

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Twenty Third day of April Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE SATRUGHANA PUJAHARI

WMP NO.5399 OF 2018

IN WP.33170/2017

VIJAYASANTHI LOTUS POND FLAT [PETITIONER]
OWNERS ASSOCIATION, TOWER NO.9, F.NO.5D,
NO.46-A, IT HIGHWAY (OMR),
THAIYUR B VILLAGE, KELAMBAKKAM-603 103.

Vs

1 LOTUS POND RESIDENTS WELFARE [RESPONDENTS]
ASSOCIATION (LPRWA), REP. BY ITS SECRETARY
MR.S.GANESA MOORTHY, NO.46, I.T. HIGHWAY,
THAIYUR B VILLAGE, KELEMBAKKAM, KANCHEEPURAM
DISTRICT-603 103

2 THE DISTRICT REGISTRAR,
REGISTRAR OF SOCIETIES, RAJAJI ST, J.C K
NAGAR, HANUMANTHAI, TAMIL NADU,
CHENGALPET-603 001.

3 MR.R.ANAND KUMAR,
NO.4E, TOWER 7, VIJAYSHANTI LOTUS POND,
THAIYUR VILLAGE, KELEMBAKKAM-603 103.

4 MRS.V.G.MEENAKSHI,
NO.7G, TOWER 8, VIJAYSHANTI LOTUS POND,
THAIYUR VILLAGE, KELEMBAKKAM-603 103.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Vacate the Stay Order granted on 05.01.2018 in WMP No.36577 / 2017 in WP No.33170/2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.MANO HAR, Advocate for the petitioner and of MR.SIVANANDHARAJ, FOR M/S.ROHINI RAVIKUMAR, for the 1st Respondent the court made the following order:-

This Miscellaneous Petition has been filed by the petitioner who is the second respondent in the writ petition, to vacate the order of stay passed by this Court on 05.01.2018.

2. It appears that the Writ Petitioner Association was formed by residents/owners of Apartment viz., Lotus Pond Residential Complex, for the welfare of the residents therein. In that capacity they were collecting the subscriptions for maintenance of the flats as well as for doing various welfare activities. The said Association was registered under the Tamil Nadu Societies Registration Act, 1975. However, since the term of the office bearers were expired, elections were also conducted to elect the new office bearers during March 2017. The term of such bearers is two years, according to bye-laws. After such elections, new office bearers have taken over the power. Thereafter, certain allegations were made by some members, against the writ petitioner Association, indicating that some members have been admitted illegally and they have been allowed to contest and become officer bearers and the elections were not conducted in a proper manner. Considering the same, the The second Respondent/The District Registrar of Cooperative Societies sought for some clarification from the writ petitioner Association with regard to the election. After receipt of such explanation, the District Registrar/the second respondent herein came to pass the impugned order appointing the Ad-hoc committee to take over the affairs of the Association till fresh elections of the officer bearers and refused the Form VII submitted by the Writ Petitioner Association indicating that the members elected were new members and having a right to participate in the election. The said order is under challenge in the above Writ Petition.

3. According to the Writ Petitioner Association, pursuant to the aforesaid order of District Registrar, interference was made by the police authorities directing the office bearers of the Writ petitioner Association to hand over the charge and also not to collect the subscription. Hence, the writ Petitioner has prayed for interim stay of the order of the District Registrar dated 01.12.2017 and this Court on 05.01.2018, after hearing the parties, has granted an order of interim stay till 16.03.2018 and made it clear that no precipitative action shall be taken against the newly elected members of the Writ Petitioner Association by any authority concerned, till the matter is heard after notice to the parties .

4. The learned counsel for the second respondent in the Writ Petition submits that because of such interim order, residents of the aforesaid Apartment are suffering. The members who have no legal right to be elected and are not the original members of the association have no right to continue as members of the Writ Petitioner Association and even many of the members of the association who are morethan 1000 were not participated in the elections. It is further contended that newly elected members are compelling the other members illegally to give subscriptions which is contrary to the order passed by the District Registrar,

appointing the Ad-hoc committee to administer the affairs of petitioner association and therefore prays this Court to vacate the interim order otherwise the same would cause much prejudice to residents of the Association.

5. The said contention is vehemently objected to by the learned counsel for the first respondent/writ petitioner stating that the jurisdiction exercised by the Registrar was not vested on him. This Court having prima facie satisfied with the contentions of the writ petitioner has passed an order of stay. The said order should not be vacated pending disposal of the Writ Petition. But, be made absolute.

6. Heard the submissions made by the learned counsel appearing on either side and perused the materials on record.

7. As it appears the members of the writ petitioner association have been duly elected in an election, which has been disputed by some other owners/residents of the owners association. Considering the same, the District Registrar came to pass the Impugned Order. But, such order of the Registrar has been stayed by this Court vide interim order dated 05.01.2018. The counsel appearing for the petitioner/second respondent submitted that the aforesaid interim order of this Court is prejudicial to the majority of the members inasmuch as they have no sanction or approval of continuance of the Writ petitioner's association to collect the subscription of maintenance and to maintain the apartment, as some ineligible persons have been elected manipulating the procedure of election and taken out the affairs of the Association. Considering the same, when the District Registrar, who has a supervisory jurisdiction of the affairs of the Association have passed an order appointing Ad-hoc committee to look after the affairs of the Writ Petition, this Court should vacate the interim order inasmuch as the paramount consideration in this regard should be the welfare of the residents and the majority of the residents are not satisfied with the continuance of the maintenance and Management of the Apartment by the Writ petitioner Association.

