

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
W.P.No.3729 of 2012

Pazhiya Marakkanam Nadar Mahimai Paribalana
Sanga Sothu Meetpu Sangam,
MVDC Salt Depot Complex,
Tindivanam Road,
Marakkanam,
Tindivanam Taluk
Rep. By its President,
C.Kumaresan

...Petitioner

Vs

1.The Inspector General of Registration,
No.100, Santhome Road,
Chennai-28.

2.The Registrar of Societies,
(District registrar of Assurances)
Rottikkara Street,
Tindivanam.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to Writ of Mandamus directing the respondents herein to appoint a liquidator with respect to erstwhile "Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam" (in Reg.No.4/1960), as mandated under section 40 of the Societies Registration Act.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.P.P.Purushothaman
Government Advocate

O R D E R

The Writ petitioner Pazhiya Marakkanam Nadar Mahimai Paribalana Sanga Sothu Meetpu Sangam, as the name signifies had been formed to redeem the property of the Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam.

2. This writ has been filed seeking a Writ of Mandamus directing the respondents, namely, Inspector General of Registration and more particularly, also the Registrar of Societies (District Registrar of Assurances), Tindivanam to appoint a liquidator to examine the functioning of the Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam, which was registered under Reg.No.4/1960 under the Societies Registration Act 1975. Necessitating appointment of a liquidator had arisen, since it was stated that the Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam (herein after called the original Sangam) was the owner of the properties, which are given below.

S.No	DESCRIPTION OF PROPERTY
1.	Old Dry S.No.388/1 Ac 0.05 (New Dry S.No.502/2 Hc 0.02.0)
2.	Old Dry S.No.388/2 Ac1.52 (New Dry S.No.502/2 Hc 0.60.5)
3.	Old Dry S.No.388/3 Ac 2.04 (New Dry S.No.502/3Hc 0.82.0)
4.	Old Dry S.No.388/7 Ac 1.51 (New Dry S.No.502/1Hc 0.62.5)

3.These properties were purchased by the said original Sangam by two sale deeds dated 12.08.1964 and 01.12.1975. As time passed by, the Society came to be managed by Office bearers, who also individually had a direct interest in the properties, since, as stated by the learned counsel for the petitioner, they were the descendants of the original owners, who had transferred the properties to the society. As time passed, by the value of the properties increased manifoldly and the descendants of the original owners found that the transfer to the original Society which had been effected in the years 1964 and 1975, were not to their advantage and as a matter of fact, to the detriment of their family monetary interests.

4. It was stated in the affidavit that thereafter the office bearers of the society did not continue active management of the society in accordance with the rules under the Tamilnadu Registration Act 1975. This led to the Registrar of Societies to intervene in the functioning of the society and an order came to be passed under Section 44 of the Tamilnadu Registration Act. Under Section 44(4), the Society had been struck off the Register and notice had also been published by the Tamilnadu Government Gazette and the Society was deemed to be dissolved.

5. It was pointed out by the learned Government Advocate that the petitioner society, which is now called Pazhiya Marakkanam Nadar Mahimai Paribalana Sanga Sothu Meetpu Sangam, had been found with the only object of re-claiming the said property.

6. It was brought to the attention of this Court that, a collusive suit was filed in O.S.No.64 of 2008 on the file of the Principal District Munsif Court, Tindivanam. The society was not a party to the said suit, but the properties were the subject matter of the said suit. The said suit had been filed by Sivekarmegam, who described himself as the son of the original owner of the suit properties. He filed the suit against four individuals and sought a judgment and decree for declaration of title and recovery of possession. That suit did not go through its normal course. Half way through the proceedings, the respondents filed a memo submitting to a decree and accordingly, the learned Principal District Munsif, Tindivanam also granted a judgment declaring title of the suit properties to the plaintiff and also granting the relief of recovery of possession. By this one judgment, the properties of the society were screened away from the society and taken control by individuals. It is to redeem such properties that the writ petitioner's society has been found.

7. The learned Government Advocate argued that under Section 44 (4) of the Society Registration Act, since the original Society had been dissolved, a liquidator cannot be appointed as sought in this writ petition. It was stated that there is no Society to adjudicate. There are no properties to manage. There are no office bearers, on whom accountability can be placed even if a liquidator appointed. It would only be a paper order and no effective role can be performed by the liquidator since there is no society at all and it had been dissolved under Section 44(4) of the Societies Registration Act 1975.

