

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Writ Appeal No. 779 of 2019

and

C.M.P.No.6139 of 2019

Namakkal Taluk Lorry Owners Association,
rep by its Secretary, 87, Salem Road,
Namakkal - 637 001.Appellant

-vs-

1.K.Nallathambi
2.The District Registrar,
Namakkal District,
Namakkal.
3.P.Kumar
4.P.Manivelu
5.C.Sathish Kumar Respondents

Writ Appeal filed under Clause 15 of Letters Patent for
setting aside the order passed by this Court in W.P.No.22273 of
2018 dated 06.02.2019.

WP.NO.22273/2018:

Writ of Certiorari, Calling for the records comprised in the
Resolution No. 4 dated 25.10.2017 on the file of the 2nd
respondent in so far as the removal of the petitioner from the
basic membership of the 2nd respondent society is concerned and
the consequential order as made in Na.Ka.No. 6032/ E/ 2017 dated
28.12.2017 on the file of the 1st respondent quash the same
and pass such further or orders as this Hon'ble Court deem fit
and proper and this render justice.

For appellant : Mr.T.R.Rajagopalan,
Senior Counsel for
Mrs.P.Veena Suresh.

For Respondents : Mr.R.Thiyagarajan, Senior Counsel
(for R.1,3 to 5) for
Mr.K.Karthikeyan
Mr.T.M.Pappiah
Special Government Pleader for R.2

JUDGMENT

(Judgement of the Court was delivered by T.S.Sivagnanam, J.)

This Appeal by the second respondent in W.P.Nos.22273 and 22274 of 2018 dated 06.02.2019 is directed against the order passed in the writ petition filed by the first respondent herein by which one of the writ petitions namely W.P.No.22273 of 2018 was allowed with certain directions. The other writ petition in W.P.No.22274 of 2018 was closed as no orders are required. Therefore, the appeals are before us challenging the order and direction in W.P.No.22273 of 2018.

2.We have heard Mr.T.R.Rajagopalan, learned Senior Counsel for Mrs.P.Veena Suresh for the appellant and Mr.R.Thiyagarajan, Senior Counsel for Respondents 1,3 to 5 for Mr.K.Karthikeya, Mr.T.M.Pappiah Special Government Pleader for R.2.

3.As mentioned above, the first respondent/writ petitioner filed two writ petitions in W.P.Nos.22273 & 22274 of 2018 challenging the resolution passed by the appellant's association in its General Body Meeting dated 25.10.2017 in so far as it remands the writ petitioner from basic membership by the appellant Association and the consequential proceedings dated 28.12.2017 which is the general body resolution. The second writ petition namely W.P.No.22274 of 2018 has been filed questioning the Form-VI declaration dated 06.11.2017 submitted in terms of Rule 16 of the Tamil Nadu Societies Registration Rules, 1978, insofar as it records the removal of the first respondent/writ petitioner from the basic membership of the appellant association. सत्यमेव जयते

4.After elaborately hearing the learned counsel for the parties and perusing the materials placed on record, we express a genuine doubt as to whether at all the writ petition is maintainable challenging the resolution taken in the General Body Meeting of the appellant association registered under the Provisions of the Tamil Nadu Societies Registration Act, 1978. The answer to the above question should be in the negative since the appellant being a private association the affairs of the association are regulated by the byelaws of the association and that the society is registered under the provisions of the Act itself will not confer jurisdiction on the writ Court to decide the correctness of the resolution passed in the General Body

Meeting. If there are allegations of fraud and impersonation and falsification of records, then the remedy for aggrieved persons is not before this Court nor before the Authorities under the Act but elsewhere i.e., before the Civil Court.

5. So far as the second writ petition is concerned namely W.P.No.22274 of 2018, the appellants questioned the Form-VI declaration dated 06.11.2017 filed by the appellant's association before the District Registrar. Further, the said writ petition is closed and no orders have been passed by the Writ Court. The Hon'ble Full Bench of this Court in the case of CMS Evangelical Suvi David Memorial Higher Secondary School Vs. The District Registrar, Thirunalveli District [reported in (205) 2 CTC 161] held that the power of the Registrar under the Act to enquire into the affairs of the association cannot be construed as an appellate power. The Registrar has no power to direct holding a fresh election and it is only the Civil Court which is competent to decide the validity of the election. The power of the Registrar under Section 36 of the Act with regard to deciding the validity of the Form-VII declaration filed in terms of Rule 17(2) of the Rules was held to be a ministerial act as the Registrar has powers only to maintain a Register containing names, addresses and occupation of its members and notice of any change among the members. Therefore, it was held that the suit is the only remedy if a person seeks to question the correctness of a Form-VII declaration. To the same effect is the decision of the Hon'ble Division Bench in the case of R.Muralidharan & 6 others Vs. The District Registrar, South Madras and another [reported in the Law Weekly, 29.03.2008 (page 75)] and in the case of Theni Melapettai Hindu Nadarkal Uravinmurai Vs. The District Registrar (Societies) [reported in 2007 (5) CTC 421] and the decision of the Hon'ble First Division Bench in the case of V.Sobana Kumar Vs. The District Registrar of Societies, Marthandam, Kanyakumari District & others [reported in 2008-4-L.W.760], wherein it was held as follows:

