

O.A.No.22 of 2020
in
C.S.No.14 of 2020

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed to grant an order of interim injunction restraining the 1st respondent/defendant, its men, agents, servants, representatives or anyone acting under or through it from, in any manner, conducting or holding the election to be held on 12.01.2020 or thereafter, since it is a dissolved society as per Section 44(4) of Tamil Nadu Registration of Societies Act, 1975, pending disposal of the above suit.

2. The present application is filed in a suit for a permanent injunction to restrain the 1st defendant from conducting the election on 12.01.2020 or thereafter, and for a mandatory injunction directing the 2nd defendant to affiliate the plaintiff association as a representative of the State of Tamil Nadu. As is evident, this application is for an interim injunction on the same lines as the permanent injunctive relief prayed for in the plaint.

3. I heard the learned senior counsel for the applicant/plaintiff, the learned counsel for the 1st respondent and the learned counsel for the 2nd respondent.

4. The principal contention of the learned senior counsel for the applicant is that the 1st respondent was dissolved under the provisions of the Tamil Nadu Societies Registration Act, 1975 (the TN Societies Registration Act). In support of this contention, the learned senior counsel referred to the Gazette Notification at page No.54 of the typed set of papers filed by the plaintiff and, in particular, to Serial No.542 at page No.55, which shows that the first respondent was removed from the Register of Societies. In this connection, he also referred to the reply received from the Public Relations Officer of the Registrar of Societies confirming that the 1st respondent Society became a defunct society under Section 44(4) of the TN Societies Registration Act and that was notified vide Government Gazette dated 19.07.2017. After the 1st respondent became defunct, he submitted that the applicant was registered as a society by the Registrar of Societies on 04.10.2019, as evidenced by the Certificate of Registration under

Section 10 of the TN Societies Registration Act at page No.52 of the typed set of papers. Upon registration of the applicant, the learned senior counsel contended that only the applicant is entitled to affiliation with the 2nd respondent, i.e. the Kho-kho Federation of India, and there cannot be two societies in respect of one sport.

5. In these circumstances, he pointed out that the 1st respondent issued a notice for the Special General Body Meeting on 12.01.2020. On account of the fact that a defunct society was convening a meeting of its General Body in order to elect office-bearers, he submitted that the applicant was constrained to file the present suit. In view of the fact that the society is defunct, he contended that the 1st respondent is not entitled to function as per the provision of the TN Societies Registration Act. In addition, he contended that the 1st respondent is not functioning either in accordance with its bye-laws or in accordance with the Rules and Regulations of the 2nd respondent herein. In particular, he submitted that the Secretary of the 1st respondent has continued in that position for about 40 years. Even with regard to deputing participants for competitions, he submitted that it is not being done in a fair and

reasonable manner and that arbitrary choices are being made by the office-bearers of the 1st respondent. Consequently, the applicant is entitled to an interim injunction and that the order of interim injunction should be made absolute.

6. On the contrary, the learned counsel for the 1st respondent contended that the applicant is neither a member nor an office-bearer of the 1st respondent and, therefore, does not have local standi to file the suit or the present application.

7. The second submission was that the 1st respondent is affiliated to the 2nd respondent as well as the Indian Olympic Association, whereas the 1st respondent herein is not affiliated. With regard to the contention that the 1st respondent is defunct as per Section 44 of the TN Societies Registration Act, he submitted that it is the admitted position that the 1st respondent is carrying on operations. Consequently, it is not liable to be dissolved in terms of Section 44(1) and (2) of the said Act. As regards non-filing of financial statements and other documents for three consecutive financial years, he pointed out that this is a curable defect and that the 1st respondent had

already submitted a letter dated 21.01.2020 to the Registrar of Societies seeking restoration of the 1st respondent. In addition, he submitted that a society is an association of persons and not a juristic person and, therefore, does not cease to exist because it is deemed to be defunct. He also pointed out that the applicant is not duly constituted for the purpose of affiliation with the 2nd respondent Federation. For this purpose, he referred to the Bye-laws of the 1st respondent and pointed out as to how the Bye-laws provide for district level bodies, which are affiliated to the 1st respondent. By contrast, he pointed out that there is no equivalent provision in the Bye-laws of the applicant. For all these reasons, he submitted that the applicant is not entitled to the order of interim injunction.

8. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court reported in ***I.Nelson and another v. Kallayam Pastorate and others [(2006)11 SCC 624]***, and in particular, paragraphs 14 to 16 thereof, wherein the Hon'ble Supreme Court held that a society need not necessarily be held to have become defunct only because certain statutory provisions have not been complied with. Likewise, in this case, he contended that the temporary

defunct status of the 1st respondent is only on account of non-filing of documents and not on account of non-operation. Consequently, it is a curable defect and that cannot be the basis of an application for interim injunction at the instance of a 3rd party. Thus, the ad-interim injunction that was granted earlier is liable to be vacated by dismissing the application.

9. The learned counsel for the 2nd respondent Federation confirmed the position that only one association can represent the State as regards the sport "Kho-Kho". With regard to the cancellation of the registration, he submitted that the said fact was not within the knowledge of the 2nd respondent Federation. On account of the non-election of office-bearers, he submitted that only a provisional affiliation was granted and not a permanent affiliation. As regards the 1st respondent, on receipt of the complaint from the applicant, he pointed out that an enquiry was initiated but the said enquiry was kept in abeyance on account of the present suit. He also confirmed that it is necessary to have district level bodies which are affiliated to the state association.

10. By way of rejoinder submissions, the learned senior counsel for the applicant submitted that, as per Section 9(2)(c) under the TN Societies Registration Act, no society can be registered with the word "state" as part of its name. In view of the fact that the applicant was duly registered on 04.10.2019, he pointed out that it is no longer possible to restore the first respondent. With regard to *locus standi*, he pointed out that, as a duly registered society catering to the same sport, the applicant has the civil right to ensure that a defunct society does not carry on functions or elect office-bearers. He also pointed out that the General Secretary of the 1st respondent, Mr.Appavoo Pandian, started functioning in that capacity from 2002, as per the counter-affidavit of the 1st respondent and that he is 77 years old, which is above the outer age limit prescribed, both by the 2nd respondent and under the National Sports Code. With regard to the judgment that was relied upon by the learned counsel for the 1st respondent, he pointed out that the judgment turned on the fact that the society in question was registered both under the Societies Registration Act, 1860 and under the TN Societies Registration Act and that, in that factual

context, the Hon'ble Supreme Court concluded that the fact that it had become defunct under the State Act, would not render it defunct under the Central Act.

11. I considered the submissions of the learned senior counsel/counsel for the respective parties and examined the records.

12. The short question that arises for consideration is whether the 1st respondent is not entitled to carry on functions on account of it being deemed to be defunct. Under Section 44 of the Tamil Nadu Societies Registration Act, 1975, Sub-section 3(b) thereof provides that if a Registered Society has not, for three consecutive financial years, filed with the Registrar all or any of the documents referred to in clause (b) of Sub-Section (3) of Section 16, the Registrar may notify the said fact by making a publication in the Tamil Nadu Government Gazette, and send a notice to the registered society by registered post. Once the time specified in the said notice expires, the Registrar may, unless cause to the contrary is previously shown by the registered society, strike-off the name of the registered society from the register and publish a notice to that effect in the Tamil Nadu Government Gazette. On publication of such notice, the registered society shall be

deemed to be dissolved.

13. In this case, it appears that such a publication was issued in the Tamil Nadu Government Gazette, as evidenced by page Nos. 54 and 55 of the typed set of papers filed by the applicant. Nevertheless, it is clear from Section 44(6) that it is possible to restore the society, which is deemed to be defunct by filing an application under Sub-Section(6). Sub-Section (7) provides that the registered society, whose name is restored to the register under sub-Section (5) or sub-Section (6), shall be deemed to have continued in existence as if its name had not been struck off. Sub-Section 8 provides that if the name of the registered society having been struck-off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made or an appeal has been made but dismissed, the registered society shall not function and the provisions of Section 39 shall apply as if the registration of such society has been cancelled. Section 39 provides that when the registration of the registered society is cancelled, the registered society shall forthwith cease to carry on its business.