8. The learned counsel appearing for the writ petitioner, however submits that the same is without any substance inasmuch as the jurisdiction exercised by the Registrar in scrutinizing the election is illegal and arbitrary and he is not empowered to do so. Considering the same, this Court passed an interim order and the same should not be interfered with, more particularly, when the Association is a registered one and prima facie it cannot be stated that officer bearers are ineligible and was elected manipulating the Procedure of election. Hence, the prayer for vacating the stay is liable to be rejected.

9. After considering such submission, as it appears that this Court looking into materials on record and especially the fact that the Writ petitioner Association was a registered one and Managing the welfare of the Association including the maintenance and had also got litigations with the builder in the interest of the

residents of the Association as well as the fact that prima facie, the Registrar has no jurisdiction to question such election has granted interim order of stay, but simultaneously looking into the number of the members participated in the election and the majority of members according to the petitioner/ second respondent have come out with a case that by manipulating of the process of the elections, some persons have occupied the office and they are not happy with the Managing and looking after the affairs of the Apartment and as such the Association was also formed contrary to the law, this Court is of the view that if the officer bearers of the Writ Petitioner Association are allowed to manage the affairs of the Association as they are doing till date, modifying the interim order, shall serve the interest of justice.

10. Accordingly, a suggestion was given to parties by this Court that the maintenance and management of the said Apartment be made by the office bearers of the Writ petitioner Association as they are doing till date. But the subscription of maintenance by the residents of the Apartments as they are paying now shall be deposited in a Joint account giving intimation to the Writ Petitioner Association and such account be opened in the name of one person representing the Writ petitioner Association and the other representing the second respondent in the Writ petition, who shall reimburse the expenditure made by Writ petitioner Association in such maintenance, provided the same is certified by a independent Advocate, they readily agreed for the same and suggested the name of Mr.V.Manohar, learned counsel on behalf of the second respondent in the Writ Petition and Mr.Mahesh Kumar, learned counsel from the side of the Writ Petitioner and Senior Counsel Mr.M.S.Krishnan as independent Advocate. However, such consent of the Senior Advocate is not readily available to this Court. But, they say that learned Senior Advocate Mr.M.S.Krishnan shall have no objection for the same.

11. Considering the same, this Miscellaneous Petition is disposed of with a direction to open a joint account within three days from the date of receipt of a copy of this order, in the name of the aforesaid two counsel in any of the Nationalised Banks or Private Banks of their choice and Pass Book and Cheque Book be kept in the custody of learned counsel for the writ petitioner Mr. Mahesh Kumar and the residents of the aforesaid Association shall positively deposit their subscription of maintenance as per their liability to pay, in the said account from 1st May 2018 onwards and furnish the proof thereof to the office bearers of the Writ Petitioner association and the office bearers of Writ petitioner shall immediately thereafter include such deposit to have been made in the relevant register. The office bearers of the writ petitioner association shall maintain the Apartment and with respect to the expenditure incurred, furnishing the vouchers and accounts of the same to Mr.M.S.Krishnan, for reimbursement, who shall verify the same taking the Assistance of the aforesaid two counsels and on satisfaction of both of them as well his direct the counsel for drawal of cheque to the tune of the amount as certified by him for reimbursement in the name of the Writ Petitioner

Association within seven days from the date of furnishing of the bill. The amount certify by Mr.M.S.Krishnan against the bill for payment shall be final during this interregnum. A sum of Rs.50,000/- (Rupees Fifty Thousand) and an amount of Rs.15,000/- (Rupees Fifteen Thousand) as honorarium be paid to learned Senior Counsel Mr.M.S.Krishnan and Writ Petitioner counsel respectively for rendering the aforesaid assistance to this Court, by the writ petitioner association and subject to reimbursement as above, in the end of June 2018, by the Writ Petitioner. Counsel for the respondent agree to render assistance pro bono. So far as expenditure voucher submitted the same shall be kept in the custody of the counsel for the second respondent to the writ petition. Needless to say that if any expenditure is incurred by the aforesaid committee of the three advocates to discharge the aforesaid duty, they may furnish such bill to the Writ petitioner Association who inturn pay the same and get the same reimbursed in the manner directed. However, the above arrangement is without prejudice to the claim of the Writ Petitioner as well as the second respondent in the Writ Petition.

Post the Writ Petition on 27.06.2018.

-sd/-
23/04/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT REGISTRAR,
REGISTRAR OF SOCIETIES, RAJAJI ST,
J.C K NAGAR, HANUMANTHAI, TAMIL NADU,
CHENGALPET-603 001.

C.C. to M/S.V.MANO HAR Advocate Sr.No.5090

Order
in
WMP.5399/2018
in
WP.33170/2017

Date :23/04/2018

From 26.2.2001 the Registry is issuing certified
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