

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04 / 12 / 2019
Delivered on	24 / 01 / 2020

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

**W.P.No.17583 of 2019, 31752 & 31755 of 2019 &
Connected miscellaneous petitions**

and

**O.A.Nos.574, 575 & A.No.3759 of 2019 in C.S.No.353 of 2019 &
O.A.No.657 of 2019 in C.S.No.419 of 2019 &
O.A.No.701 of 2019 in C.S.No.441 of 2019**

W.P.No.17583 of 2019

South Indian Artistes' Association,
Rep. by its General Secretary,
No.1/8, Dr.Narasiman 1st Cross Street,
Flat No.2, Ground Floor, North Boag Road,
T.Nagar,
Chennai-17.

.. Petitioner

Vs.

1.The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai - 600 032.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned communication No.6443/E2/2019, dated 19.06.2019 issued by the first respondent and quash the same and consequently forbear the first respondent from interfering with the election process of the petitioner-Association.

For Petitioner : Mr.E.Omprakash
Senior Counsel
For Mr.Krishna Ravindran

For Respondents : Mr.P.H.Arvinth Pandian
Additional Advocate General
Assisted by
Mr.T.M.Pappiah
Special Government Pleader

For Impleading
Petitioners :Mr.R.Subburaj (W.M.P.No.18775 of 2019)
Mr.R.Sagadevan (W.M.P.No.19007 of 2019)
Mrs.Hema Sampath, Senior Counsel
For M/s.V.Anantha Natarajan
(W.M.P.No.19017 of 2019)
Mr.N.Umapathi (W.M.P.No.19118 of 2019)
Mr.A.L.Somayaji, Senior Counsel
For Mr.V.Vasanthakumar(W.M.P.No.19124/2019)
Mr.R.Thiagarajan, Senior Counsel
For M/s.AAV Partners (W.M.P.No.19135 / 2019)
Mr.A.L.Somayaji, Senior Counsel
For Mr.V.Vasanthakumar(W.M.P.No.19138/2019)
Mr.S.Siva Shanmugam (W.M.P.No.22500 of 2019)

* * *

W.P.No.31752 of 2019

South Indian Artistes' Association,
Rep. by its President Mr.M.Nasser,
No.21, G1, Nanda Apartments,
Habibullah Road,
T.Nagar, Chennai-17.

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration,
(M1) Department,
Secretariat, Chennai - 600 009.

2. Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

3.The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai - 600 032.

4.Mrs.P.V.Geetha,
Assistant Inspector General of Registration,
Special Officer, South Indian Artiste Association,
Office of DIG, Registration,
Guindy Industrial Estate,
Chennai - 600 032.

.. Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the impugned Government Order in G.O.(Ms)No.177, Commercial Taxes and Registration (M1) Department, dated 06.11.2019, on the file of the first respondent and quash the said impugned Government order being arbitrary, colourable exercise of power, in derogation of the statutory provisions.

For Petitioner : Mr.E.Omprakash
Senior Counsel
For Mr.Krishna Ravindran
For Respondents : Mr.P.H.Arvinth Pandian
Additional Advocate General
Assisted by
Mr.T.M.Pappiah
Special Government Pleader

W.P.No.31755 of 2019

Sl.Karthi,
The Treasurer,
South Indian Artistes' Association,
No.21, G1, Nanda Apartments,
Habibullah Road,
T.Nagar, Chennai-17.

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration,
(M1) Department,
Secretariat, Chennai - 600 009.

2.Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

4. Mrs. P.V. Geetha,
Assistant Inspector General of Registration,
Special Officer, South Indian Artiste Association,
Office of DIG, Registration,
Guindy Industrial Estate,
Chennai - 600 032.

For Petitioner : Mr.V.P.Sengottuvel
For Mr.Krishna Ravindran

For Respondents : Mr.P.H.Arvinth Pandian
Additional Advocate General
Assisted by
Mr.T.M.Pappiah
Special Government Pleader

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O.A.Nos.574, 575 & A.No.3759 of 2019
in C.S.No.353 of 2019

A.Elumalai

... Applicant / Plaintiff

Vs.

1.The South Indian Artistes' Association,
Rep. by its General Secretary,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-17.

2.The Election Officer,
The South Indian Artists Association,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai - 600 017.

... Respondents / Defendants

Prayer in O.A.No.574 of 2019 in C.S.No.353 of 2019

Original Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 1 and 2 of C.P.C., for grant of an order of interim injunction, restraining the respondents / defendants, their men, agents, servants, or any other member claiming under them including Executive Members from conducting election for the first defendant Association i.e., Executive Committee including President, Secretary, Treasurer for the period

2019-22 pursuant to the Executive Committee Meeting held on 14.05.2019 in view of the fact that the Executive Committee has ceased to hold office from 18.10.2018, pending disposal of the suit.

Prayer in O.A.No.574 of 2019 in C.S.No.353 of 2019

Original Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 1 and 2 of C.P.C., for grant of an order of interim injunction, restraining the respondents / defendants, their men, agents, servants or any other member claiming under them including Executive Committee members from in any way administering the Association by convening any meeting including General Body meeting for conduct of election or otherwise, pending disposal of the suit.

Prayer in A.No.3759 of 2019 in C.S.No.353 of 2019

Application filed under Order XIV Rule 8 of Original Side Rules read with Section 151 of C.P.C., to appoint an Ad-hoc Committee to administer the first respondent / defendant Association to finalize the proper members / voters list and to conduct a free and fair election of Executive Committee of the first respondent / defendant Association.

