

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

O.S.A.No.380 of 2018
and
C.M.P.No.17024 of 2018

1.Baulsundar

2.R.Bennet Stephenson .. Appellants

-vs-

India Evangelical Lutheran Church (IELC)
Rep. by its General Treasurer,
Rep. R.Vijayakumar,
Having Office at
No.47, Eldams Road,
Teynampet, Chennai-600 018 Respondent

PRAYER: Original Side Appeal against the fair and decreetal
order dated 31.07.2018 passed in Application No.1695 of 2018 in
Tr.C.S.No.741 of 2017.

For Appellants : Mr.K.Venkateswaran

For Respondent : Mr.V.Govardhanan &
Mr.Velumani

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J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal has been preferred against the order passed by
the learned Single Judge, by which an Interim Administrator has

been appointed, who is a retired Judge of this Court, to look after the administration of the respondent/Church. The Original Suit in O.S.No.3261 of 2017 has been filed by the Church, for declaring that the Notification issued by the 2nd defendant dated 06.06.2017 as null and void and for permanent injunction restraining the 2nd defendant/2nd appellant herein, in any manner interfering with the smooth functioning of the India Evangelical Lutheran Church (IELC) and other reliefs.

2.The case of the plaintiff is that the office bearers were already elected on 26.05.2017 lawfully. Thereafter, the 1st appellant herein, unilaterally appointed the 2nd appellant as Election officer, who issued a notification for the election of the office bearers of the Church, without any authority. Therefore, the suit was filed.

3.A suit in C.S.No.373 of 2017 has been filed by one Rev.C.Duraiarasu seeking a declaration that the 2nd defendant therein is not the Chief Election Commissioner of the respondent/society and for declaration, declaring that the election in Notification No.1 issued by the 2nd defendant therein dated 28.02.2017 pertaining to Ambur Circle positions, Ambur Synod positions and IELC positions as illegal and null and void and declaring that the election notice in Notification No.1 issued by the 2nd defendant therein dated 26.03.2017 pertaining to Ambur Circle positions, Ambur Synod positions and IELC positions as null and void and for permanent injunction and mandatory injunction. The said suit was struck off at the instance of the respondent.

4.Originally, the suit filed by the respondent before the City Civil Court was numbered as O.S.No.3261 of 2017 and the same was transferred to this Court and renumbered as Tr.C.S.No.741 of 2017.

5.Hearing all the parties in both the suits and taking note of many proceedings pending before various Courts and the unilateral declaration made by the 1st appellant as Vice President, the learned single Judge, suo motu, appointed a retired Judge of this Court as the Interim Administrator for smooth functioning of the Church. The findings given in the said suit read as follows:

"Further, this Court is of the view that for smooth running of the Church and in view of the serious allegations made against each other, for the interest of the Church and its members, Retired Judge of this Court to be appointed as Administrator of the Church to maintain and to conduct elections and the entire administration

should be monitored as per Byelaws of Church by a responsible person like retired Judge."

6. However, the learned single Judge recorded the statement of the respondent herein that if administrator is appointed, the term would be cut short as they were duly elected on 26.05.2017 only and they should be allowed to continue to work along with the administrator and to be monitored by the administrator. The learned Single Judge has recorded that the other side viz., the appellants herein have no objection. Only with regard to that, the appellants have got objection stating that they have not stated no objection in the suit. Therefore, they want to delete the observation made by the learned single Judge in Tr.C.S.No.741 of 2018 on 31.07.2018.

7. After hearing the parties, we could only come to the conclusion that the appointment of Interim Administrator by the Court is suo motu and not on application filed by either of the parties. The learned Single Judge felt that the interest of the Church and its members should be safeguarded, as serious allegations are being made against each other, only if an Interim Administrator is appointed to administer the Church and also for conducting election as per the bye laws.

8. Regarding the objections as noted by the learned single Judge, the learned counsel for the respondent would submit that the learned counsel, who appeared before the learned single Judge, for the appellants has stated no objection and therefore, the learned single Judge has recorded the same. Even otherwise, when this Court records a statement in an order, it is deemed that it is based on the facts and this Court cannot suspect the observation or statement made in the order. Even otherwise, the office bearers of the respondent have been elected on 26.05.2017, which was not at all challenged by the appellants at any point of time. Even the notification, which was challenged in C.S.No.373 of 2017, itself was struck off. Therefore, there is no impediment for the office bearers of the Church, who have been elected on 26.05.2017 to continue. Therefore, now the objection raised with regard to the statement of the appellants that they have not said no objection in the suit is not sustainable and the same is rejected.

9. However, the learned single Judge very cautiously, only directed the office bearers to take decisions with regard to the affairs of the Church, only with the sanction and concurrence of the administrator. Further, the learned single Judge rightly made it clear that the concurrence of the administrator is final. When such a safeguard is provided, there should not be any problem to any of the parties. Hence, the appeal fails and

the same is dismissed.

10.All the parties are hereby directed to co-operate with the learned Administrator, without creating any problem, for the smooth functioning of the affairs of the Church. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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+3cc to M/s.Venkateshwaran, Advocate SR.No.66596

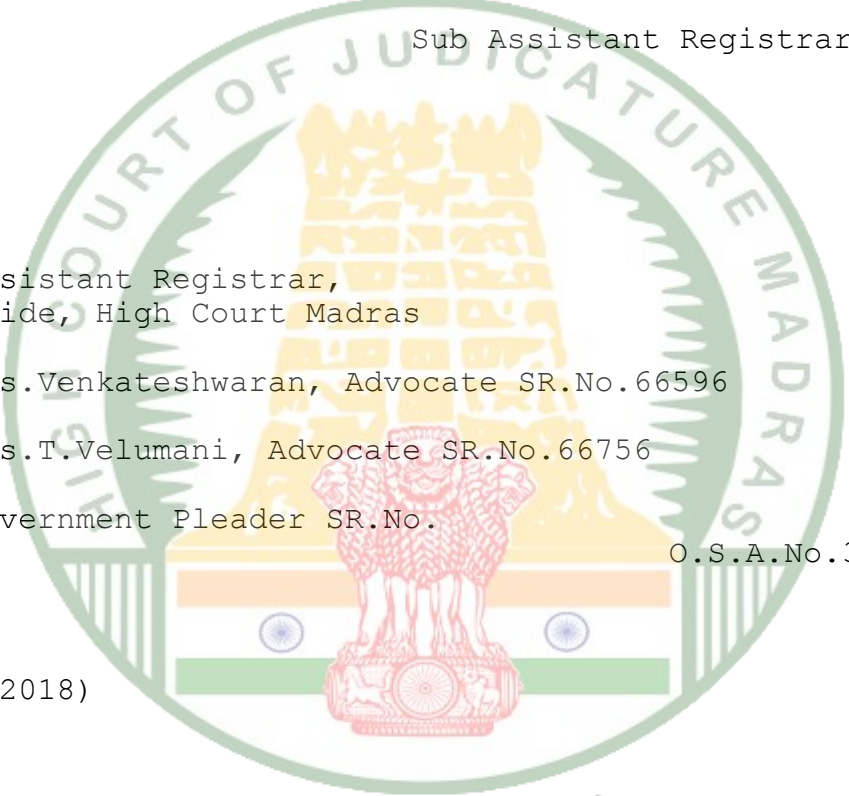
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O.S.A.No.380 of 2018

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