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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

Coram:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) Nos.12850 and 15065 of 2013 and

M.P. (MD) Nos.2 and 1 of 2013 and

W.P. (MD) No.9602 of 2014 and

M.P. (MD) Nos.1 and 2 of 2014

W.P. (MD) No.12850 of 2013

1.A.Earnest Balasingh

2.C.Julian Sam Nayagam

3.TDTA Employees Welfare Association,
represented by its Secretary,
A.Earnest Balasingh

.. Petitioners

-Vs-

1.The Registrar of Companies,
No.26, Haddows Road,
2nd Floor, Chennai-600 006.

2.The Tirunelveli Diocesan Trust Association,
Rep. by its Secretary,
No.5, Punithavathiyar Street,
Palayamkottai-627 002,
Tirunelveli District.

3.The Bishop,
Tirunelveli CSI Diocese,
Bishop's Stowe,
North High Ground Road,
Palayamkottai-627 002, Tirunelveli District.

4.Moderator's Commissary,
Thoothukudi CSI Diocesan Office,
Coldwell Higher Secondary School Campus,
Beach Road,
Thoothukudi.

5.The Treasurer,
Tirunelveli CSI Diocese,
5, Punithavathiyar Street,
Palayamkottai-627 002,
Tirunelveli District.

6.The Treasurer,
Thoothukudi Nazareth CSI Diocese,
Coldwell Higher Secondary School Campus,
Beach Road, Thoothukudi.

.. Respondents

forbearance
the business

Mr.G.Prabhu Rajadurai (for R3 and R5)

A.Earnest Balasingh
Secretary,
TDTA Employees Welfare Association,
Ex-Principal,
Bishop Sargent Teachers Training Institute .. Petitioner

-VS-

- 1.The Registrar of Companies,
Shastri Bhavan,
No.26, Haddows Road,
2nd Floor, Chennai-600 006.
- 2.The Tirunelveli Diocesan Trust Association,
Rep. by its Secretary,
No.5, Punithavathiyar Street,
Palayamkottai-627 002,
Tirunelveli District.
- 3.Church of South India Trust Association,
through its Secretary,
No.5, Whites Road, Royapettah,
Chennai-14.
- 4.The Moderator,
CSI Synod,
No.5, Whites Road, Royapettah,
Chennai-14.
- 5.The Bishop,
Tirunelveli CSI Diocese,
Bishop's Stowe,
North High Ground Road,
Palayamkottai-627 002,
Tirunelveli District.



6.The Treasurer,
Tirunelveli CSI Diocese,
5, Punithavathiyar Street,
Palayamkottai-627 002,
Tirunelveli District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the 1st Respondent to take action against the Respondents 2, 3, 4, 5 and 6 for the illegal sale/transaction of TDTA Land and Building in contravention to the TDTA Company Rules and Regulations.

For Petitioner : Mr.S.R.Anbarasu
For Respondents : Mr.S.Chellapandian (for R2 and R6)
Mr.S.Jeyasingh (for R1)
CGSC

WP(MD)No.9602 of 2014

A.Earnest Balasingh
The Secretary,
T.D.T.A. Employees Welfare Association,
Regn. No.28/2008

.. Petitioner

-Vs-

- 1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Company Affairs,
Government of India,
New Delhi.
- 2.The Registrar of Companies,
Shastri Bhavan,
Haddows Road, Chennai-600 006.
- 3.The Deputy Registrar of Companies,
IInd floor Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.
- 4.Tinnevelly Diocesan Trust Association,
A Company under the Companies Act,
No.116, No.5, Punithavathiar Street,
Palayamkottai,
Tirunelveli-2, Rep. by its Secretary.
- 5.Jesubatham Paranjothi Vasanthakumar,
Director of Tinnevelly Diocesan Trust Association,
New No.29-A Maharaja Nagar,
12th Cross Street, Palayamkottai,
Palayamkottai (T), Tirunelveli
Tamil Nadu 627 011, India.