For applicant /
Plaintiff : Mr.S.S.Rajesh

For Respondents /
Defendants : Mr.V.P.Sengottuvel
For Mr.Krishan Ravindran for D-1

* * *

O.A.No.657 of 2019 in C.S.No.419 of 2019

K.Benjamin

... Applicant /
Plaintiff

Vs.

1.The South Indian Artistes' Association,
Rep. by its General Secretary,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-17.

2.The Election Officer,
The South Indian Artists Association,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai - 600 017.

... Respondents /
Defendants

Prayer:- Original Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 1 and 2 of C.P.C, for grant of an order of interim injunction restraining the respondents / defendants, their men, agents, servants, or any other member claiming under them from in any way declaring the results of the Election held on 23.06.2019 pursuant to the Election notification, dated 29.05.2019, pending disposal of the above suit.

For Applicant /
Plaintiff : Mr.S.Balaji

For Respondents /
Defendants : Mr.V.P.Sengottuvel
For Mr.Krishna Ravindran for D-1

* * *

O.A.No.701 of 2019 in C.S.No.441 of 2019

A.Elumalai

... Applicant /
Plaintiff

Vs.

1.The South Indian Artistes' Association,
Rep. by its General Secretary,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-17.

2.The Election Officer,
The South Indian Artists Association,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai - 600 017.

... Respondents /
Defendants

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Prayer: - Original Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 1 and 2 of C.P.C. for grant of an order of interim injunction restraining the respondents / defendants, their men, agents,

servants, or any other member claiming under them including Executive Committee members from implementing the election held on 23.06.2019 for the first respondent / Defendant Association, i.e., Executive Committee including President, Secretary, Treasurer for the period 2019-22, pursuant to the Emergency Executive Committee Meeting held on 14.05.2019 in view of the fact that the Executive Committee has ceased to hold office from 18.10.2018, pending disposal of the suit.

For applicant /
Plaintiff

: Mr.S.S.Rajesh

For Respondents /
Defendants

: Mr.V.P.Sengottuvel

For Mr.Krishan Ravindran for D-1

* * *

COMMON ORDER

W.P.No.17583 of 2019 has been filed assailing the order of the Registrar of Societies, South Chennai, dated 19.06.2019, whereunder the petitioner-Association was restrained from conducting election for the Executive Committee for 2019-2022.

2. The writ petitioner is an Association and registered under the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as "the Act"). On 18.10.2015, an election was held for the office bearers of the petitioner-Association for a period of three years. The term of office bearers had expired on 18.10.2018. However, before expiry of the period, an Annual General Body Meeting was convened on 19.08.2018 and the term of office bearers was extended for another six months, for the reason that the construction of convention hall and office premises of the petitioner-Association was at the crucial stage.

3. The petitioner would state that since the office bearers were held up in shootings and they were busy with raising of funds for the ongoing construction and for some other reasons, they could not conduct the Executive Committee Meeting before the extended period of six months i.e., 18.04.2019, but in the meeting held on 28.04.2019, the Hon'ble Mr.Justice.E.Padmanabhan (Retired) was appointed as an Election Officer to conduct election for the office bearers of the petitioner-Association.

4. It is the case of the petitioner-Association that the Form VI and Form VII were duly filed with the first respondent on 22.09.2018 and the latest

Form VI was updated and filed on 17.05.2019. The Election Officer also finalized the eligible voters list for the election to be conducted on 23.06.2019. Accordingly, an election notification, dated 29.05.2019 was issued. While so, a letter was received from the first respondent, dated 13.06.2019, levelling certain allegations, based on the complaints received from the members. The petitioner-Association sent a reply dated 17.06.2019, however, the first respondent without due consideration to the detailed reply given by the petitioner-Association, in a hurried manner, issued the impugned order.

5. According to the petitioner-Association, the impugned communication dated 19.06.2019, is arbitrary, illegal and *mala-fide* and it is liable to be set-aside being violative of law. As per Section 36 of the Act, the first respondent is authorized to take action on the complaint of not less than the 1/3rd of the members of the registered Society, but in this case, the complaints preferred by 61 members do not constitute minimum required member of 1/3rd of the members. The power and functions of the Registrar under Section 36 of the Act are only ministerial and he cannot exercise any further powers other than seeking for clarification, but under the guise of seeking clarification, the first respondent has exercised extraordinary powers of stalling the election process, which is against the decision of the Division Bench of this Court reported in

R. Muralidaran and Ors. vs. The District Registrar and Ors. [2008 (2) LW 75].

6. In the counter affidavit filed by the first respondent, it is stated that the General Secretary of the Association is empowered to sue or to be sued on behalf of the Association under Bye-law 71. Since the tenure of the present General Secretary expired as early as on 18.10.2018, he has no authority to approach this Court and file the present Writ Petition. It is further stated that the term of office bearers of the Association is governed by Section 15 (4) of Act, as per which, the term of office of the members of the Committee shall not exceed 3 years from the date of their appointment and hence, their term cannot be extended by way of Resolution at the General Body Meeting on the ground that the construction of convention hall and office premises are in progress. Further, Clause 37 of the Bye-laws of the Association, mandates conduct of the election of office bearers once in three years. Therefore, the Executive Committee had no power to convene the meeting on 28.04.2019 for the purpose of conducting election for the forthcoming term.

