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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 18784 of 2019

R. Mohanrajan

... Petitioner

Vs.

1. The Secretary to Government,
Registration Department,
Government of Tamilnadu,
Fort St. George,
Chennai 9.
2. The Inspector General of Registration,
Santhome,
Chennai - 4.
3. The District Registrar,
Society Registration,
T.Vi.Ka.Industrial Estate,
Guindy.
4. PANGDR Association,
No. 7A, Proabhu Nagar (Ambal Nagar)
Pallikaranani, Chennai 100.
5. B. Kumar,
Ex. Secretary, Adhoc Committee,
No. 20, 3rd Street, Sri Ganapathy Nagar,
Pallikaranai, Chennai 100.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 17.06.2019 and to consequently, direct the First to Third Respondents to appoint a Special Officer to our association to carry out the day to day affairs of the association, conduct the election in fair manner, with new voters list.



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For Petitioner : Mr. S.N. Subramani

For Respondents: Mr. T.M. Pappiah (For R1 to R3)
Special Government Pleader
Ms. D. Maragathavalli (For R4)
Mr. Suryaprakash (For R5)

O R D E R

This Writ Petition had been filed for a direction to the Respondents to consider the representation dated 17.06.2019 made by the Petitioner for directing the First to Third Respondents to appoint a Special Officer for the Third Respondent to carry out its day to day affairs and conduct the election in fair manner with new voters list.

2. The Third Respondent has filed Counter Affidavit dated 12.11.2019 in response to that contention, in which it has been stated as follows:-

"With regard to Para 6 of the affidavit, it is submitted that the receipt of the society for the year 2015-16 is Rs.6,540/- and the expenditure for the same year is Rs.5,800/- and the balance available with the society is Rs.740/- only. Appointment of Special Officer to such kind of societies having meagre income is not feasible. Hence the representation dated 17.06.2019 of the Petitioner requesting to appoint a Special Officer could not be complied with. If any election to the Executive Committee is held in contravention of the bye-laws of the society and the provision of the Tamil Nadu Society Registration Act, the Petitioner has to approach the Civil Court which alone could adjudicate the dispute on the basis of oral and documentary evidence."

In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs



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of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

In the light of the aforesaid legal position viz-a-viz the cogent reasons assigned by the Third Respondent for not accepting the claim of the Petitioner for appointment of Special Officer, this Court does not find any justification to entertain this Writ Petition in the exercise of its discretionary powers under Article 226 of the Constitution.

3. Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Registration Department,
Government of Tamilnadu,
Fort St. George,
Chennai 9.



2. The Inspector General of Registration,
Santhome,
Chennai - 4.

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3. The District Registrar,
Society Registration,
T.Vi.Ka.Industrial Estate,
Guindy.

+lcc to the Government Pleader Sr.95571
+lcc to Mr.S.N.Subramani, Advocate Sr.94449
+lcc to Mr.R.Suryaprakash, Advocate Sr.94682

W.P. No. 18784 of 2019

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srg 07/01/2020