6. Israel Devadoss Sundarapandian
Director of Tinnevelly Diocesan Trust Association,
63, Old No.25-A, Salai Street,
Vannarpettai, Palayamkottai,
Tirunelveli, Tamilnadu 627 003, India.

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7. Gnanamuthu Manickam
Director of Tinnevelly Diocesan Trust Association,
Gurumanai Illam, Keelatheru,
Idayankudi Radhapuram Taluk,
Idayankudi, Tamil Nadu 627 651.

8. Jebarajan Gabriel,
Director of Tinnevelly Diocesan Trust Association,
5-41, Sivan Koil West Car Street,
Palayamcottai, Tirunelveli,
Tamil Nadu 627 002.

9. Selwyn Jayaraj Jacob
Director of Tinnevelly Diocesan Trust Association,
34, State Bank Colony,
Jawahar Nagar, Tirunelveli,
Tamil Nadu 627 007.

10. Jeyaraj Jeyakumar Christdoss
Managing Director of Tinnevelly Diocesan
Trust Association,
41-A, 1-111 Vasanthapuram,
South Jebanagar, Tirunelveli District,
Tamil Nadu 627 005.

11. Henry Lawrance Billy Amoss,
Director of Tinnevelly Diocesan Trust Association,
6/65, South Street, North Vagaikulam,
Tirunelveli, Tamil Nadu 627 001.

12. Devadoss Arputham,
Director of Tinnevelly Diocesan Trust Association,
C9, Jawahar Nagar, NGO B Colony,
Tirunelveli, Tamil Nadu 627 007.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents 1 to 3 herein to take action against the 4th respondent under the Companies Act 1956 to prevent misappropriation, mismanagement and oppression of the 4th respondent company under the Companies Act by the respondents 5 to 12 and also not to permit the respondents 5 to 12 to continue as Director of the 4th respondent under Sec.209-A (9) of the Companies Act 1956.

<https://hcservices.ecourts.gov.in/hcservices/>

For Petitioner : No Appearance



For Respondents : Mr.S.Chellapandian(for R4 to R6,R9 to R12)
Mr.S.Arunkumar (for R1 to R3)
Mr.M.Vedasingh (for R8)

COMMON ORDER

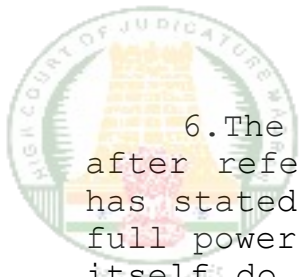
W.P.No.15065 of 2013: The petitioner has filed this writ petition for the issuance of Writ of Mandamus by directing the 1st respondent to take action against the respondents 2, 3, 4, 5 and 6 for the illegal sale/ transaction of TDTA Land and Building in contravention to the TDTA Company Rules and Regulations.

2.W.P.No.9602 of 2014 The petitioner has filed this writ petition for the issuance of Writ of Mandamus by directing the respondents 1 to 3 herein to take action against the 4th respondent under the Companies Act 1956 to prevent misappropriation, mismanagement and oppression of the 4th respondent company under the Companies Act by the respondents 5 to 12 and also not to permit the respondents 5 to 12 to continue as Director of the 4th respondent under Sec.209-A (9) of the Companies Act 1956.

3.W.P.No.12850 of 2013 The petitioner has filed this writ petition for the issuance of Writ of Mandamus by directing the 1st respondent to appoint Special Officer/ Officers with necessary Advisory Board for the effective administration of the TDTA Company by invoking Section 397 and 398 of Companies Act and consequentially forbearing the Respondents 3 to 6 from involving in any manner with the business, affairs and administration of TDTA Companies.

4.In all these three writ petitions, the petitioner is one and the same and the issues involved in those writ petitions are same. Therefore all the three writ petitions are heard together and common order is passed.