7. The counter affidavit further proceeds that the compliant given by 61 members acted only like spark plugs, providing sparks for ignition of an enquiry

under Section 36 of the Act and the impugned communication is not solely on the complaint of those individuals, but under *suo-motu* power under Section 36 of the Act. It is further stated that the first respondent has not gone into the election dispute between the parties, but deals with the issues, viz., (i) the different members of the petitioner-Association, (ii) the genuineness of the complaints given by the members of the petitioner-Association, (iii) finalizing the voters list that consists all eligible voters and (iv) the decision making power of the Executive Committee pursuant to the expiry of its tenure. In paragraph No.19 of the counter, it is stated that merely because the first respondent has accepted the Form VII allegedly containing the entire list of voters, it cannot be said that the first respondent has exercised powers, which were not available to him under the Act.

8. A reply affidavit has been filed by the petitioner-Association, wherein it is stated that the General Body of the Association is a supreme body, which is vested with the power to decide on certain exigencies. The Resolutions passed in the Annual General Body Meeting were intimated to the first respondent. No member of the petitioner-Association had challenged the decision taken in the Annual General Body Meeting in the manner known to law. The impugned order is passed at the instance of frivolous complaints from some members. It is

further stated that Bye-law 71 provides for the power to sue or to be sued in the name of the General Secretary of the Association. As the Bye-laws of the Association do not provide for any interim arrangement and in the absence of any such provision, the outgoing General Secretary continue to represent the Association till the elected General Secretary comes into place. Under Section 36 of the Act, an enquiry into the affairs of the registered Society can result with the exercise of power under Section 37 of the Act, viz., cancellation of registration and therefore, the first respondent is not entitled in law to pass any orders of cancellation of election, conduct of election, inclusion of members, exclusion of members and management of the affairs of the Society.

9. In the above Writ Petition, this Court, by an order dated 21.06.2019, in W.M.P.No.17059 of 2019, stayed the impugned communication, dated 19.06.2019 however permitted to continue the electoral process till the stage of polling of votes.

10. W.M.Ps.18775, 19007, 19017, 19118, 19124, 19135, 19138, 22500 of 2019 have been filed to implead the proposed parties, as respondents in the Writ Petition in W.P.No.17583 of 2019.

11. W.P.Nos.31752 & 31755 of 2019 are filed by the Association represented by its President and another by the Treasurer in his individual capacity, assailing the impugned G.O.(Ms).No.177, dated 06.11.2019 superseding the committee of the petitioner-Association by appointing a Special Officer. It is the case of the petitioners that the election to the Association was held on 23.06.2019 in pursuance of the order of this Court, dated 21.06.2019. At that juncture, a show-cause notice dated 05.10.2019 was issued calling upon the Association to show-cause as to why an action to supersede the committee of the Association shall not be proceeded with under Section 34-A of the Act. The petitioner-Association, by communication, dated 09.10.2019, sought for some documents. After receiving those documents, a detailed reply was submitted on 25.10.2019.

12. The grievance of the petitioners is that when the Court proceedings are nearing completion, the order was passed in an illegal and arbitrary manner without providing personal hearing to the petitioners. It is also contended that once an election process is started, till the conclusion of the same, the existing committee has to discharge its function for the day-to-day activities. Therefore, exercise of power under Section 34-A of the Act prior to the declaration of the result is untenable.

13. A common counter affidavit has been filed by the respondents 1 to 3, reiterating their stand as was taken in W.P.No.17583 of 2019. The sum and substance of the counter is that the term of office bearers of the petitioner-Association came to an end on 18.10.2018, so, it was not open to the petitioner-Association to take a different procedure with an intention to defeat the provisions of Section 15(4) of the Act. The first respondent has got powers to ensure that the petitioner-Association does not violate the provisions of the Act.

14. Civil Suits in C.S.Nos.353 of 2019 and 441 of 2019 have been filed by one A.Elumalai and C.S.No.419 of 2019 is filed by one Benjamin, challenging the decision taken in the Executive Committee Meeting held on 14.05.2019, and the conduct of election on 23.06.2019. Their main contentions are as follows:-

(i) The tenure of the Executive Committee of the South Indian Artistes' Association is for 3 years as per the Bye-law 37 and the term of Office expired on 18.10.2018 in view of Section 15 (4) of the Act. Even assuming that the Executive Committee members extended their tenure for a period of six months, the said date expired on 17.04.2019. Hence, the election announced

by the Election Officer on 29.05.2019 and any Resolution passed after 18.10.2018, were done without any proper authority.

(ii) The voters' list of the first defendant / South Indian Artistes' Association was finalised in pursuance of the orders passed in O.S.A.Nos.132 and 133 of 2015. Subsequently, the Executive Committee unilaterally demoted some of the members from professional category to non-professional category, when there was no Agenda or Resolution to that effect. There were inconsistencies in the list of old members and present members issued by the first defendant. Bye-law 40 of the Association mandates 21 days prior notice to the members, but the venue of conducting election at Dr.M.G.R.Janaki College, R.A.Puram as per the election notification, dated 23.06.2019 was changed on 22.06.2019, i.e., one day prior to the election. Hence, the present election is liable to be set-aside.

15. Along with the suits, applications in O.A.Nos.574 of 2019, 575 of 2019, 657 of 2019 and 701 of 2019 have been filed for grant of interim injunction and A.No.3759 of 2019 is filed to constitute an Ad-hoc committee to administer the first defendant-Association.

