

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HON'BLE MR. JUSTICE C. V. KARTHIKEYAN

W.P. Nos. 203 and 258 of 2020

and

W.M.P. Nos. 233, 234, 305 & 306 of 2020

W.P. No.203 of 2020:

L.Selvaganapathy

... Petitioner

-vs-

1. The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai, Tamil Nadu 600 028.
 2. The Registrar of Societies - Madras, South,
SIDCO, Electronic Complex,
Thiru. Vi. Ka, Industrial Estate,
Guindy, Chennai 600 032.
 3. The Secretary,
Golden Opulence Owners Association,
Tower - 5, Golden Opulence,
Poonamallee Bye-pass Road,
Poonamallee, Chennai 600 056.
 4. The Election Officer,
Golden Opulence Owners Association,
Tower-5, Golden Opulence,
Poonamallee Bye-pass Road,
Tiruvalluvar District, Chennai 600 056.
- ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to inquire into the affairs of the 3rd respondent Association based on the petitioner's representation dated 24.12.2019 and conduct the election for the Executive Committee of the 3rd respondent Association in a democratic manner and in accordance with law.

W.P. No.258 of 2020:

K.Kirankumar

... Petitioner

-vs-

1. The Secretary,
Commercial Tax and Registration Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
2. The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai, Tamil Nadu 600 028.
3. The Registrar of Societies - Madras, South,
SIDCO, Electronic Complex,
Thiru. Vi. Ka, Industrial Estate,
Guindy, Chennai 600 032.
4. The Secretary,
Golden Opulence Owners Association,
Tower - 5, Golden Opulence,
Poonamallee Bypass Road,
Poonamallee, Chennai 600 056.
5. The Election Officer,
Golden Opulence Owners Association,
Tower-5, Golden Opulence,
Poonamallee Bypass Road,
Tiruvalluvar District,
Chennai 600 056.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to appoint a Special Officer to manage the affairs of the 4th respondent Society based on the petitioner's representation dated 26.12.2019.

For Petitioner in
both writ petitions : Mr.A.R.L.Sundaresan,
Senior Counsel
For Mr.P.M.Surendrakumar

For Respondents in
both writ petitions : Mr. T.M.Pappiah,
Special Government Pleader
(For R1 to R4)
: Mr.M.R.Jothimanian (For R5)

COMMON ORDER

Both the above writ petitions have been filed for similar relief, seeking writ of Mandamus directing the 2nd respondent, viz., the Inspector General of Registration, who was the 1st respondent in W.P. No.203 of 2020 and the 2nd respondent in W.P. No. 258 of 2020, to enquire into the affairs of the Golden Opulence Owners Association, viz., the 3rd respondent in W.P. No.203 of 2020 and 4th respondent in W.P. No. 258 of 2020, based on the representation of the petitioner in W.P. No.203 of 2020, dated 24.12.2019 and the representation of the petitioner in W.P. No.258 of 2020, dated 26.12.2019 and to conduct election for the Executive Committee of the 3rd respondent Association in a democratic manner and also for appointment of Special Officer to manage the affairs of the said society.

2. The petitioner in W.P. No. 203 of 2020 by L.Selvaganapathy, claims to be the owner of the flat No.703, Golden Opulence, Bye-pass Road, Poonamallee, Chennai. The petitioner in W.P. No.258 of 2020, K.Kirankumar, stating that his wife Mrs.Lavanya Kirankumar is the owner of the flat No.713/2 in the said apartments, has filed the writ petition, seeking a direction to appoint a Special Officer to manage the affairs of the 4th respondent Society based on his representation dated 26.12.2019.

3.1. The locus of two writ petitioners in filing the writ petitions has been questioned. At the first instance, the learned Standing counsel for the 3rd respondent association states that the petitioner in W.P.No.203 of 2020 viz., L.Selvaganapathy, who seeks conducting in the election for the Executive Committee in a democratic manner, as a matter of fact, has filed his nomination intending to participate in the election which has been scheduled by the Election Officer appointed during the meetings of the Executive Committee. The said Election Officer has been appointed to conduct free and fair elections.