"17. In view of the above precedents, we are of the opinion that filing of Form VII by the Registrar does not involve any civil consequences either apparent or real. The rights of parties will have to be crystallised in forums other than the Societies Registration Act. Since the learned Counsel submitted that Sections 34 and 36 of the Societies Registrations Act vest with the Registrar with certain powers, it is necessary to analyse them in the context of a grievance projected by the appellant.

19. A careful reading of the provision does not show that it either clothes the Registrar with any power of enquiry or determines the rights of parties. It does not provide as suggested by the appellant that

a decision taken by the Registrar will visit with civil consequences on the parties. As rightly observed by the Division bench in Muralidaran's case that it only involves an ministerial act and nothing more. If the appellant can be described as the "Form Filler", then the Registrar under Section 34 will be "Form Filler". We are not persuaded to take any different view on Muralidaran's case. We do not find any inconsistency between the Full Bench decision and the subsequent decisions of the Division Benches."

6. In our considered view, the ration laid down in the afore mentioned decisions would equally apply to the effect of Form-VI declaration which was questioned by the first respondent in W.P.No.22274 of 2018. Thus, if the first respondent/writ petitioner alleges that fraud has been committed, signatures have been forged, the General Body Meeting was not conducted in proper manner, proper notice was not given, and procedures under byelaws were violated, those are all issues which the first respondent/writ petitioner should adjudicate before the Civil Court.

7. The learned Senior Counsel appearing for the first respondent/writ petitioner submitted that the first respondent has challenged the Form-VI declaration alone and not the Form-VII declaration, since the Form-VII declaration has not been filed till date. Mr.T.M.Pappiah, learned Special Government Pleader submitted that this submission of the learned Senior Counsel appearing for the first respondent is factually incorrect as the Form-VII declaration has been submitted and registered as Document No.4 of 2017. In such circumstances, the Form-VI declaration stood merged with the Form-VII declaration and if the first respondent/writ petitioner is aggrieved by the deletion of his name from the primary membership of the association as reflected in column No.3 of the Form-VII declaration, then in terms of the aforementioned decision, the first respondent/writ petitioner remedy is before the Civil Court and the writ petitions filed by the respondent/writ petitioner are not maintainable.

8. The learned Senior Counsel appearing for the appellant submitted that no records were produced by the District Registrar before the Writ Court and in fact the appellant had filed only a petition for vacating interim order supported by a short affidavit raising maintainability of the writ petition. The appellant had no opportunity of meeting the merits of the matter since the appellant had questioned maintainability of the writ petition at the first instance. However, when the orders were passed in the writ petition, the appellants were shocked to find that the Writ Court has gone into the merits of the matter,

that too, in the absence of any counter affidavit by the District Registrar or the records been placed before it. As could be seen from the material papers, the appellant had filed vacate stay petition with the short affidavit challenging the maintainability of the writ petition and the merits of the matter were not canvassed.

9.It was pointed out in the said affidavit that the first respondent/writ petitioner was aware of the impugned proceedings in the month of December, 2012 itself but had filed the writ petition belatedly in the month of August, 2018 which itself will show that the intentions are far from being genuine.

10.Be that as it may, this Court is fully satisfied that the prayer sought for in the writ petitions filed by the first respondent herein is not maintainable.

11.For the above reasons, the writ appeal is allowed and consequently the W.P.No.22273 and 22274 of 2018 were dismissed as not maintainable and the findings recorded by the Writ Court with regard to the validity of the General Body Meeting etc., are set aside and it is left open to the first respondent/writ petitioner to adjudicate his grievances before the competent Civil Court, if so advised. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The District Registrar,
Namakkal District,
Namakkal.

+1cc to Mrs.P.Veena Suresh, Advocate sr.no.22893
+1cc to Mr.K.Karthikeyan, Advocate sr.no.22836
+1cc to Government Pleader sr.no.24233

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nr 15/03/2019