16. Counter affidavits have been filed by the respondents disputing and denying the allegations made by the applicants / plaintiffs. In the counter, it is stated that though the term of office was expired on completion of 3 years as per Section 15(4) of the Act, but it was extended under Bye-law 21 of the Association, which is for the welfare of the Association. The applicants / plaintiffs have also attended the Annual General Body Meeting convened on 19.08.2019. Admittedly, the said Resolution extending the term of office bearers was not challenged by any of the members.

17. With regard to change of venue, it is stated that the original venue of the election was at Dr.M.G.R.Janaki Arts and Science College, Chennai and the change in venue was due to mischief played by the members, who had approached the local police raising several issues. Hence, in the last minute, election venue was shifted to St.Ebbas School, Chennai. It is further stated that the Election Officer has issued an advertisement in the newspaper, informing the members about change of venue, which did not have any effect in the polling for the election, since more than 1600/2000 have cast their votes.

18. It is further stated that removal of certain erring members was done, after following due process of law. The removal of certain members and

changing from provisional to non-provisional have been done only as per the Bye-laws and for valid reasons. During the previous election conducted in 2015, the final list of eligible members was not provided to the proposed candidates, hence, the Hon'ble First Bench issued certain directions to finalise the eligible voters list. In the present election, such a scenario never existed and the updated voters' list was duly filed with the Registrar of Societies and sufficient copies were provided to all contestants. It is the case of the respondents that the applicants have not made out any ground for grant of interim orders sought for in the above applications and prayed for dismissal of the same.

19. Mr.E.Omprakash, learned Senior Counsel appearing on behalf of the petitioner-Association has made the following submissions:-

- ♦ The impugned order does not refer to any provision of law under which the order was passed or the authority of the 1st respondent in issuing such direction to defer the election.
- ♦ The action of the 1st respondent is allegedly based on 61 complaints against the election being held by the Association. The said complaints are stereotyped with name, address and signatures alone being assigned by the alleged complainants.

- ♦ The Registrar of Societies has no powers to interfere with the election process of the registered Society.
- ♦ The settled principles of law by various judgments establish that the Registrar of Societies cannot cancel elections, order re-elections, etc., and cannot sit on decision on the elections.
- ♦ The Registrar of Societies has acknowledged the filing of Form VI and VII periodically by the petitioner Association and the action of the Association against the 61 complainants was referred to the Form VII filed in 2017 itself and the Registrar could have verified the same and should have referred the parties to agitate their rights only before a Civil Court and not interfere with the election process.

20. In support of the above contentions, the following decisions have been relied on:

a) In ***K.Arivananthapandian and another vs Nadar Mahajan Sangam, S.Vellaichamy Nadar College, Nagamalai Pudukottai, Madurai 625 019, represented by its Secretary SVS Sundaramurthy, and 3 others reported in 1994 2 LW 584***, the relevant paragraphs read as follows:

"7.....Chapter IV also contains several provisions, but for our purpose, S. 36 alone is relevant which reads thus:—

“36. Power of Registrar to inquire into the affairs of registered society:- (1) The Registrar, may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society, or if so moved by the District Collector, hold or direct some person authorised by the Registrar by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of that registered society.

(2) An application to the Registrar under sub-Section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under sub-Section (1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.

(4) All expenses of, and incidental or preliminary to the inquiry shall where such inquiry is held:—

(a) on application be defrayed by the applicant therefor or out of the assets of the registered society or by the members or officers of the registered society, in such proportion if the Registrar may, by order in writing, direct and

(b) on the District Collector's or Registrar's motion, be defrayed out of the assets of the registered society and shall be recoverable as an arrear of land revenue.

(5) An order made under sub-Section (4) shall, on application be enforced by any civil court having local jurisdiction in the same manner as a decree of such court.

(6) A person holding an inquiry under this Section shall at all reasonable times have free access to all the books, accounts and documents of the registered society and shall have power to call upon the registered society and the officers of the registered society to produce such books, accounts and documents and furnish such statements and other information in relation to its business as he may direct.

(7) It shall be the duty of all persons who are or have been officers of the registered society to furnish the inquiring officer with all the books, accounts and documents in their custody or power relating to the registered society.

(8) A person holding an inquiry under this Section may summon any person who he has reason to believe, has knowledge of any of the affairs of the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the person holding the inquiry has reason to believe that such books, accounts or documents contain any entries relating to transactions of the registered society.

(9) The result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under S. 37, he may issue such direction to the

registered society, or any member of the registered society, as the Registrar may deem fit.”

Stress is laid by the appellants on the words constitution, working and financial condition ‘occurring in S. 36(1) of the Act. On the basis of those words, it is contended that the Registrar is entitled to inquire into the question as to who are the members, who can be recognised as having been elected to the Committee to carry on the affairs of the Sangam. It is submitted that Chapter III which deals with management and administration as such’ it also covers the working of the society, because a society cannot function without the Committee and how the Committee can be constituted, is also provided in Chapter III of the Act. Therefore, the Registrar, in exercise of his power under S. 36 of the Act is entitled to inquire into the matter only to ensure as to who are members of the Society, who have been elected to the Committee only for the purposes of the Act. On the contrary, it is the contention of the respondents that the Registrar has no such power, therefore, he has acted without jurisdiction. The definition expression ‘Registrar’ has already been extracted. As per the definition, the District Registrar is also the Registrar. As such, he is entitled to exercise all the powers which the Registrar can exercise under the provisions of the Act subject to such administrative directions as may be issued by the Inspector General of Registration, who is the higher authority. The powers of inspection, inquiry, cancellation of registration, winding up are all vested in the Registrar under the various provisions