14. The facts of this case should be examined *prima facie* in light

of the aforesaid statutory context. Upon such examination, I find that TN Societies Registration Act does not prohibit a society, which is deemed to be defunct under Section 44(4), from carrying on functions until the stage specified in Section 44(8) thereof is reached. In this case, an application was submitted by the 1st respondent seeking restoration under letter dated 21.01.2020. At this juncture, it is not possible to determine as to whether that letter qualifies as a valid appeal in terms of Section 44(6) of the Act and there is no evidence that the Section 44(8) has been reached. In any event, such determination should be made by the Registrar of Societies. Meanwhile, it is clear from the documents produced before this Court and the submissions of the learned counsel for the 2nd respondent Federation that a provisional affiliation was provided to the 1st respondent and such affiliation continues as on date. It also appears that the 1st respondent is affiliated to the Indian Olympic Association.

15. In these facts and circumstances, the question arises as to whether the applicant has made out a prima facie case and, more importantly, whether the balance of convenience is in favour of the continuation of the ad-interim injunction that was granted previously.

Given the fact that the Tamil Nadu Societies Registration Act does not prohibit a society, which is deemed to be defunct from carrying on functions unless the final stage as per Section 44(8) is reached, I am of the view that the order of interim injunction cannot be continued at the instance of the applicant herein, which is a rival society, and its locus standi appears prima facie tenuous. If the order of interim injunction is vacated, the applicant would not be put to irreparable hardship. Therefore, this application is disposed of with the following directions:

(i) The order of ad-interim injunction granted on 10.01.2020 is hereby vacated.

(ii) It is made clear that the pendency of the suit shall not preclude the 2nd respondent Federation from continuing with the enquiry that was initiated upon receipt of the complaint from the applicant.

(iii) This order and the pendency of the

civil suit shall not preclude the Registrar of Societies or any other Governmental body from taking appropriate action in respect of the non-filing of the financial statements and other documents by the 1st respondent or any other action in accordance with the Tamil Nadu Societies Registration Act, 1975.

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12.02.2020

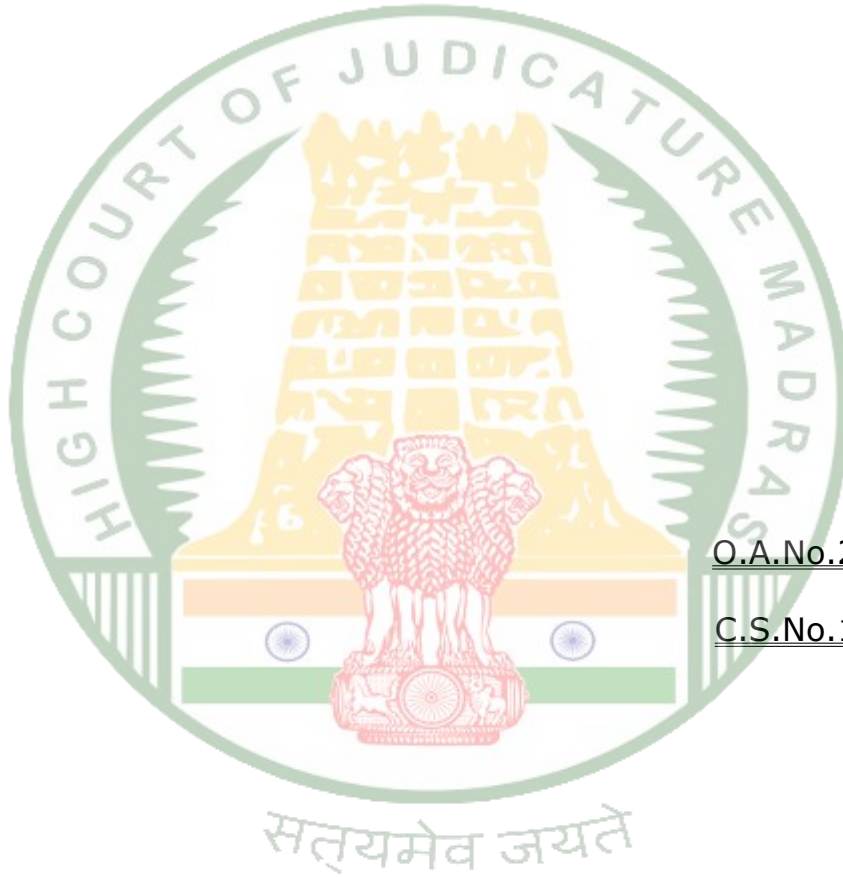


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