IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.250 of 2020
and C.M.P.No.4215 of 2020

S.Arivu ..Appellant

-vs-

1.The Secretary to Govt.,
Dept. of Commercial Taxes and
Registration, Secretariat,
Fort St. George, Chennai-9.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.

3.The District Registrar/Registrar of
Societies, Cuddalore.

4.The Bishop
ALC Bharathi Road, Cuddalore-07.

5.The Chairman
Pastarate Committee/Convener ALC
Arbitration Road, ALC Campus,
Bharathi Road, Cuddalore-01.

6.The Secretary,
ALC Church Board, Bharathi Road,
Cuddalore-01. ..Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2019 passed in W.P.No.26718 of 2019 on the file of this Court.

PRAYER: WP.NO.26718 of 2019

Writ Petition praying to issue Writ of Mandamus to forbear the Third Respondent from approving the election date 03.08.2019, since the Arcot Lutheran Church society has been declared non-operating (Defunct) by the Third Respondent pending the representation of the Petitioner dated 06.08.2019.

For Appellant	:	Mr.R.Krishna Kumar
For Respondents	:	Mr.T.M.Pappiah Spl.G.P. For RR 1 to 3
	:	Mr.Srinath Srideven for RR 4 and 6

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for the appellant, learned Special Government Pleader for respondents 1 to 3 and learned counsel for respondents 4 and 6.

2.We have gone through the entire length and breadth of the pleadings that have been placed on record by the appellant, who contends that the learned Single Judge has fallen in error in treating the proceedings concluded under Section 44 (4) as a mere notice under Section 44 (3) of the Tamil Nadu Societies Registration Act, 1975. The contention is that these proceedings stood foreclosed, for which he relies on the documents which have been filed, particularly the document at page no.98 of the paper book and the mention of the respondent Society at Sl.No.168. His contention is that this error is apparent and therefore, the impugned judgment deserves to be set aside.

3.Learned counsel for respondents 4 and 6 has vehemently opposed the appeal contending that as a matter of fact, the document relied on by the appellant was a proceeding initiated in terms of sub-section (3) of Section 44, but the same had not concluded at all by passing of any order by the Registrar under sub-section (4) of Section 44. His contention is that as a matter of fact, the Government has issued G.O.(Rt.) No.633, Commercial Taxes and Registration (M1) Dept., dated 18.11.2019, whereby the entire proceedings has been closed and the notice under Section 44 has been dropped.

4.Having considered the submissions raised, what we find is that the appellant came up with the following reliefs in the writ petition:-

a) "Appoint a Retired High Court Judge as interim administrator to look after the management and administer the affairs of the 4th to 6th respondent's society for betterment of justice ;
b) Injunction restraining the Respondents 4 to 6, their men, agents or any other person claiming through them from interfering or managing or administering the day to day affairs Arcot Lutheran Church society pending disposal of this writ petition;
c) Directing the 3rd respondent to conduct a detailed audit of funds received and spent by appointing an independent auditor and conduct a forensic audit into the day to day affairs of the management;
d) Issue an order or direction more particularly in the nature of writ of mandamus to forbear the 3rd respondents from approving the election dated 03.08.2019, since the Arcot Lutheran Church society has been declared non-operating (Defunct) by the 3rd respondent pending the representation of the petitioner dated 06.08.2019."

5.The learned Single Judge appears to have granted an interim order on 06.09.2019 to the following effect:-

> "Mr. T.M. Pappiah, Learned Special Government Pleader takes notice for the First to Third Respondents and Mr. Srinath Sridevan, Learned Counsel takes notice for the Fourth and Sixth Respondents. 2. Notice to the Fifth Respondent. Private notice is also permitted.
>
> 3. Learned Senior Counsel appearing for the Petitioner submits that the Third Respondent/Arcot Lutheran Church Society had been declared as defunct on 05.09.2001 and as per the information sought under the Right to Information Act, 2005, the last returns have been filed only for the financial years 1995-1996 and 1996-1997 and thereafter, no attempts were made for revival of the Society. In such circumstances, it is complained that despite the aforesaid position of the Society, the funds have been collected and misused without proper accounting.
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> 4. In view of the aforesaid submissions made, there shall be an order of interim injunction restraining the Fourth to Sixth Respondents from withdrawing any amount from its bank account until further orders. Further, any amount collected or

received by the Fourth to Sixth Respondents shall be immediately remitted in their accounts with in any Nationalized bank, but no withdrawal of those amounts shall be made without prior permission of this Court, until further orders. "

6.The narration of facts as above would demonstrate that the reliefs claimed in the writ petition were virtually to supersede the management of the Society levelling allegations of alleged financial irregularities and for conducting an audit in respect thereof. The prayer also was to prevent the District Registrar, the third respondent, from approving any elections being set up by the Society.

7.In our considered opinion, all these reliefs were not reliefs liable to be entertained in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, inasmuch as the appellant petitioner virtually wanted an injunction against the Society, which could not be a subject matter for a writ petition and for which, an aggrieved person having the locus could have moved by way of a regular suit or otherwise or approached the concerned authorities in the appropriate forum. The prayer for not accepting elections even before they are approved of was an absolutely premature exercise undertaken by the appellant petitioner in the writ petition and therefore, the writ petition, in our opinion, should not have been entertained at all by the learned Single Judge, much less the passing of any interim order or interfering with the same. Ultimately, the learned Single Judge has dismissed the writ petition and as stated by the learned counsel for respondents 4 and 6, the curtain has already been drawn on the proceedings with the issuance of the G.O. No.633, dated 18.11.2019, which is not the subject matter of challenge in the writ petition. Consequently, there is no merit in this appeal.

The Writ Appeal is, accordingly, dismissed. No costs. Consequently, C.M.P.No.4215 of 2020 is also dismissed.

Sd/-
Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

sra

To

1.The Secretary to Govt.,
Dept. of Commercial Taxes and
Registration, Secretariat,
Fort St. George, Chennai-9.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.

3.The District Registrar/Registrar of
Societies, Cuddalore.

+1cc to Mr.Sridevan, Advocate, S.R.No.24941
+1cc to Mr.Amalraj, Advocate, S.R.No.24940

W.A.No.250 of 2020

MG(CO)
KKV/28/10/2020