

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2019	Pronounced on : 28.08.2019
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CORAM:

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 19222 of 2019
and
W.M.P. No. 18657 of 2019

S.K. Koteeswaran ... Petitioner

-vs-

1. The Registrar,
Department of Registration of Societies,
Chennai North,
Chennai - 600 108.
2. The Secretary,
Chennai Nadar Munnetra Elaignar Kazhagam,
(Reg. No. 24/1954),
No. 13/8, M.C. Road,
Chennai - 600 021. ... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to conduct enquiry regarding the correctness and validity of the members list of the Chennai Nadar Munnetra Elaignar Kazhagam, Chennai - 600 021 by considering the Petitioner's representation dated 23.06.2019 and consequently ensure that the election to the Chennai Nadar Munnetra Elaignar Kazhagam, Chennai - 600 021 is conducted only with the members approved by the First Respondent.

For Petitioner :M/s. V. Meenakshi

For Respondents:Mr. T.M. Pappiah,
Special Government Pleader (for R1)

O R D E R

The Writ Petition has been filed for a direction to the First Respondent to conduct enquiry regarding the Second Respondent, viz., Chennai Nadar Munnetra Elaignar Kazhagam, which is a society governed by the Tamil Nadu Societies Registration Act, 1975, by considering the representation dated 23.06.2019 made by the Petitioner and consequently ensure that the election of the Second Respondent is conducted only with the members approved by the First Respondent.

2. Having regard to the nature of the aforesaid relief claimed, it would be appropriate to straightaway refer to the decision of the Full Bench of this Court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee -vs- District Registrar, Cheranmahadevi [(2005) 2 LW 550], in which it has been held as follows:-

"17. A conspicuous reading of the above mentioned provisions show that the Act is intended to regulate the affairs of the society in accordance with the provisions contained therein and the rules made thereunder and that the registration is made compulsory on certain contingency and for its enforcement the provisions confer only the administrative power of the Registrar to ensure that the registered society to function strictly in accordance with the provisions of the Act or the Rules made thereunder, more particularly for maintenance of accounts for audit purpose; framing of bye-laws in conformity with the object of the society for which it is formed and registered; in respect of application of funds of the registered society, conduct of annual General Meetings and extraordinary general meeting and amalgamation and division of registered societies. The Registrar has power to direct the registered society to furnish in writing such information or explanation in respect of any document which the registered society is required to file with him.

18. The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No. VII in order to

effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction.

19. In this context it could also be kept in mind the intention of the Legislature not to confer a power of supersession of the Committee on the Registrar as by insertion of Tamil Nadu Act 16 of 1994, such power is vested only in the Government and even when the Registrar is satisfied after enquiry under Section 36 that the society which has contravened any of the provisions of the Act or the Rules made thereunder or the society is insolvent or must necessarily become so or that the business of any such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum filed with the Registrar, he may only cancel the registration.

20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of sub-section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the

Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power under Section 37 to cancel the registration. Hence, the power under sub-section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court."

The said principle has been reiterated by the subsequent Division Benches of this Court in V. Sobana Kumar -vs- District Registrar, Registrar of Societies, Marthandam [(2008) 4 LW 760], C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee -vs- District Registrar, Cheranmahadevi [(2008) 4 LW 1080] and C. Dharmalingam -vs- District Registrar, Madurai [(2010) 3 CTC 390].

3. In view of the settled legal position, it does not fall within the domain of the Registrar of Societies to conduct any enquiry regarding the correctness and validity of the members list of the Second Respondent and the remedy of the Petitioner lies only in instituting suit before the jurisdictional Civil Court for the said purpose. This would obviously mean that the First Respondent cannot be called upon to consider or pass orders on the representation dated 23.06.2019 made by the Petitioner in this regard. Commenting upon the exercise of discretionary powers of the High Court under Article 226 of the Constitution, the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], has observed 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...."

Inasmuch as the Petitioner has not established the legal right for granting the relief claimed, there is no justification to entertain this Writ Petition.

4. 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

The Registrar,
Department of Registration of Societies,
Chennai North,
Chennai - 600 108.

+1cc to M/s.Gnanadesikan Law Associates Advocate Sr.75036

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W.P. No. 19222 of 2019

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