8. The learned counsel appearing for the Writ petitioner however pointed out the provision under Section 44(8) of the Tamilnadu Society Registration Act. Under this provision, if a Society had been struck off the Register and if had not been restored or if appeal had not been filed within the period stipulated, then the provisions of Section 39 shall applied as if the registration has been cancelled. This would mean that the society moves away from the character of a defunct society to that of a society, which had been cancelled by law. When a society is cancelled, the effect of such cancellation of the registration is provided under Section 39 and a resolution can be passed and the Society can be dissolved under Section 41. But in this case, a resolution will never be passed since the office bearers had divested the properties of the society.

Under Section 40, when the registration is cancelled, the Registrar may appoint a liquidator for the society.

9. Once again to revisit the provision under Section 44 (8), the provision states that " the registration of such society has been cancelled". If it is cancelled, then the registrar has the power to appoint a liquidator. In this connection, it must also be mentioned that the writ petitioner had filed a Civil Suit in O.S.No.117 of 2008 on the file of the Sub-Court, Tindivanam. In the said Civil suit, the reliefs sought were for a judgment and decree to declare that the suit properties belong to the Original Society and for recovery of possession of the properties. The defendant in the said suit is the Original Society and also the office bearers. The Registrar of the Society is not a party of either one of the two suits. It had been stated by the learned counsel for the writ petitioner that the said suit was decreed but later the said decree was reversed in appeal by the First Appellate Court on the ground of limitation. It is also informed that this Court had admitted the Second appeal and it is pending. Naturally then substantial questions of law have been framed necessitating enquiry and adjudication of the Second Appeal on the points of law so framed.

10. Coming back to Section 40 which gives the Registrar to power to appoint Liquidator, the Liquidator has wide powers. It is provided as follows:-

"(a) to institute or defend any action or other legal proceedings on behalf of the registered society by his name of office;

(b) to determine, from time to time, the contribution to be made or remaining to be made by the members of the registered society, respectively, to the assets of the registered society;

(c) to investigate all claims against the registered society and subject to the provisions of this Act, to decide questions of priority arising between claimants.

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(e) to give such direction in regard to the collection and distribution of the assets of the registered society as may appear to him to be necessary for winding up the affairs of the registered society."

11. In the counter affidavit filed by the respondents, it had been stated that the petitioner Society was registered only in the year 2008 that the object was to recover the properties of the Original Society. This Court is also conscious of the fact that the properties of the Original Society had been taken away by a collusive decree. Consequently a liquidator has to be appointed is to examine the entire issues. In the counter affidavit, it is stated that the Society was only declared as defunct under Section 44(8). However, after the lapse of period of appeal, the defunct society automatically stands cancelled and thereafter the provision under Section 40 comes into play.

12. In the affidavit filed in support of the present Writ Petition, it had been stated that the Registrar of Society has a statutory duty to examine the activities of the Original Society, namely Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam under Section 40 of the Registration Act. In view of the foregoing facts, I find much force in the reasons advanced and also in the arguments advanced by the learned counsel for the respondents.

13. The learned Government Advocate also stated that the Registrar of Society has the power to appoint a liquidator to examine the affairs of the Society. In this case, the reasons necessitating appointment of a liquidator are primarily that a collusive decree in O.S.No. 64 of 008 on the file of the Principal District Munsif Court, Tindivanam, had been obtained whereby the properties of the Original Society had been screened away and taken away from the control of the Society. This naturally requires examination and among the powers of the liquidator as provided under section 40 is that he could also institute any legal proceedings on behalf of the Society and also investigate all claims subject to the provision of the said Act. He also has the power to summon and enforce attendance of witnesses and to compel the production of documents in the same manner as a Civil Court. It is also stated that the orders of the liquidator and enforceable as if they are a decree of Civil Court.

14. I told that in this case the writ petitioner has made out a case for necessitating the appointment of a liquidator. The liquidator must follow the procedure as laid down in law by give opportunity to all the concerned individuals and act in accordance with the provision of the Societies Registration Act 1975. The Respondents are directed to appoint a liquidator to examine the issues raised by the writ petitioner with respect to the affairs of the Marakkanam Nadar Mahimai Paribalana Sangam, Marakkanam. The liquidator is to be appointed within a period of

4 weeks from the date of this order.

15. With the above observations, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

tta/vsg

To

1.The Inspector General of Registration,
No.100, Santhome Road,
Chennai-28.

2.The Registrar of Societies,
(District registrar of Assurances)
Rottikkara Street, Tindivanam.

+1cc to Mr.D.Ravichander, Advocate, S.R.No. 76655
+1cc to the Government Pleader, S.R.No.77042

rrs 13/11/2018

W.P.No.3729 of 2012

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