contained in Chapter IV. He can, as a result of the inquiry cancel the registration of a society and also issue directions as deemed fit under the circumstances of each case. It is the Registrar who alone can register a society and it is the Registrar to whom Form No. VII is to be submitted. Any change in the membership or in the Committee also has to be reported to the Registrar, as per S. 15 read with Rule 17 in Form No. VII. S. 15(3) of the Act specifically provides that the members of the Committee shall be appointed at a meeting of the Society by a resolution of a majority of the members present and entitled to vote thereat. It is those members of the Committee who have to report to the Registrar the change in the constitution of the Committee under S. 15(2) of the Act in Form No. VII as prescribed under Rule 17 of the Rules. Thus, it is the Registrar who administers the Act. Therefore, for the purpose of the Act, it is necessary for the Registrar to be sure of the persons who are elected to the Committee of each and every Society, which comes under his jurisdiction. For this purpose, wherever Form No. VII is filed and the correctness of it is challenged by one or the other party, being the members of the Society/Sangam, he can inquire and find out as to who are elected to the Committee. Otherwise, it would not be possible for him to administer the Act and also exercise control and supervision over the societies in order to ensure that the societies function within the four corners of the Act and the Rules framed thereunder and the bye-laws formed by them. Of-course, the Act does not prescribe any forum to

challenge the election or the grounds on which the election can be challenged nor does it either by express provision or by necessary implication take away the jurisdiction of Civil Court. As such, the members of the society who claim to have been elected as members of the committees can undoubtedly approach civil court and have their claim adjudicated. It cannot at all be said that such an adjudication falls outside the purview of the Civil court. S. 9 of the Code of Civil Procedure specifically provides that the Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is because of this, as already pointed out, the Act has defined the expression 'Court' consequently, the power the Registrar exercises for determining the correctness or otherwise of the change reported in Form VII would be entitled to approach the Court as defined under the Act and have the same adjudicated by the Court. Of-course, if the order passed by the Registrar under S. 36 of the Act is not in accordance with the provisions of the Act and does not conform to the principles of natural justice and is passed without holding an inquiry as required by S. 36 itself, it would be open to the parties to invoke the jurisdiction of this Court under Art. 226 of the Constitution in which event, it would be open to this Court to exercise the jurisdiction or decline to exercise, depending upon the facts and circumstances of each case, and direct the parties to have it adjudicated by the Court as defined in the Act.

....

....

10. As far as point number (ii), whether the letters sent by registered post and under certificate of posting reached the District Registrar subsequent to 22.4.1994 or earlier, does not make any difference in the case, because the District Registrar has not held an inquiry. He has passed an order on 22.4.1994 itself, the date fixed for filing objections. However, we have already pointed out that the letters must have been delivered either on 22.4.1994 or earlier to that date. Thus, ignoring the letters seeking time and without holding an inquiry but on the basis of the letter containing the signatures of Thiru K. Arivanandapandian and 137 members of the general body requesting for fresh election, the District Registrar has ordered to call for an extra-ordinary general body meeting after giving a month's notice to the general body members, as per S. 128(1) of the Act and has further directed the Principal of the College to take up the responsibility to hold the election in a cordial atmosphere. Thereafter, he has passed an order on 11.5.1994 directing the Principal to complete the election and furnish a list of newly elected office bearers and send the same for the approved to the District Registrar, within the time stipulated as per the order of the District Registrar dated 22/4/1994. The order dated 11/5/1994 is only consequential based upon the order dated 28/4/1994. S. 36(1) provides for an inquiry and S. 36(1) shall be supported by such evidence as the Registrar may

require for the purpose of showing that the applicants have good reason for applying for an inquiry. Sub.S. (8) of S. 36 further provides that a person holding an inquiry under S. 36 is entitled to summon witnesses and examine them. Then, Sub.S. (9) thereof provides, the result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under S. 37, he may issue such direction to the registered society or any member of the registered society, as he may deem fit. Therefore, it is evident that the inquiry contemplated under S. 36 of the Act is an inquiry which as got all the trappings of a judicial proceeding. As such, the District Registrar was required to record evidence, if any, and hear the parties and pass orders in accordance with law. In this case, it is not in dispute that no such inquiry was held. Therefore, the order passed by the District Registrar on 22/4/1994 and 11/5/1994 are unsustainable, as the same have been passed in violation of the provisions of S. 36 of the Act and are also opposed to principles of natural justice. Hence, the same are liable to be quashed. Learned single Judge, as already pointed out, has quashed those orders.

11. No doubt, learned single Judge has quashed the impugned orders not on the ground that they have been passed in violation of the provisions contained in S. 36 of the Act and without affording an opportunity to the contending parties, but on the

ground that the District Registrar has no such jurisdiction. As we have already held that the District Registrar enjoys such jurisdiction, and we have also held that the orders are passed without following the procedure prescribed under S. 36 of the Act, the same are liable to be quashed. Point (ii) is answered in the negatived."

b) In **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another vs. State of Maharashtra and others reported in 2001 8 SCC 509**, the Hon'ble Supreme Court has held as follows:-

"12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal."

c) In ***C.M.S. Evangelical Suvi Davi Memorial Higher Secondary School Committee, Karisal through its Secretary Sri. S. David Stephen, S/o. Samuel, Krisal, Ambasamudram Taluk, Tirunelveli District vs. The District Registrar Cheranmahadevi, Tirunelveli District and 4 others reported in 2005 2 LW 550***, this Court has held as follows:-

"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.