5.The petitioner one Mr.A.Earnest Balasingh claims to be the Secretary of T.D.T.A. Employees Welfare Association which was a registered one bearing Registration No.23 of 2008. In this entire writ petitions, the main allegation of the petitioner is that the Tinnevely CSI Diocese is a Religious unregistered institution and it has its own unregistered constitution. The TDTA is a company registered under the Indian Companies Act, 1913 way back to 08.12.1919 itself. The Tinnevely Diocesan Trust Association (TDTA) manages and Administers, TDTA Company. Its previous Registration number was 2 of 1919 and its present number is No.3009 of 1956. The TDTA Company has its own Memorandum and Articles of Association and it is a separate and independent company. The Tinnevely CSI Diocese can't on any account interfere or control over the Administration of



6.The further case of the petitioner is that the petitioner after referring to various Regulations and Articles of Association has stated that the committee of management is vested with all and full power to do all such acts and things as the Association could itself do. The petitioner further stated that as per Regulation 18 (a), the committee of management alone is having the rights to Sell, Exchange, Partition, Lease, invest or otherwise dispose of the property of Association or any part thereof, any interest therein, for money or other valuable consideration, as they are absolute owners.

7.The further attack of the petitioner on the committee of management of TDTA is that the petitioner has brought to the notice of mis-management, misdeeds and incompetency of the TDTA management to the 1st respondent frequently. Since there was no action from the 1st respondent, the petitioner filed W.P.No.1185 of 2010 before this court to take action against the TDTA Company. Thereafter only, the affair of the TDTA Company was inspected by the Deputy Registrar of companies and it was found that there are thirty two violations in the functioning of the TDTA Company. Subsequently after issuing show cause notices, criminal case for Economic offences in E.O.No.11 to 14 of 2013 was filed by the 1st respondent against the 5th respondent and others before the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai and the same is pending as on today.

8.The further case of the petitioner is that the TDTA Company is meant for the entire Tirunelveli District which includes the present Tuticorin District, since TDTA Company was registered much before the bifurcation of Tuticorin District. The Tirunelveli District was bifurcated with effect from 20.10.1986. In fact, the resolution to bifurcate should be made subject to the obtaining orders of the Company Court under Sections 391 to 394 of the Companies Act. Sections 391 to 394 of the Companies Act is as follows:

"Application of sections 34 to 36 and Chapter XX.

391.(1) The provisions of sections 34 to 36 (both inclusive) shall apply to-

(i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(ii) the issue of Indian Depository Receipts by a foreign company.

(2) The provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

Punishment for contravention.

392. Without prejudice to the provisions of section 391, if a foreign company punishable with fine which shall not be less than one lakh rupees but which may extend to



three lakh rupees and in the case of a continuing office, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

393. Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Annual reports on Government companies.

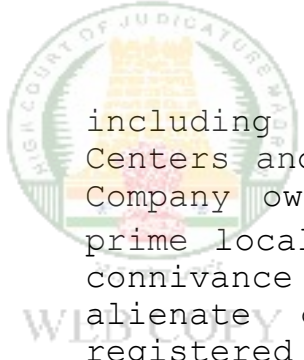
394. (1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be-

(a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and

(b) as soon as may be after such preparation, laid before both House of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1)."

As on today the 2nd respondent TDTA Company was not bifurcated. But in violation of Articles of Associations of the 2nd respondent TDTA Company, They are conducting two separate elections, first for Tinnevely Diocesan and another for Tuticorin Nazareth Diocesan.



including Hospitals, School Buildings, Special Homes, Eye Care Centers and Home for the Children for Boys and Girls etc. The TDTA Company owns more than 2,000 acres of land which are located in prime localities. The 2nd respondent through its Secretary with the connivance of the respondents 4 and 5 is taking effective steps to alienate other immovable properties, apart from executing a registered Settlement Deed dated 28.11.2011, by way of executing Settlement Deeds and Sale Deeds in flagrant violation of the Memorandum and Articles of Associations of 2nd respondent TDTA Company. It is a criminal offence which attracts criminal prosecution also. Despite of many complaints given to the 1st respondent, the 1st respondent is not taking action to stop the illegal act of the 2nd respondent. Because of the illegal act of the 2nd respondent, the petitioner in W.P.No.12850 of 2013 has sought for appointment of Special Officer for the effective administration of the TDTA Company as per sections 397 and 398 of the Companies Act.