3.2 The locus of the petitioner in W.P.No.258 of 2020 is questioned on the ground that he is not at all a flat owner and not a member of the General Body and hence, he cannot seeks to set aside the election or seek appointment of a Special Officer to manage the affairs of association.

3.3 In W.P.No.258 of 2020, it is stated that at the most, if permission is granted by the actual flat owner, the petitioner can participate in the election. No such materials have been placed or produced before the court. It is for Mrs.Lavanya

Kirankumar to decide to either permitting the petitioner to participate in the election.

4. Heard arguments advanced by the learned Senior counsel appearing on behalf of the writ petitioners and also by the learned Senior counsel appearing on behalf of the Association and by the learned Special Government Pleader for the Registration Department.

5. The grievance of the two writ petitioners is that the Golden Opulence Owners Association had been registered on 30.12.2016, the records/papers relating to such registration were presented by the Executive Committee earlier on 18.10.2016. The present issue which arises for consideration is whether the nominated members came into office on 18.10.2016 or on 30.12.2016 i.e. on the date of registration.

6. It is pointed out by the learned Senior counsel for the petitioners that as provided under Section 15(2) of the Societies Registration Act, 1975 and as contained under Rule 17 of the said Tamil Nadu Societies Registration Rules, the documents provided under the Registration Rules, had been presented for registration. The fact is that registration was effected on 30.12.2016.

7. Further, on the facts, when this Court put up a query to the learned Special Government Pleader regarding the date on which association actually came into existence, it is stated by Mr.T.M.Pappiah, learned Special Government Pleader appearing for the Registration Department that the Society has come into existence on the date of registration.

8. The above issue assumes significance in view of the fact that bye-laws of the association do not give any insight with respect of the commencement of existence of the society.

9. The Societies Registration Act, 1975 provides that the Executive Committee can be in existence for not more than three years. However in the bye laws of the present Association, it has been stated that the Committee shall be in existence for one year. It has also been mentioned in the very same bye-law that the same committee shall continue until an election is called for.

10. Whether the period of one year ends on 18.10.2017 or on 31.12.2017 is a mute question. Since that issue has not been directly raised, I am not prepared to answer the same in the context of the issues raised in the present writ petitions. The period of one year has been completed even when calculating it from the date of registration, on 01.01.2018.

11. Admittedly, no election had been conducted from the date of registration of the Society or after the first set of Executive Committee Members were nominated/elected/appointed. It also transpired from the records produced before this court and from the submission of the learned Special Government Pleader that the Registrar of Societies had issued a communication to the Association on 19.11.2019 and the Association had also given a reply to the said notice.

12. The reason why the writ petitioners have come up before this Court is that, after conducting an Executive Committee Meeting, followed by the General Body Meeting on 21.12.2019, the dates for conducting the elections were confirmed but the elections have not been conducted for quite some period of time and therefore the Executive Committee appointed a retired District Judge as Election Officer. Along with the retired Judge, an Advocate has also been appointed as an Assistant Election Officer to assist the retired District Judge. The nominated District Judge and the Advocate have issued a notification in respect of conduct of the election and had also given the schedule. Issuance of such schedule for election has been recorded. It is in this connection, the contention of the learned Senior Counsel for Association that the writ petitioner in W.P.No.203 of 2020 having filed his nomination, cannot turn around and now question the election, assumes significance. It is also under these circumstances that the learned Senior Counsel for the writ petitioner in W.P.No.258 of 2020, states that the writ petitioner can contest the elections, provided the actual owner namely his wife gives permission. These issues are significant but no document has been produced before this Court showing that she has permitted him to participate in the election.

13. Therefore, it is clear that two adventure seekers are before this Court. They have not raised any issue earlier as regards non filing of returns of income and of expenditure relating to the association funds and the amounts which had been collected from the apartment owners/residents. The writ petitioners having assumed the posts in the Executive Committee as office bearers, can participate in the election. The present petitioners have not raised their voice at any particular point of time, as regards the issue of handing over of accounts. The petitioners having been the office bearers had not questioned the Association for not filing the statement of accounts regularly.