....

....

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. Accordingly, the issue is answered. Post the Writ Appeals for disposal accordingly. "

It is relevant to note that the decision of the Division Bench in **1994 2 LW 584**, was overruled by the Full Bench in the case referred supra.

d) In *I. Nelson & another vs. Kallayam Pasorate and others reported in 2006 11 SCC 624*, it has been held as follows:-

"14. It is true that elections were being held under the supervision of an Advocate Commissioner for sometime past. We will also assume that there had been some mismanagement of the Church properties on the part of the elected representatives. We may also proceed on a further assumption that the provisions of the 1975 Act had also not been complied with. The question, however, remains that as the appellants before us were not parties in the High Court, whether the impugned order is sustainable in law. The High Court proceeded to set aside all the elections in their entirety on the premise that the society has become a defunct one.

....

....

17. We fail to understand as to why the Inspector General of Registration, who was impleaded as a party in the suit, also did not bring the relevant provisions of the Tamil Nadu Act to the notice of the High Court. The statutory authority, while allowing the impugned order to be passed by the High Court, abdicated itself of its statutory functions. The society might not be, in fact, registered as such under the 1975 Act, but, as it was registered under the 1860 Act, we have no other option but to hold that it was deemed to be registered also under the 1975 Act. Having regard to the provisions contained in Section 53

thereof, once the society became a society registered under the 1975 Act, all the consequences arising thereunder shall ensue. It was, therefore, for the statutory authorities to take recourse to such actions as are provided for in the 1975 Act or the Rules framed thereunder. In the event, the society became defunct or other statutory requirements were not complied with by the members of the society, penal measures could have been taken but in no situation the election of the office-bearers could have been set aside. Right to contest an election of an office-bearer of the society is a statutory right of the member thereof. Such a right also exists under the bye-laws of the society. It is not the case of the respondents that the bye-laws of the society are invalid in law. Once a valid election was held, the High Court, in our opinion, could not have directed setting aside of an election only on the purported ground that it became defunct. An almost similar question came up before this Court in Board of Control for Cricket in India v. Netaji Cricket Club [(2005) 4 SCC 741] wherein this Court, despite its jurisdiction under Article 142 of the Constitution of India, did not venture to consider the validity or otherwise of the election of the office-bearers of BCCI as they had not been impleaded as parties therein, stating: (SCC p. 763, para 84)

“84. On 11-10-2004, we had, after hearing the counsel for the parties observed that if a situation arises this Court would go into the validity of the election of the office-bearers of the Board held in

the meeting dated 29-9-2004, but, as indicated hereinbefore, we did so under a mistaken belief that the Board would be represented by the new office-bearers and, thus, all parties would be before us. However, it now stands admitted that the office-bearers either in their personal capacity or official capacity are not before us. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, we would not be in a position to entertain the dispute as regards validity of the meeting of 29-9-2004 resulting in the election of the office-bearers. Giving an opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum."

18. There is, therefore, no reason as to why the elected members should not be allowed to carry on the activities of the society wherefor they were duly elected. We may, however, hasten to add that when we say so, we do not intend to pronounce on the validity or otherwise of the elections held. If any application has been filed by a person aggrieved for setting

aside an election, the same undoubtedly will have to be disposed of in accordance with law. ”

e) In **C.M.S.Evangelical suvi David Memorial High Secondary School Committee, Karisal through its Secretary Secretary Sri.S.David Stephen, S/o.Samuel, Karisal, Ambasamudram Taluk, Tirunelveli District and 4 others reported in 2008 4 LW 1080**, the relevant paragraphs read as follows:

"36. In view of the foregoing analysis of all the relevant provisions and the ratio of the Full Bench decision, our conclusions are as follows: –

(i) The ratio of the Full Bench decision is only to the effect that the Registrar does not have any power either under Section 34 or 36 of the Tamil Nadu Societies Registration Act, 1975, to cancel the election to the committee, and, or to direct holding of fresh election.

(ii) If the Registrar of the Societies is not satisfied about the correctness of the Form VII, he need not take such Form VII on file, but he can direct the parties to approach the Civil Court to establish the validity of the election.

(iii) When any notice in Form VII is received by the Registrar, he is required to find out whether such notice has emanated from the appropriate authority. Obviously, he is also required to find out whether the persons claiming to be the members are in fact the members of the society. Since the register maintained in the

office of the Registrar is supposed to contain the names of such members, it is not difficult for the Registrar to find out as to who are the members of the society.

(iv) Section 36 of the Act contemplates that, if necessary, the Registrar can call upon the persons likely to have information, knowledge in the matter for enquiry and for recording of statements on oath.

(v) Such conclusion by the Registrar is only for the purpose of maintenance of correct records, but any such order regarding membership of the society or election to the committee for the purpose of maintenance of records is obviously subject to the decision of the Civil Court, whether final or interlocutory order. However, till any contrary order is passed by the Civil Court, either finally or even by interlocutory order, the authorities under the Tamil Nadu Societies Registration Act, 1975 or under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, are not expected to go beyond such taking of Form VII. There is no concept of accepting as many as Form VII are possible as adoption of such a course would obviously result in chaotic conditions.

