

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.746 of 2015,
M.P.No.1 of 2015 and CMP No.21636 of 2017

Dohnavur Fellowship
Dohnavur Post,
Tirunelveli District - 627 102.
Rep. by its Selfstyled Secretary
R.Ezekiel Devairakkam Appellant

(Substituted vide order of this Court dated 12.07.2018
made in CMP No.11568 of 2018 by KKSJ & RSMJ)

-vs-

- 1.A.Thiyaja
- 2.The Inspector General of Registration,
Registration Department,
Santhome High Road, Chennai - 600 004.
- 3.The District Registrar,
Registration Department,
Tirunelveli District, Tirunelveli -1. Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
against the order passed in W.P No.45823 of 2002 dated
27.03.2014.

WP.45823 of 2002 Prayer: Writ of Certiorari, to call for the
records of the II respondent dated 27.8.2002 made in
No.4791/C2/2002 as well as the order of the I respondent dated
24.10.2002 made in Ka.No.609/II/2001 and quash the said orders
of the I and II respondent dated 24.10.2002 and 27.8.2002
respectively and consequently direct the 1st and 2nd
respondent to convene the General Body Meeting and conduct the
elections of the 3rd respondent society with the participation of
all the members as contained in the Coming Day Book maintained

since 1901 by the III respondent Society.

For Appellant : Mr.Ravikumar Paul
Senior Counsel
for M/s.Paul and Paul

For Respondents : Mr.B.Jaganath for R1
Mr.T.M.Pappiah
Spl.Govt.Pleader for R2 and R3

J U D G M E N T

[Judgment of the Court was delivered by
K.K.SASIDHARAN, J.]

Introductory

The first respondent without even demonstrating that he was a member of Dohnavur Fellowship, Tirunelveli, filed a writ petition before the Writ Court in W.P.No.45823 of 2002, challenging the order dated 27 August 2002 and the Appellate Order dated 24.10.2002 on the file of the Inspector General (Registration) refusing to issue a direction for convening the General Body Meeting. The learned single Judge without deciding the question as to whether the first respondent was a member of the Society directed the appellant to conduct the election in accordance with the By-laws of the Society. Feeling aggrieved by the said order, the Dohnavur Fellowship, a registered Society is before this Court.

Brief Facts

2. The first respondent, claiming himself as a member of the appellant Society submitted a representation before the District Registrar (Tirunelveli), requesting to convene the Extraordinary General Body Meeting of the Society. The request was rejected by order dated 27 August 2002 on the ground that the first respondent was not a member of the Society. The said order was unsuccessfully challenged before the Appellate Authority. The order passed by the District Registrar dated 27 August 2002 and the Appellate order dated 24 October 2002 were challenged by the first respondent before the Writ Court in W.P.No.45823 of 2002.

3. The Writ Court was expected to arrive at a factual finding at the first instance as to whether the first respondent herein was a member of the Society. The learned single Judge made an observation that the Court is not giving any opinion with regard to the veracity of the first respondent's claim that he was a member of the Society. Even after making such an observation, a direction was issued to convene the General Body Meeting and conduct election as per the By-laws of the Society.

The order is under challenge at the instance of the Society primarily on the ground that the writ petition filed by the first respondent ought to have been dismissed on the ground of maintainability.

Submissions

4. The learned Senior Counsel for the appellant contended that the first respondent was not a member of the Society. According to the learned Senior Counsel, the first respondent claimed that he was a member of the Society since his name was found in the "Coming Day Book, which is not a register of members as per the Tamil Nadu Registration Act. The learned Senior Counsel contended that the Society is maintaining a separate register for Members and the name of the first respondent is not found on the rolls. This aspect was not considered by the learned single Judge.

5. The learned counsel for the first respondent while supporting the order passed by the learned single Judge contended that the "Coming Day Book" should be construed as a Membership Register. The learned counsel further contended that on account of the age factor, it would not be possible now for the first respondent to enroll himself as a Member of the Society. However, according to the learned counsel, the Society should have convened the meeting to elect the officer bearers and to that extent, the learned single Judge was correct in issuing a Mandamus.

The Issue

6. The core question is as to whether the District Registrar was correct in negating the request made by the first respondent for convening the General Body Meeting for the purpose of conducting the election to the Society.

Discussion

7. There is no dispute that the name of the first respondent is not found in the register maintained by the appellant. The appellant in accordance with the Tamil Nadu Societies Registration Act has been submitting the list of Members of the Society to the Registrar. It not the case of the first respondent that his name was found in any of such Register. The first respondent made a claim only on the basis of the entries found in "Coming Day Book", which is in the nature of a visitors register. Such a book would not constitute the Register of Members under the provisions of Tamil Nadu Societies Registration Act.

8. The learned single Judge was obliged to decide the question as to whether the first respondent was a Member of the

Society entitling him to make a request to convene the General Body Meeting for the purpose of conducting election. The learned single Judge failed to decide the said fundamental question before directing the Society to convene the meeting. The observation made by the learned single Judge in Paragraph 38 of the order that the Court does not have an opinion about the veracity of the writ petitioner's membership clearly shows that there was no adjudication with respect to the right claimed by the first respondent. There is no question of directing the Society to convene a meeting at the instance of a stranger. The learned single Judge without any material to arrive at a finding that the first respondent has got a right to convene the General Body Meeting allowed the writ petition. Since it is very clear that the name of the first respondent was not included in the register of members of the Society, the appellant must succeed.

9. The order dated 27 March 2014 is set aside. The writ petition in W.P.No.45823 of 2002 is dismissed.

10. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

svki

To

1.The Inspector General of Registration,
Registration Department,
Santhome High Road, Chennai - 600 004.

2.The District Registrar,
Registration Department,
Tirunelveli District, Tirunelveli -1.

+1cc to Mr.A.Jenasenan, Advocate SR.No.47874
+1cc to Mr.Paul and Paul, Advocate SR.No.48130
+1cc to Government Pleader SR.No.48937

W.A.No.746 of 2015

RK (CO)
GN (20/08/2018)