



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)NO.805 OF 2018
and
C.M.P(MD)No.4806 of 2018

Gunasingh Chelladurai :Appellant/third party

.vs.

1.Rev.Henry Lawrence Billy Amoss,
Director,
Tinnevely Diocesan Trust Association,
D.No.5, Punithavathiyar Street,
Palayamkottai. : Ist Respondent/Petitioner

2.The Registrar of Companies,
Ministry of Corporate Affairs,
Block No.6, 'B'Wing,,
Second Floor, Shastri Bhavan,
D.No.26, Haddows Road,
Chennai- 600 006. :Second Respondent/Respondent

3.C.John Kirubakaran :Third Respondent

4.R.Jayakumar Thomas Jayaraj :Fourth Respondent

(R3impleaded as per order of this Court vide
C.M.P(MD)No.4990 of 2018 in W.A.(MD)No.
805 of 2018, dated 14.06.2018)

(R4 impleaded as per order of this Court
vide C.M.P(MD)No.5007 of 2018 in W.A.(MD)
No.805 of 2018, dated 14.6.2018)

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.11781 of 2018, dated 31.5.2018.

Prayer in WP(MD). 11781/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue Writ of Mandamus
directing the respondent to consider the representation of the
petitioner dated 30/01/2018 and to restore the names of the elected



directors of Tinnevelly Diocesan Trust Association (TDTA) on 11/07/2017 in the Company Master Data and pass such further or other orders.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondent-1 : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.T.R.Jeyapalam
For Respondent-2 : Mr.R.Nandakumar
For Respondent-3 : Mr.P.Ronald
for Mr.S.Shanmugaraja
For Respondent-4 : Mrs.Lita Srinivasan

JUDGEMENT

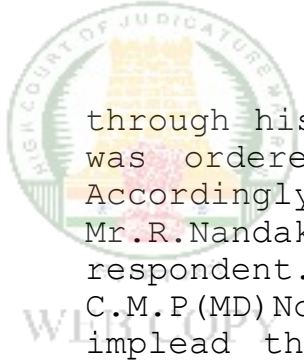
[Judgement of the Court was made by K.RAVICHANDRABAABU,J.]

The appellant, who is a third party to the Writ Petition, filed the present Writ Appeal, after obtaining leave from this Court, challenging the order passed by the Writ Court in W.P(MD) No.11781 of 2018, dated 31.05.2018. The first respondent herein is the Writ Petitioner. He sought for issuance of mandamus directing the second respondent herein, who was arrayed as sole respondent in the Writ Petition, to consider his representation, dated 30.01.2018 and to restore the names of the elected Directors of Tinnevelly Diocesan Trust Association(TDTA) on 11.07.2017 in the Company Master Data.

2.The Writ Court at the admission stage itself, without issuing notice to the sole respondent as well, has chosen to allow the Writ Petition and directed the respondent therein to consider the Writ Petitioner's representation, dated 30.01.2018 and restore the names of the elected Directors of Tinnevelly Diocesan Trust Association (TDTA) on 11.07.2017 in the Company Master Data. The Writ Court also directed the respondent therein to complete such exercise within a period of two weeks from the date of receipt of a copy of the order. Thus it is evident that a positive mandamus was issued at the admission stage itself without notice to the respondent.

3.The main grievance of the appellant before this Court is that the issuance of such positive mandamus to restore the names of the Directors is erroneous, especially when such restoration can be done only after removing the names of the persons already entered in the data, out of whom, the Writ Appellant is one such person. Therefore, it is contended that the very Writ Petition filed without impleading those persons including the appellant herein, is not maintainable, apart from the fact that the Writ Court has erroneously chosen to allow the Writ Petition at the admission stage itself without even issuing notice to the sole respondent and hearing him.

4.This Writ Appeal was taken up on 08.06.2018 for admission, on which date, notice was taken on behalf of the first respondent



through his counsel, represented by a Senior Counsel. Hence notice was ordered to the second respondent returnable by this day. Accordingly, the matter is listed today for further hearing. Mr.R.Nandakumar, learned counsel takes notice for the second respondent. Two other Miscellaneous Petitions are also filed in C.M.P(MD)Nos.5007 of 2018 and 4990 of 2018 by two individuals to implead themselves as party-respondents in this appeal, which we have separately considered and allowed. These impleaded respondents are admittedly sailing with the Writ Appellant herein by raising the very same grievance and objections.