14. The learned Special Government Pleader submits that the petitioners herein have not raised their voice at any particular point of time and have never given any representation regarding the apprehensions raised in the present writ petitions. Only

when the election notification was issued, have they come forward with the present prayer seeking directions.

15. The learned Senior Counsel for the petitioners states that seeking the appointment of a Special Officer to examine into the affairs of the Association are within the rights of the writ petitioner in W.P. No. 258 of 2020. It must be pointed out that the writ petitioner in W.P. No.203 of 2020, has only sought conducting the elections for the Executive Committee.

16. As regards questioning of conduct of elections, in the present Writ petitions, it is very strange question, because, it has been informed to this court that the petitioner in W.P.No.203 of 2020 has expressed willingness to participate in the said election. He has not chosen to question or seek any direction seeking appointment of a Special Officer to manage the affairs of the said Association. That relief is sought only by the writ petitioner in W.P. No.258 of 2020. That writ petitioner can contest the election only, if his wife properly permits him to participate in the election. Therefore, in these circumstances, the Writ petitioner in W.P.No.258 of 2020, who has not questioned the conduct of the election, seeks to scuttle the entire Association by seeking appointment of a Special Officer based on the representation dated 26.12.2019. Therefore, the allegations of both the petitioners are suspect and their motives are not bonafide.

17. Having heard the arguments of the learned Senior Counsel arguments, it transpires that the Association has not filed annual returns. It is a fact that the elections have not been held after the formation of Society and the assumption of the present Office bearers. The explanation given by the respondents, has not been accepted by the Registrar of Societies.

18. At this juncture, this Court is not prepared to examine those explanations to find out whether they are satisfactory or not. The learned Senior Counsel for the petitioners stated that this Court can appoint any person to oversee and conduct the election. But, an Election officer has already been appointed and he has taken the said issue in his hands. In the affidavit filed there is no allegation raised either against the Election officer or the named Advocate by questioning their bonafide. The only point raised in the grounds filed in the affidavit, is that the Election officer has issued a sequence of dates for conducting elections but that by itself would not in any way cast malafide intention on the Election officer. Therefore, I am not prepared to issue any direction in this regard.

19. Both the learned Senior Counsels and the learned Special Government Pleader for the respondents submitted that this Court

may direct the Registrar of Society to appoint a Special Officer. In his reply, the learned Special Government Pleader appearing for the Registrar of Societies, has stated that if necessary, they may also appoint the Special officer to oversee the elections.

20. Therefore, on the ground that the writ petitioner in W.P.No.203 of 2020, seeks to set aside the election after having submitted his nomination to participate in the election, I hold that he is indulging in an adventure to advert the members of GOOA for some reason like canvassing, which would be better to move around gather votes in order to avoid free and fair elections from being conducts.

21. Insofar as the writ petitioner in W.P. No.258 of 2020 is concerned, he has sought appointment of a Special Officer to manage the Association is concerned, he is not a owner of a flat. In the present writ petition, no documents have been filed proving authorization, especially to participate in the election.

22. In such circumstances, I am not prepared to accede to any of the requests and it is specifically ordered that the District Judge and the Advocate who has been intimated shall alone conduct the elections. I am not prepared to appoint any of the Special Officer even as observer.

23. This Court cannot go into any other details. It is for the member to hold the election and the members have nominated a retired District Judge and also, an Advocate for such purpose. For all the above reasons, the writ petitions stand dismissed. The Election Officer already appointed may, in accordance with rules and regulations issue a fresh time schedule for the election and call for the elections.

24. In view of the above, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai, Tamil Nadu 600 028.
2. The Registrar of Societies - Madras, South,
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3. The Secretary,
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4. The Election Officer,
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Tiruvalluvar District,
Chennai 600 056.
5. The Secretary,
Commercial Tax and Registration Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

+2cc's to Mr.K. Balu, Advocate, S.R.No. 13926, 13927
+2cc's to Mr.S.Ashok kumar, Advocate, S.R.No. 12968
+2cc's to Mr.S.Ashok Kumar, Advocate, S.R.No. 12967
+2cc's to Government Pleader, SR.No. 14198

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W.P. Nos. 203 and 258 of 2020
and

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KKV/22/05/2020