(vi) It is immaterial as to whether the order of the Registrar is considered as “administrative” or “ministerial”. If, while passing the order, the Registrar acts arbitrarily, it would be open to the Writ court to consider the matter within the accepted parameters of writ jurisdiction and pass any appropriate order.

Under what circumstances the High Court can interfere would obviously depend upon the facts and circumstances of each case."

f) In *D.Dharmalingam vs. The District Registrar, Office of the Registrar, Madurai South, Palace Road, Madurai and 7 others* reported in 2010 3 CTC 390, the relevant paragraphs read as follows:

"22. In R. Muralidaran, the Division Bench has dealt with in detail about the power of the Registrar which can either administrative, quasi-judicial or ministerial and to what extent the order where amenable to judicial review. The Division Bench also held that acceptance of Form No. VII by the Registrar is not a declaration regarding the validity of the election. Therefore the Division Bench also said, following the Full Bench, that the party aggrieved should only go before a Civil Court and a person aggrieved by an election cannot challenge the acceptance or rejection of Form-VII by the Registrar as a short cut to invalidate the election. C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee v. District Registrar, Cheranmahadevi & others, 2008 (4) LW 1080, too, in the conclusion, the Division Bench held that the Registrar does not have power to cancel the election or to direct holding of election and if the Registrar is not satisfied about the correctness of Form No. VII, he need not accept it and he can direct the parties to approach the Civil Court. When Notice in Form No. VII is received by the Registrar, he has to verify certain particulars

and finally held it is immaterial as to whether the order of the Registrar is considered as “administrative” or ministerial, if it is arbitrary, the writ Court can consider. Therefore, we do not see any deviation in either of the orders from the principles laid down by the Full Bench in Christian Suvi case. But, we do hold, with due respect, that the per incuriam comment was in deviation from the principles laid down in Philip Jeyasingh Full Bench. ”

g) *In the Music Academy, rep. by its Executive Trustee, etc., v. Inspector General of Registration & others reported in 2005 4 LW 67*, the relevant paragraphs read as follows:

"41. Last but not the least comes two crucial questions, one relating to the prayer for quashing the show cause notice issued under Section 34-A and the other relating to the report of the Registrar calling upon the Society to remove the deficiencies/defects.

42. So far as 34-A of the Act is concerned, such provision relates to supersession of the Committee. Under the aforesaid provision, action can be taken by the Government for supersession of the Committee of the Society if such Committee is not functioning properly or the affairs of the Society are mismanaged or the society's activities are not in furtherance of the objects of the society or the Committee has contravened any of the provisions of the Act or the Rules made thereunder or wilfully disobeyed or

wilfully fails to comply with any lawful order or direction issued under the provisions of this Act or the Rules made thereunder. Before taking any such action, the Government is required to give an opportunity to the Committee to make its representation.

43. In the present case, the notice was issued by the Government as required under Section 34-A(1). However, at that stage, the Music Academy as well as some of the Members of the Committee have approached the court, and therefore, such proceeding has remained in doll-drums. As per Section 34-A, when the Government takes a decision to supersede the Committee, a Special Officer is required to manage the affairs of the Society for a specified period not exceeding one year. As per Section 34-A(4), the Special Officer so appointed is obliged to arrange for constitution of a new Committee in accordance with the provisions of the Act. The normal term of the Committee has come to an end and as per the present direction, election is directed to be held under the direct control of a retired Judge of the High Court to be assisted by an officer to be nominated by the Government. In such view of the matter, we do not feel that any useful purpose would be achieved in continuing the enquiry. As a matter of fact, the learned Addl. Advocate General in course of his submission has fairly submitted that if directions are issued for holding election, there may not be any necessity for appointing a Special Officer as the main intention of the Government was to set right the organisation and bring the same

back to the tracks as the organisation had been derailed. During pendency of the writ petitions the Music Academy/Executive Committee had submitted certain explanations and papers as well as application under Section 54 of the State Act. Such papers/applications have been returned by the State on the ground that the writ appeal and other writ petitions are pending. Now that the matters are being disposed of, the State would consider all the aspects and may suggest any remedial measures so that the deficiencies would not recur in future. However, since a new Executive Committee would be elected by virtue of the present order, we do not feel any real necessity for taking any action for supersession of the Committee on the basis of the show cause notice. "

21. With regard to the supersession of the committee under Section 34 of the Act, Mr.Omprakash, learned Senior Counsel would argue that the Government has not followed the essential ingredients before passing the order. It is his submission that when the election issue is sub judice, the respondents should not have ventured to pass the impugned order.

22. Per contra, Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing on behalf of the respondents would contend that the Writ Petitions as framed are not maintainable. It is the submission of the learned

Additional Advocate General that the conjoint reading of the Section 20 of the Tamil Nadu Societies Registrations Act and Rule 6 (h) of the Tamil Nadu Societies Registration Rules would show that the erstwhile office bearers have no authority to approach the Court as their period of office expired as early as on 18.10.2018.

