



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2016

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. (MD) No.2280 of 2016

and

WMP (MD) No.2006 of 2016

Dinesh Kumar

.. Petitioner

vs.

The District Registrar (Societies),
Office of the District Registrar,
Virudhunagar Town & District.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in Na.Ka.No.2910/E1/2015, dated 18.12.2015, on the file of the Respondent, as illegal and arbitrary and quash the same and consequently direct the Respondent to accept form-7 submitted by the Petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai
for
Mr.M.Thirunavukkarasu

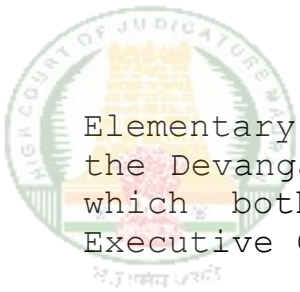
For Respondent : Mr.K.Maheshraja
Government Advocate

O R D E R

Heard the Learned counsel for the Petitioner and the Learned Government Advocate appearing for the Respondent.

2.By consent, the main writ petition itself is taken up for final disposal.

3.According to the Petitioner, Devangar Mahaajana Shabai was established in the year 1945 by Devangar Community people for the development, welfare and upliftment of Devangar Community and the same was registered with the Respondent/District Registrar (Societies) Office of the District Registrar, Virudhunagar Town and District, as per Registration No.S11/1945 on 07.12.1945. There are two Higher Secondary Schools, three Middle Schools and one



Elementary School functioning under the control and Management of the Devangar Mahaajana Shabai. Once in three years, an election in which both the office bearers i.e. President, Secretary and Executive Committee Members will be elected simultaneously.

4. The stand of the Petitioner is that in the election for the Devangar Mahaajana Shabai that took place on 27.07.2015 one S.Sivakumar, was elected as President. He was elected as Secretary of Devangar Mahaajana Shabai. As such, on 07.08.2015, the Petitioner submitted an application together with necessary fees under Form VII as per Tamil Nadu Societies Registration Act, 1975 before the Respondent for issuance of certified copy of the Form VII enabling the Society to submit the same before other authorities. As a matter of fact, the Respondent had also issued a receipt in Form VII application on 21.08.2015.

5. The version of the Petitioner is that it is the duty of the Respondent to take on file the Form VII and to issue certified copy of the same. However, the Respondent had failed to discharge his official duty for the reason best known to him. Till date, the Respondent has not issued Form VII to the Society and because of the same, the Society is not in a position to submit the certified copy of Form VII before the Educational Authorities for approving Secretaryship for their respective schools. In effect, the stand of the Petitioner is that the delay in issuing the certified copy of Form VII is causing much hardship and inconvenience to the Devangar Mahaajana Shabai as well as to the Societies Educational Institutions.

6. The Learned counsel for the Petitioner brings it to the notice of this Court that the Petitioner made an application before the Respondent office under Right To Information Act, to furnish copy of the application and he was furnished with the proceedings of the Public Information Officer of the office dated 20.10.2015 mentioning that Form VII application is pending before the Respondent. Immediately, on 20.10.2015 itself, the Petitioner projected a representation before the Respondent making a request to issue copy of Form VII. However, the said representation was submitted in person and since the Respondent had not accepted the Form VII of the Petitioner and all the more, when the matter is pending for a quite long time, the Petitioner was performed to file a writ petition in W.P.(MD)No.20101 of 2015 before this Court with a direction to consider the representation of the Petitioner, date 20.10.2015. The said writ petition was disposed of by this Court on 05.11.2015 with a direction to the Respondent to consider the Petitioner's representation within a period of four weeks from the date of receipt of copy of the order.

7. The Learned counsel for the Petitioner proceeds to state that the Respondent on 18.12.2015, passed the impugned order, whereby and where under, it was stated that since the suit in



O.S.No.191 of 2015 is pending on the file of the Learned District Munsiff, Aruppukottai and also Cont.P.(MD)No.1046 of 2015 filed by one Murugesan, is pending before this Court and as such, as per circular No.7/2007, issued by the Inspector General of Registration, certified copy of the Form VII would not be issued in view of the pendency of the aforesaid cases. Viewed in that perspective, the Respondent opined that certified copy of Form VII shall be issued to the Petitioner on the final outcome of the aforesaid cases.

8.The Learned counsel for the Petitioner urges before this Court that the Contempt Petition (MD)No.1046 of 2015 filed by one Murugesan before this Court and relied by the Respondent/District Registrar (Societies), Office of the District Registrar, Virudhunagar Town and District, was dismissed on 21.01.2016. Continuing further, it is represented on behalf of the Petitioner that the suit in O.S.No.191 of 2015 on the file of the trial Court is not related to the issuance of Form VII and therefore, the Respondent cannot refuse to issue certified copy of Form VII submitted by the Petitioner till the disposal of the aforesaid suit.

