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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

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

W.P. No. 21495 of 2019
and
W.M.P. No. 20705 of 2019

Rev.J. Daniel Gnanasekaran

... Petitioner

-vs-

1. The District Registrar,
Cuddalore District.
2. The Arcot Lutheran Church,
Saron, Thiruvannamalai.
3. The Arcot Lutheran Church Society,
No. 9, ALC Campus,
Central Office,
Cuddalore - 607 001.
4. The Bishop President,
Arcot Lutheran Church,
No.9, ALC Campus,
Cuddalore - 607 001.
5. The Secretary,
CB, ALC, No.9, ALC Campus,
Central Allice,
Arcot Lutheran Church,
Cuddalore - 607 001.
6. The Election Commissioner,
No.9, ALC Campus,
Central Allice,
Arcot Lutheran Church,
Cuddalore - 607 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in respect of the proceedings in Na.Ka. No.2585/A3/2019 dated 05.07.2019 order as arbitrary, illegal and quash the same.



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For Petitioner : Mr. Guruprasad M.
For Respondents: Mr. T.M. Pappiah
Special Government Pleader for R1.
Mr. Srinath Sridevan for R4 to R5.

O R D E R

Heard Mr. M. Guruprasad, Learned Counsel for the Petitioner, Mr. T.M. Pappiah, Learned Special Government Pleader appearing for the First Respondent, Mr. Srinath Sridevan, Learned Counsel appearing for the Fourth and Fifth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner made a representation dated 03.07.2019 to the First Respondent alleging that certain irregularities had taken place in the conduct of election held on 27.04.2019 for the election of members to the Pastorate Committee of the Third Respondent, viz., Arcot Lutheran Church, Cuddalore, which is governed by the Tamil Nadu Societies Registration Act, 1975, (hereinafter referred to as 'the Act' for short). The said representation was rejected by the First Respondent by order Na. Ka. No. 2585/Aa3/2019 dated 05.07.2019 stating that certain litigations relating to the Third Respondent were pending before the Civil Courts and this Court and that the delay in filing the annual returns from 1996-1997 till 2015-2016 under the Act, had not yet been condoned. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. The First Respondent has filed Counter Affidavit dated 27.10.2019 contending, inter alia, that election disputes of a Society governed by the Act would have to be agitated only before the Civil Court and cannot be decided by the Registrar of Societies under the Act.

4. Further, Learned Special Government Pleader appearing for the First Respondent, on instructions, states that G.O. (Rt). No. 633 Commercial Taxes and Registration (M1) Department dated 18.11.2019 has been issued by the Government of Tamil Nadu, exempting the Third Respondent from the provisions of Rules 17(2), 22 and 26 of the Tamil Nadu Societies Registration Rules, 1978, for having filed the aforesaid documents belatedly with a direction to file the documents without any delay in future.

5. At this juncture, it would be necessary to refer to the decision of the Full Bench of this Court in C.M.S. Evangelical Suvi David Memorial High Secondary School Committee, Karisal -vs- District Registrar, Cheranmahadevi, Tirunelveli District



Whether the power of the Registrar to enquire into the affairs of the registered society under the Act would include the power to enquire into the disputes relating to the election to the members of the society?

"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



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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. Accordingly, the issue is answered...."

6. Having regard to that authoritative pronouncement which holds the field, the First Respondent cannot be required to enquire into the complaints made by the Petitioner relating to the election held to the members of the Pastorate Committee of the Third Respondent, and the Petitioner would have to work out his remedies in that regard in a suit before the jurisdictional Civil Court.

7. Accordingly, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

kv/vjt
To

1. The District Registrar,
Cuddalore District.
2. The Election Commissioner,
No.9, ALC Campus,
Central Allice,
Arcot Lutheran Church,
Cuddalore - 607 001.

+1 CC to The Govt. Pleader sr 100450.
+1 CC to Mr.M. Guruprasad, Advocate sr 99642.
+1 CC to Mr. Srinath Sridevan, Advocate sr 100041.

W.P. No. 21495 of 2019

VD(CO)
SP(09/01/2020)