Sections 397 and 398 of the Companies Act is as follows:

"Admissibility of certain documents as evidence.

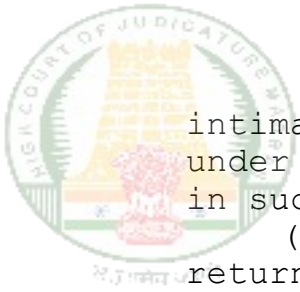
397. Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

Provisions relating to filing of applications, documents, inspection, etc., in electronic form.

398. (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000 (21 of 2000), the Central Government may make rules so as to require from such date as may be prescribed in the rules that-

(a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(b) such document, notice, any communication or



intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

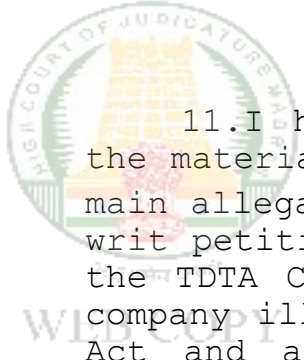
(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.- For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

(2) The Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (1) through the electronic form."

Hence, the petitioner has approached this Court by filing the above writ petitions for taking necessary actions.

10. The 12th respondent in W.P.No.9602 of 2014 have filed counter affidavit and contended that the petitioner has not approached this Hon'ble Court with clean hands. The petitioner has also suppressed so many facts and these writ petitions are filed at the instigation of those who have failed to get elected themselves even as members of the company.



11. I have heard the arguments on the either side and perused the materials available on record. In all these writ petitions, the main allegations of the petitioner is that the 2nd respondent in two writ petitions i.e., W.P.No.15065 of 2013 and W.P.No.12850 of 2013, the TDTA Company is attempting to alienate the properties of TDTA company illegally without adhering to the provision of the Company Act and also without following the procedure laid down in the Memorandum and Articles of Associations of TDTA company and thereby they have committed financial mismanagement. Therefore, in order to safe guard the properties of the TDTA Company, the petitioner has sought for action against the Secretary of TDTA Company and others by the 1st respondent namely the Registrar of the Companies.

12. A perusal of records shows that already the Deputy Registrar of Companies has initiated action against the TDTA and its Directors by filing cases in E.O.C.C.No.157 to 179 of 2013 before the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The grievance of the petitioner has already been looked into and the authorities have initiated proceedings against the TDTA company and others.

13. Apart from that this is not the forum to the petitioner for getting the relief sought for in these writ petitions. It is for the authorities to look into the complaint and to decide the matter in a manner known to law. As far as the appointment of Special Officer is concerned also the power is vested with the 1st respondent namely Registrar of Companies. The Writ Court is not the proper forum to agitate the issues involved in these writ petitions. The petitioner can work out his remedy before the competent court in a manner known to law.

14. In view of the forgoing reasons, I do not find any merits in these writ petitions and the same are liable to be dismissed.

15. Accordingly, all these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar



To

1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Company Affairs,
Government of India,
New Delhi.

2.The Registrar of Companies,
Shastri Bhavan,
Haddows Road, Chennai-600 006.

3.The Deputy Registrar of Companies,
IInd floor Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

+1cc to VEERA ASSOCIATES in SR. No.12799

+1cc to Mr.S.CHELLAPANDIAN Advocate in SR. No.13099

VSA/SKN

JS/JC/SAR.1/21.08.2017/11P-6C

Pre-Delivery order made in
W.P. (MD) Nos.12850 and 15065 of 2013 and
M.P. (MD) Nos.2 and 1 of 2013 and
W.P. (MD) No.9602 of 2014 and
M.P. (MD) Nos.1 and 2 of 2014
06.03.2017