9.That apart, the Learned counsel for the Petitioner contends that in the suit in O.S.No.191 of 2015, filed by one S.Chandrasekaran and others on the file of the Learned District Munsiff, Aruppukkottai (filed against Aruppukottai Devangar Mahaajana Shabai and others), the relief sought for is only pertaining to the grant of permanent injunction restraining the defendants 2 and 3 from conducting election in respect of the first defendant/Society under the name and style of 'The Aruppukottai Devangar Mahaajana Shabai' having registration No.11/1945 for the period 2015-2018 violating Bye-Laws and for the order of mandatory injunction directing the defendants 2 and 3 to include the Devangar Chettiar Community people hailing from Aruppukottai Town, Puliampatti Region, Therku Theru, Aruppukottai who present application, as per the Bye-Laws as members of the first defendant etc., and in the said suit as on date, there is no interim order granted.

10.In this connection, the Learned counsel for the Petitioner takes a plea that already election to the First Respondent/Society took place on 27.07.2015 and all members were elected and till date, no legal proceedings were initiated by the authorities concerned, challenging the conduct of election etc. and therefore, there is no impediment in Law for the Respondent to take the Form VII on file and to issue the said Form VII certified copy to the Petitioner.

<https://hcservices.courts.govt.in/hcservices/> 11.The Learned counsel for the Petitioner places reliance on the Full Bench decision of this Court in C.M.S.EVANGELICAL SUVI DAVI MEMORIAL HIGHER SECONDARY SCHOOL COMMITTEE KARISAL v. THE



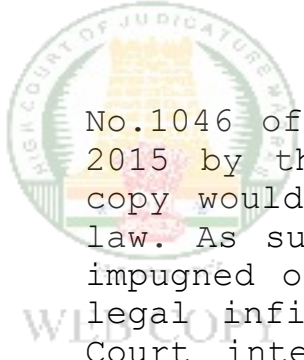
DISTRICT REGISTRAR, CHERANMAHADEVI reported in (2005) 2 M.L.J. 335, wherein at special 341, in paragraph No.18, it is observed as follows:-

"The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Sec.36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Sec.36 shows that the Registrar could look into only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Sec.34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the writ jurisdiction."

12.In substance, the legal plea taken on behalf of the Petitioner is that the Respondent/Registrar is only to find out whether the contents of Form VII submitted by the Petitioner is true or otherwise. Further more, in the impugned order, dated 18.12.2015, passed by the Respondent, the Respondent himself had accepted that the election was conducted after issuing notice and the Form VII of one Muthusangu, which was already rejected and as such, there is no rival claim in this regard.

13.In reality, the reasons assigned by the Respondent in the impugned order are that the Contempt Petition(MD)No.1046 of 2015 is pending and till the disposal of suit in O.S.No.191 of 2015, Form VII is not to be issued, because of the objection raised by the said Muthusangu. Subsequently, the Contempt Petition (MD) No.1046 of 2015 in W.P.(MD)N.10974 of 2015 was disposed of by this Court. Moreover, in O.S.No.191 of 2015, they have not challenged the election of the Petitioner and since there is no interim order in the said suit, the pendency of the said suit would have no bearing in the subject matter in issue, in the considered opinion of this Court.

<https://hcservices.ecourts.gov.in/hcservices/> of the foregoings, the consequent conclusions arrived at by the Respondent in the impugned order, stating that only after passing of the final orders in Contempt Petition (MD)



No.1046 of 2015 and the passing of the Judgment in O.S.No.191 of 2015 by the trial Court, the proceedings would be taken up and copy would be issued etc., are per se not correct in the eye of law. As such, this Court is of the considered view that the said impugned order, dated 18.12.2015, of the Respondent bristles with legal infirmities and to prevent an aberration of justice, this Court interferes with the said order and sets aside the same. Resultantly, the writ petition succeeds.

15. In the result, the writ petition is allowed, leaving the parties to bear their own costs. The impugned order, dated 18.12.2015, passed by the Respondent is hereby set aside, by this Court, for the reasons assigned in this writ petition. As a logical corollary, the Respondent is directed to accept the Form VII submitted by the Petitioner in the manner known to law and in accordance with law and to issue a certified copy on payment of necessary charges, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

The District Registrar (Societies),
Office of the District Registrar,
Virudhunagar Town & District.

+1cc to Mr.M.Thirunavukkarasu, Advocate, Sr.No.28976

rj2

JM/GSV-PM/SAR-III/14.06.2016/5P-3C

W.P. (MD) No.2280 of 2016
08.06.2016