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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.05.2016

Pronounced on : 03.06.2016

CORAM

The Hon'ble Mr. Justice M.V.MURALIDARAN

CRP(PD) (MD) No.1061 of 2016

and

CMP(MD) No.5336 of 2016

1.Rev. Rajagembeeram
2.REv. R.Vijayakumar
3.Rev. M.Wilson
4.Mr.V.A.Raj
5.Mr.J.Jeya Selvin

.. Petitioners/Respondents/
Respondents

Versus

Indian Evangelical Lutheran Church (IELC)
Rep. By its General Secretary K.Baul Sundar,
Son of Karuthudayan
Lutheran Mission Compound,
No.321, K.P.Road, Nagercoil,
Nagercoil Village, Agasteeswaram Taluk,
Kanyakumari District.

.. Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the order of Interim Injunction dated 29.04.2016 passed in I.A.No.260 of 2016 in O.S.No.153 of 2016, on the file of the Subordinate Judge, Nagercoil.

For Petitioners : Mr.VR.Shanmuganathan

For Respondent : Mr.T.R.Jeyapalan

O R D E R

Heard the submissions of Mr.VR.Shanmuganathan, learned counsel for the Revision Petitioners and Mr.T.R.Jeyapalan, learned counsel for the respondent.

<https://hcservices.courts.gov.in/hcservices/courts/2016> Instant revision petition has been filed aggrieved by the order passed by the learned Principal Subordinate Court,



Nagercoil in I.A.No.260 of 2016 in O.S.No.153 of 2016 wherein the Court has granted an Interim Injunction restraining the Revision Petitioners from interfering with the peaceful administration of the Indian Evangelical Lutheran Church (IELC), Nagercoil Synods and other Synods functioning under the IELC in any manner.

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3.The controversy in the present Revision Petition revolves around the Election to the Indian Evangelical Lutheran Church (IELC) which is a society registered under the Societies Registration Act, 1860 and the Revision Petitioners claim to be the elected office bearers pursuant to the Election that has been conducted on 27.05.2014. On the other hand, the respondent who claims to be the General Secretary has also stated that he has been elected as the Secretary in an election that has been separately held and accordingly, it is a battle between these two parties as to who would be the elected office bearers of the IELC, Nagercoil.

4.A preliminary objection was raised by the respondent with regard to the maintainability of the instant Revision Petition on the ground that against an order of Interim Injunction granted under Order 39 Rule 1, it is appropriate only to move the Appellate Court since Order 43 Rule 1 prescribes that an appeal shall lie from the orders passed under Order 39 Rule 1, 2, 2-A, 4 and 10. Since there is an alternate remedy available under Section 104 the CPC itself, it has been contended by the learned counsel for the respondent that the revision petition ought to be dismissed on this ground itself. To canvass their case, they have relied on two judgments of the Supreme Court reported in **(2000) 7 SCC 695** and **2015 (2) CTC 334**.

5.To counter the said submission, the learned counsel for the Revision Petitioner made submissions two fold. Firstly, it has been submitted that certain important facts have been suppressed by the respondents while obtaining the Injunction and the lower Court has failed to consider the same. Secondly, that merely because there is an alternate remedy available, the power of this Court under Article 227 of the Constitution of India read with Section 115 of the CPC could not be curtailed.

6.It has been brought to the notice of this Court by the Revision Petitioners that the present Suit that has been filed on the file of Principal Sub Court, Nagercoil is belated since it challenges the validity of an Election that has been conducted in May, 2014 and it has also been submitted that the office bearers have taken charge almost one and half years back and they have been functioning for quite some time and almost two years later, the respondent has filed the present Suit only with an intention to cause prejudice to the Revision Petitioners by concealing and suppressing various material facts.



7.It has also been brought to the notice of this Court that there are several litigations pending with regard to the disputed election process and several suits appear to have been filed in the Principal Bench of the Madras High Court, City Civil Court, Chennai and several orders have also been passed in these litigations and without considering the comprehensive factual background and pending litigations, the impugned order has been passed.

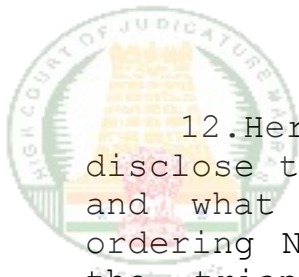
8.One another fact that has been highlighted by the Revision Petitioners is that the proposed amendments based on which the respondent claims to have been elected has also been injunctioned by the Principal Bench in the order passed in W.P.No.7004 of 2016 which is still pending before the Principal Bench.

9.The second limb of the petitioners' contention is that the impugned order of Injunction has been granted without affording notice to the Revision Petitioner in spite of there being a mandate under Order 39 Rule 3 that notice has to be given to the opposite party before granting an Injunction. Though Order 39 Rule 3 permits grant of Injunction without affording Notice to the opposite party, there is a strict condition imposed that the Court shall record the reasons for its opinion that the object of granting Injunction would be defeated by the delay.

