

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2018

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.5 of 2018
and C.M.P.No.443 of 2018

L.M.Krishnasamy Nadar

... Appellant

Vs.

1.R.Jayaveerapandian

2.N.Tamizharasan

3.R.Mathivanan

4.R.S.Rajan

5.S.Vijayarajan

6.M.Ramasamy

7.Chennai Vazh Kovilpatti Nadar Uravin
Murai Sangam (Reg.No45/1984)
Rep. by its President.

8.M/s.Crescent Auto Repairs and Services
India (Private) Limited
Rep. by its Director A.K.Abdullah

... Respondents

Appeal filed under Order XXXVI Rule 9 of the O.S.Rules r/w
Clause 15 of the Amended Letters Patent, 1865, against the order
dated 12.12.2017 made in A.No.3303 of 2016 in C.S.No.673 of 2012.

A.No.3303/16 in CS.No.673 of 2012:Application praying that this
Hon'ble Court be pleased to appoint an Advocate Commissioner to
Conduct the election for Chennai vazhi kovilpatti Nadar
Uravinmurai Sangam Reg.No.45/1984 to elect officer bearers to
administer the Sangam and to resolve all the disputes pending
disposal of the suit.

For Appellant : Mr.Murugamanickam, S.C.
For Mr.B.Mutharasu

For Respondents : Ms.R.Poornima for R1 & R2

JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDHER, J)

1. This is an appeal preferred against the judgment and order dated 12.12.2017, passed by the learned Single Judge in A.No.3303 of 2016 in C.S.No.673 of 2012.

2. At the heart of the matter is the controversy with regard to the list, which is required to be taken into account, while conducting the election.

3. Learned Senior Counsel for the appellant says that the appellant has no grievance vis-a-vis the directions issued by the learned Single Judge to hold election. According to the counsel, the appellant's grievance is the rejection of his plea by the learned Single Judge that the list of members, filed with the Registrar of Societies in Form VI, pursuant to the General Body Meeting (GBM) held on 04.10.2015, has been rejected.

4. To be noted, prior to the GBM held on 04.10.2015, a list of members for 2014 was filed on 25.08.2015.

5. The learned Single Judge, after adverting to the fact that no meeting was held on 04.10.2015, decided to take into account the list of 120 members, which was filed with the Registrar of Societies in Form VI on 25.08.2015. The said list comprises of 120 members as subsisting of 30.09.2014. The learned Single Judge, pursuant to the submission made before him has pruned the list of members to 81, after he was informed that out of the 120 members subsisting as on 30.09.2014, 39 members had expired.

6. The learned Senior Counsel appearing for the appellant, thus, emphasizes that the list filed by the appellant, after the General Body Meeting was held on 04.10.2015, should be taken into account. It is the contention of the learned Senior Counsel that the list, which the appellant filed in Form VI with the Registrar of Societies, is the list that, ought to have been taken into account. This, according to the learned counsel, would substantiate the fact that a GBM was held on 04.10.2015.

6.1. Furthermore, the learned Senior Counsel says that the minutes of the meeting held on 04.10.2015 would also establish the fact that the GBM was, indeed, held on 04.10.2015.

7. According to us, the submission advanced by the learned Senior Counsel is untenable for the reason that on 02.10.2015, a letter had been sent to the Inspector of police, Sastri Nagar Police Station, at the behest of the appellant, seeking cancellation of the GBM slated for 04.10.2015. Since, the letter is brief, the relevant extract is set forth hereafter:

"To

The Inspector of Police
Sastri Nagar Police Station (L & O)

Sir,

The general body meeting schedule to be conducted on 04.10.2015 at 3.00 is hereby canceled due to the ill health of president L.M.Krishnaswami Nadar."

8. Furthermore, in response to an application filed under the Right to Information Act, the Inspector of Police, confirmed that no meeting was held on 04.10.2015.

8.1. This fact, as indicated above, has been taken note of, by the learned Single Judge as well. Therefore, the contention of the learned Senior Counsel that because Form VI was filed with the Registrar of Societies and given the fact that the minutes of meeting records convening of the GBM should establish that a GBM was, in fact, held is, in our opinion, a fallacious and untenable submission. Mere filing of Forms or a recording in the minutes book cannot establish that the meeting was, indeed, held. These documents can, if, at all create, only rebuttable presumption and in this case, the presumption can rebut.

8.2. Pertinently, learned Senior Counsel for the appellant has not been able to show us any material, which would have persuaded to us to accept the stand of the appellant that the GBM, in fact, was held on 04.10.2015.

9. In these circumstances, we are not inclined to interfere with the order of the learned Single Judge.

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10. The appeal is, accordingly, dismissed, as it is bereft of any merit. Consequently, connected pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

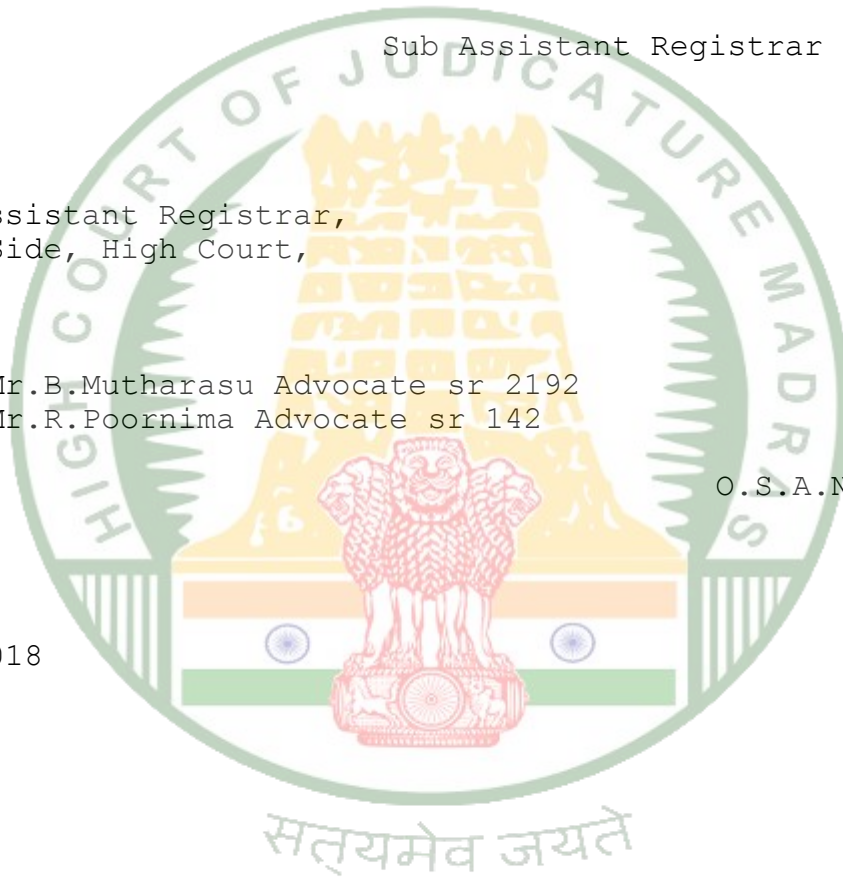
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To
The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+1 cc to Mr.B.Mutharasu Advocate sr 2192
+1 cc to Mr.R.Poornima Advocate sr 142

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