrar reported in 2005 (2) CTC 161, it was categorically stated that the registrar has no authority under Section 36 (9) of the Tamil Nadu Societies Registration Act to direct a registered society to hold a fresh election. In the subsequent Judgment of Division Bench of this Court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal Vs. District Registrar, Cheranmahadevi reported in 2008 4 LW 1080, following the Full Bench decision mentioned supra, it was observed as hereunder:

"5. After thus taking stock of the factual matrix, time is now ripe to analyze the much misunderstood decision

of the Full Bench, which was constituted to consider the correctness of the decision reported in 1994 WLR 779 (K.Arivananthapandian and another V.Nadar Mahajana Sangam and three others). In the above reported Division Bench decision it was inter alia observed that the Registrar alone can register a society and while considering Form No.VII containing the change in the membership or in the Committee, it is necessary for the Registrar to be sure of the persons to be elected for the Committee and wherever Form No.VII is filed and its correctness is challenged by one or other party, the Registrar can enquire and find out as to whether the persons are elected to the Committee and, if on such enquiry, the Registrar comes to the conclusion that Form No.VII filed is not correct and nobody has been elected, it will be open to him to give a direction to hold a fresh election as envisaged in Section 36(9) of the Tamil Nadu Societies Registration Act, 1975. The Division Bench had further observed that such direction would be subject to the right of the parties to have the matter adjudicated by Court. While doubting the correctness of the said reported decision, the subsequent Division Bench in its order dated 19.08.2002 observed that such decision needs reconsideration "for the reason that Section 36 of the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as "the Act" for short) does not envisage the appeal provision to meet the situation like this, where there is a dispute with regard to the election of the managing committee. We (sic-see?) some force in his contention as prima facie, we are unable to locate any power of adjudication to any dispute regarding validity of the election of the managing committee, and the appeal provision contained under Section 45 of the Act is attracted only where there is such power of enquiry under Section

36 of the Act. In view of this, we refer these matters to full bench for adjudication. Pending further orders, the order of the learned single judge, dated 3.7.2002 keeping the order of the District Registrar (Administration), Madurai, South, Madurai, dated 24.06.2002 in abeyance, is suspended."

5. The learned Special Government Pleader would therefore contend that if the relief sought for in this writ petition is granted, it would amount to issuing a direction to the Election Officer to conduct an election. Even otherwise, the interim order granted by the Civil Court was not served on the respondents before concluding the election on 30.09.2016 and therefore, the order passed by the Civil Court has not been violated by the respondents in any manner.

6. I heard both sides. It is seen from the records that challenging the rejection of his nomination form, the petitioner filed a suit in O.S. No. 4990 of 2006. Pending suit, he moved I.A. No. 13103 of 2016 in which an interim order was granted on 29.09.2016 i.e., one day before the date on which election was conducted. The copy of the order dated 29.09.2016 was admittedly not served on the respondents. The petitioner claims to have sent an e-mail on 29.09.2016 at about 7.00 p.m. enclosing the copy of the order passed by the Civil Court. Therefore, if at all the respondents have violated the order passed by the Civil Court, it is for the petitioner to work out his remedy in the suit. As rightly pointed out by the learned Special Government Pleader for the respondents, as per the decision rendered by the Full Bench as well as Division Bench of this Court mentioned above, the Registrar has no power to conduct a fresh election and the relief prayed for in this writ petition, if entertained, would render the election already conducted by the society invalid.

7. As regards the relief prayed for in this writ petition, admittedly, election was concluded and therefore, the writ petition under Article 226 of the Constitution of India is not maintainable in connection with an election dispute. Therefore also, the writ petition is not maintainable and the relief prayed for cannot be granted.

8. With the above observation, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

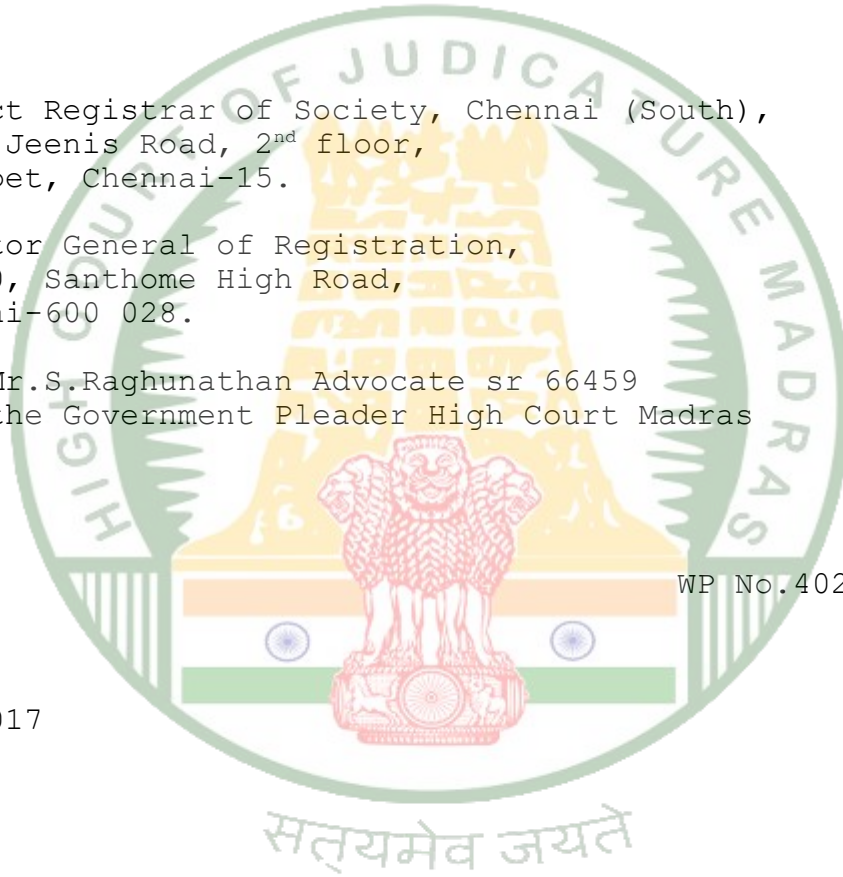
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To

1. District Registrar of Society, Chennai (South),
No.9, Jeenis Road, 2nd floor,
Saidapet, Chennai-15.
2. Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

+1 cc to Mr.S.Raghunathan Advocate sr 66459
+1 cc to the Government Pleader High Court Madras
sr 66677

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