

RESERVED ON : 05.06.2017

DELIVERED ON : 09 .06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09 .06.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.6197 of 2017

L.Chenkuttuvan ... Petitioner

v.

1 The District Registrar of Societies
Chennai North
Chennai - 600 001

2 M.Vijay Anand Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus, directing the 1st respondent to consider the petitioner representation dated 21.11.2016 and enquire in to the same and consequently direct the 1st respondent to pass suitable orders within time frame as fixed by this Court.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.S.V.Doraisolaimalai
Addl. Govt. Pleader -for R1
Mr.S.Sathiaseelan - for R2

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus, directing the 1st respondent to consider his representation dated 21.11.2016, enquire in to the same and consequently direct the 1st respondent to pass suitable orders, within a time frame.

2.1 According to the petitioner, he was authorised to represent on behalf of Brindavan Apartment Owners Association by a Resolution dated 22.12.2016. According to the petitioner, even before the election process was initiated, the 2nd respondent, along with six other owners, had clandestinely formed an association illegally, without any notice to the flat owners and the promoter under the name and style of New Washermenpet Brindavan Apartments Owners Association and had registered the Association. When the flat owners came to know about the formation of such Association illegally, the flat owners demanded cancellation of registration of the Association and also sought for registration of the self styled office bearers of the said Association. Subsequently, the office bearers of the Association, excluding the 2nd respondent, had resigned from the respective posts and had issued a letter dated 18.03.2016 itself to the 2nd respondent informing that all the office bearers of the Association, except the 2nd respondent, had resigned with immediate effect and further requested to delete their names from the register. Meanwhile, the promoters withdrew from maintaining their premises in the month of January 2016 and the owner members formed a committee and were maintaining the premises from the month of February 2016. The newly formed democratically elected Association took over the maintenance of the common amenities of Apartment Complex from May 2016.

2.2 According to the petitioner, subsequently, having taken charge of the maintenance of the common areas in the said Apartment Complex, the 1st respondent issued a show cause notice to the 2nd respondent dated 10.08.2016 requiring the 2nd respondent to explain the allegations against the 2nd respondent and also cautioned that they shall initiate action, based on the complaint received against the 2nd respondent. Subsequently, by letter dated 21.10.2016, the 1st respondent forwarded a copy of the explanation given by the 2nd respondent to the petitioner. Since the members of the 2nd respondent's Association have resigned and the same was also intimated to the 1st respondent, the petitioner, along with the office bearers of the Association, gave a representation dated 21.11.2016 requesting the 1st respondent to register the Brindavan Apartment Owners Association immediately after duly cancelling the registration of the 2nd respondent's Association. Since the 1st respondent has not considered the petitioner's representation and passed orders, the petitioner has filed the above writ petition.

3. Mr.S.V.Doraisolaimalai, learned Additional Government Pleader, appearing for the 1st respondent submitted that the 1st respondent, by order dated 06.07.2016, had already

considered the representations of the petitioner's dated 26.05.2016 and 16.06.2016 for registration of the Brindavan Apartment Owners Association and rejected the request for the reason that the name of the petitioner's Association resembles with the name of the 2nd respondent's Association. Subsequently, the petitioner has given a representation dated 21.11.2016 to consider his request for registration and for cancellation of the registration of the 2nd respondent's Association. The learned Additional Government Pleader further submitted that by letter dated 27.02.2017, 1st respondent intimated the rejection of the representations of the petitioner's dated 26.05.2016 and 16.06.2016 to the petitioner. The Additional Government Pleader, also submitted that since the 1st respondent had already considered the the petitioner's representations, the relief sought for in the present writ petition has become infructuous.

4. However, Mr.S.Sathiaselvan, learned counsel appearing for the 2nd respondent submitted that since the petitioner's Association is an unregistered Association, the writ petition filed by him is not maintainable, in view of the judgment of the Full Bench of this court reported in 1989(1) LW 239 [Tamil Nadu Panchayat Development Officers Association v. The Secretary to Government of Tamil Nadu] wherein, the Full Bench of this court held that a writ petition filed by an unregistered Association is not maintainable.

5. On a perusal of the cause title, it could be seen that the writ petition has been filed by one L.Chenkuttuvan, the President of the Brindavan Apartment Owners Association. It is pertinent to note that the Association has not filed the writ petition. The writ petition has been filed by an individual in his individual capacity. If the writ petition has been filed by the Association, then, the question of maintainability of the writ petition will arise and the ratio laid down by the Full Bench of this court reported in 1989(1) LW 239 (cited supra) is applicable. Since the present writ petition has been filed by an individual and not by the Association, the writ petition is maintainable.

6. Mr.R.Abdul Mubeen, learned counsel appearing for the petitioner submitted that liberty may be given to the petitioner to challenge the orders dated 06.07.2016 and 27.02.2017, passed by the 1st respondent, before the Inspector General of Registration, Chennai, under the Tamil Nadu Registration Act, 1975.

7. For the reasons stated above, I am of the view that the writ petition has to be dismissed as infructuous. Accordingly, the writ petition is dismissed as infructuous. It is open to

the petitioner to challenge the orders dated 06.07.2016 and 27.02.2016, in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

The District Registrar of Societies
Chennai North
Chennai - 600 001

+1cc to Mr.S.Sathiaseelan, Advocate Sr. 41372

+1cc to the Government Pleader, High Court Madras, Sr. 41289

+1cc to Mr.R.Abdul Mubeen, Advocate Sr. 40904

Pre-delivery order in
W.P.No.6197 of 2017

SJ(CO)
VR(20/06/2017)



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