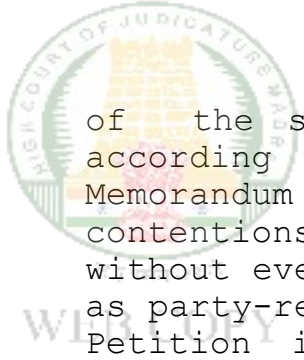
5.Heard Mr.G.Prabhu Rajadurai, learned counsel for the appellant and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent and Mr.R.Nandakumar, learned Counsel appearing for the second respondent, Mr.Ronald, learned counsel appearing for the third respondent and Mrs.Lita Srinivasan, learned counsel appearing for the fourth respondent.

6.We have given our careful consideration to the facts and circumstances of the case and the order passed by the learned Single Judge.

7.The Writ Petitioner sought for mandamus directing the Registrar of Companies, Ministry of Corporate Affairs, Chennai to consider his representation, dated 30.01.2018 and to restore the names of the elected Directors of Tinnevely Diocesan Trust Association(TDTA) in the Company Master Data. Thus the very prayer in the Writ Petition would reveal that it is not a simple mandamus for disposal of a representation on merits and in accordance with law and on the other hand it seeks a positive direction for restoration of the names of the elected Directors. Admittedly, except the said official, no other private parties were arrayed as party- respondents in the Writ Petition. The Writ Court while narrating the facts and circumstances in detail, specifically found at paragraph No.10, as follows:

'10.Despite the above facts, the names of the duly elected above said six persons had been removed from the Company Master Data on 21.09.2017 and the names of two persons, namely, Mr.Gunasingh Chelladurai and Mr.C.John Kirubakaran had been illegally inserted as Directors of the Company in the Company Master Data in violation of the Memorandum and Articles of Association of the TDTA.'

8.Therefore, it is evident that the Writ Court had taken note of the fact that the names of two persons were already inserted as Directors of the Company in Company Master Data, out of whom, one is the Writ Appellant herein and other one is the person who got impleaded himself now in C.M.P(MD)No.4990 of 2018. It is also noted by the Writ Court that the names of duly elected six persons had been removed from the Company Master Data 21.09.2017 and the names



of the said two persons had been inserted as Directors, which according to the Writ Petitioner, is illegal and in violation of Memorandum and Articles of Association of TDTA. When such being the contentions of the Writ Petitioner, the Writ Court, unfortunately, without even directing the Writ Petitioner to implead those persons as party-respondents and hearing them on merits, allowed the Writ Petition itself at the admission stage and issued a positive mandamus as stated supra. At this juncture, it is to be noted that the Writ Court is conscious of the fact that the Writ Petition is being allowed without issuing notice to the sole respondent as well. We do not find any justifiable reason in the order for not issuing notice to the sole respondent and hearing him on merit, as admittedly, a positive mandamus is sought for against such respondent. In our considered view, the order passed by the Writ Court cannot be sustained, since the learned Judge has chosen to hear the one side story of the petitioner alone and pass final orders, without even hearing the other side story of the persons, who would be affected by issuance of such positive mandamus. Therefore, on the sole ground of violation of principles of natural justice, We find that the order passed by the Writ Court cannot be sustained. At the same time, We are not expressing any view on the merits and contentions raised by both parties, as it is for them to agitate the same before the second respondent herein, before whom the representation given by the first respondent herein/Writ Petitioner is still pending. Needless to say that, it is open to the parties to raise all their contentions before the second respondent including the question of jurisdiction of the second respondent to deal with the matter, as raised by one of the impleaded respondent herein. Needless to say that, the second respondent will consider the case of the Writ Petitioner, appellant herein, impleaded respondents 3 and 4 and also other interested parties, if any, and pass appropriate orders on merits and in accordance with law, uninfluenced by any of the observations made by the Writ Court.

9. Accordingly, this Writ Appeal is allowed and the impugned order passed in the Writ Petition is set aside. Consequently, the second respondent is directed to consider the representation of the first respondent herein/Writ Petitioner, dated 30.01.2018 and pass orders on the same on merits and in accordance with law, after hearing the Writ Petitioner, appellant herein, impleaded respondents 3 and 4 and also other interested parties, if any. Such exercise shall be done by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

The Registrar of Companies,
Ministry of Corporate Affairs,
Block No.6, 'B'Wing,,
Second Floor, Shastri Bhavan,
D.No.26, Haddows Road,
Chennai- 600 006.

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 68401
+1cc to M/S.T.R.Jeyapalam, Advocate SR.No. 68397
+1cc to M/S.Lita Srinivasan, Advocate SR.No. 68327

JUDGEMENT MADE IN
W.A(MD)NO.805 OF 2018
and
C.M.P(MD)No.4806 of 2018
14.06.2018

vsn

JM/RSK/SAR 2/22.06.2018/5P/5C