10.In this context, it is relevant to consider the impugned order that has been passed by the Principal District Court, Nagercoil which is as follows:

"Heard perused this affidavit as well as documents filed along with the plaint. The Petitioner is the elected President as per the election certificate issued by the election officer. His election is duly intimated and recognised by the Registrar of Societies. The other documents also reveals that the petitioner is having a Prima Facie case, balance of convenience also in favour of the petitioner. Hence ad-interim injunction granted till 08.06.2016. Provisions of Or. 39 R 1 and 2 C.P.C to be complied proof by 2/5/16. Notice by 8/6/16."

11.As it has already been pointed out that ordering Notice to the Respondents under Order 39 Rule 3 of the CPC is a Rule rather than an exception. In fact, grant of Injunction without Notice is an exception and the same can be granted only in cases where there is an imminent urgency demonstrated by the Petitioner and that the service of notice would virtually defeat the object of granting the Injunction.

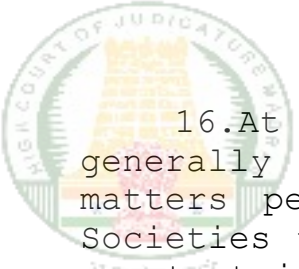


12. Here, the impugned order that has been passed does not disclose the reasons with regard to why notice need not be ordered and what is the urgency in granting the Injunction without ordering Notice. Though it is a settled proposition of law that the triangular requirement of prima facie case, balance of convenience and irreparable hardship has to be demonstrated before the Court by a person seeking Injunction, these reasons would be sufficient in cases where the other side is put on Notice. But once when the other side is not given notice, it is quite essential that the compelling emergency and the reasons why an order has to be granted has to be properly reflected in the order that is passed.

13. From a cursory perusal of the impugned order, it is seen that the mandate prescribed under Order 39 Rule 3 has not been complied with and the order of injunction without affording Notice to the opposite party is bereft of satisfactory reasons. On this ground alone, the impugned order will have no legs to stand upon and is liable to be interfered with.

14. Apart from this, on fair reading of the order in I.A.No.260 of 2016 in O.S.No.153 of 2016 dated 29.04.2016, it is made clear that there is no whisper about the documents perused by the learned Judge and the Injunction was granted. This Court time and again directed the Court belows that while passing the orders particularly, if the ex parte injunction is granted speaking orders should be passed by perusing each and every documents with the satisfactions of the learned Judge, but in the case in hand except the mentioning of the two documents, that also without mentioning the dates and particulars of the documents the injunction has been granted which is not valid in the eye of law and on this ground also it is liable to be interfered with.

15. Before deciding on the correctness of the Order, it is necessary to consider the objections raised by the respondents with regard to the maintainability of the instant Revision Petition. To canvass their case and to submit that the Revision Petition is maintainable, the petitioners would rely upon a long line of decisions reported in **AIR 1983 AP 443, (2012) 6 SCC 792, 2012 (1) CTC 659, 2010 (4) CTC 690, (2008) 17 SCC 734, 2014-2-LW-283, 2008 (1) CTC 230, 2013 (1) CTC 180, (2011) 8 SCC 249**. By relying on the above said judgments, it has been canvassed that when a proceeding is an abuse of process of Court and the Court below has exceeded its jurisdiction and violated the principles of natural justice in passing an order, it is only appropriate that under Article 227, the High Court exercising supervisory jurisdiction should interfere with such orders to ensure that injustice is not caused to the parties.



16. At this juncture it is appropriate to point out that generally the Courts are loath in granting interim orders in matters pertaining to election of office bearers in registered Societies unless or until a patent illegality is pointed out. If a patent illegality is pointed out prior to the commencement of an election process, the Court may interfere with the election process and ensure that the same is conducted strictly in accordance with law, but once when an election commenced and results are declared, until or unless some gross illegality is pointed out or some imminent urgency is revealed before the Court, the Courts generally are cautious in interfering while restraining the elected candidates from taking charge. But once when an elected candidate assumes office and has been functioning for quite some time, it would not be appropriate to restrain him from functioning without affording an opportunity. Such interference sometimes would virtually cause serious chaos and confusion in the administration and management of the society / body.

17. As it is settled in law that an availability of an alternative remedy would not debar the Court from exercising its revisional jurisdiction. Once when a decision of a Subordinate Court is found to be violating the principles of natural justice and the Court has exceeded its jurisdiction, the power of Revision could very well be exercised to ensure that no injustice is done to the aggrieved party. As already stated above, the impugned Order of Injunction that has been passed is not only bereft of reasons but also has been passed without properly considering the pendency of several litigations over the same subject matter and the implications and ramifications that could be caused by the grant of the injunction to the parties. For the said reasons, this Court is of the view that the impugned order is liable to be set aside and accordingly, the same is set aside. The Principal Sub Court, Nagercoil which is seized of the matter is directed to dispose of I.A.No.260 of 2016 in O.S.No.153 of 2016 after affording opportunity to all parties within 30 days from the date of receipt of this order.

18. Accordingly, the Civil Revision Petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To சென்னை

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The Principal Subordinate Judge, Nagercoil.

+1CC TO Mr.VR.Shanmuganathan, Advocate Sr.No.26791

+1CC to Mr.T.R.Jeyapalam, Advocate Sr.No.26675

GJM/SKS/RR/13.6.16-6P-4C

**PRE-DELIVERY ORDER MADE IN
CRP(PD) (MD) No.1061 of 2016
and
CMP(MD) No.5336 of 2016
03.06.2016**