23. The learned Additional Advocate General by placing reliance on the decision of this Court in the case of *The Music Academy vs. The Inspector General of Registration and another reported in 2005 (4) LW 67* and *The Madras Medical Mission vs. State of Tamil Nadu reported in 2003 1 MLJ 683* would contend that as per the provisions of 15 (4) of the Act, management of the Society has to vest with Government Body or the Managing Committee consisting of elected members and the term of the such elected members cannot exceed the term of three years. Hence, the unilateral extension of the tenure by the erstwhile Committee is impermissible. He would further add that By-law 21 contemplates clear interval of 21 days between the date of election and the date of calling for nominations and as per the election notification, the venue of the election was fixed at Dr.MGR. Janaki Arts and Science College, Chennai, however, one day prior to the date of polling, venue was changed. As the provisions of the Act and the Bye-laws are contravened, the Government has rightly appointed the Special Officer under Section 34 of the Act.

i) In *The Music Academy vs. The Inspector General of Registration* and another reported in 2005 (4) LW 67, the Division Bench of this Court has held as follows:-

"27. Lot of controversies have been raised regarding the manner of selection of the Trustees. Some of the office bearers are designated as Ex-Officio trustees. Apart from the above, as per 1979 bye-laws certain Trustees are also nominated. A reading of Sections 14 and 15 of the Act would leave no room for doubt that the management of the Society has to be vested in a Committee to be elected by all the members of the society. Therefore, there is no scope for having any nominated trustee far less there is any scope for providing that such nominated trustees would become members of the Managing Committee. Apart from the above contradiction between 1979 bye-laws and the provisions contained in the Act, the fact remains that such 1979 bye-laws had not been registered. Therefore, there is no scope for holding that any person could be nominated as Trustee nor it can be held that the nominated trustee can hold office for six years, because the Act is very categorical that the members of the Managing Committee should hold office for three years.

28. In view of the above analysis, it is apparent that all the office bearers must be elected and not by any other method and no member of the Committee can hold office for more than three

years, though there is no embargo for re-election any number of times."

ii) In *the Madras Medical Mission vs. State of Tamil Nadu reported in 2003 1 MLJ 68 3*, this Court has observed as follows:-

"76. S. 34-A of the Act sets out the circumstances in which supersession can be resorted to. It cannot be said that there is no legislative guidance with regard to the circumstances in which supersession can be effected and that the exercise of that power is not subjected to any limitation.

77. Before the power under that provision can be exercised, the Government should form the opinion that the Committee of the Society is not functioning properly, or that its affairs are mismanaged or that its activities are not in furtherance of the objects of the society, or that the committee has contravened any of the provisions of the Act or the Rules made there under, or that it had wilfully disobeyed or wilfully failed to comply with any lawful order or direction issued under the provisions of the Act. The power is to be exercised by a high authority and is not a power which can be exercised in a casual manner or in circumstances which are not sufficiently grave to warrant the exercise of that power.

78. Supersession does not result in any discrimination against the committee that is superseded when compared to committees of

other societies. The fact that under Section 36 the Registrar has the power to make an enquiry and, after such enquiry, may issue such directions as he may think fit does not in cases where he is not of the view that the registration of the society itself is to be cancelled, result in any hostile discrimination when the Government chooses to exercise the power of supersession under Section 34-A. While the power under Section 36 is to be exercised by the Registrar, that under Section 34-A is by the higher authority viz., the Government. The action that the Registrar may take is qualitatively different from the action that the Government may take under Section 34-A. If the Registrar, after the enquiry, decides to cancel the certificate of registration, the society is required to forthwith cease to carry on business except for the beneficial winding up and for that purpose it is required to pass a special resolution and dissolve itself in the manner provided under Section 41. On dissolution, the society will cease to exist. If, on the other hand, the Registrar chooses to give directions, the society will continue to function. In case the Society does not carry out those directions, it will make itself liable to have its committee superseded by the Government under Section 34-A. The supersession on the ground that direction has not been obeyed is one among several other grounds on which supersession can be effected, and is not the only ground. Section 34-A does not make any reference to Section 36 and does not mandate that the enquiry under Sec. 36 should precede the making of an order under Section 34-A.

79. Supersession of the committee while it deprives the elected committee of the right to manage the affairs of the society for a limited period does not bring about an end to the existence of the society, nor does it result in the society having to compulsorily wind up itself. This is in contrast to the effect of an order of cancellation of registration, which the Registrar may direct after an enquiry held under Section 36, if the result of the enquiry is such as to warrant cancellation of registration.

80. The plea of discrimination, therefore, is without any tenable basis. The circumstances in which the enquiry may be held under Section 36(1) are not spelt out in Section 36(1), while situations in which the supersession can be effected are laid down in Section 34-A. The power to order an enquiry under Section 36(1) is a very wide power. The enquiry may be held by the Registrar on his own motion or on the application of a majority of the members of a committee of a society, or on the application of not less than 1/3 members of the society or at the request of the District Collector. Such enquiry can be with regard to the constitution, working and financial condition of the society. This wide power given to the Registrar to direct an enquiry under Section 36(1) into the affairs of the society from its constitution upto its working and financial condition, is a power which the Registrar is required to exercise with a view to ensure that the society functions in accordance with law. The power given to the

Government under Section 34-A to supersede the committee is a power which is meant to be used in sufficiently grave situations in the best interest of the society itself, with a view to safeguard the interest of the society and of its members. It enables the Government to act promptly in cases where immediate intervention is called for, having regard to all the facts and circumstances of the case and the gravity of the situation. Section 34-A does not offend Art. 14."

24. The learned Additional Advocate General further submitted that the issue involved in the Writ Petitions and the suits are with regard to the Society to convene the executive meeting to conduct and held elections after expiry of the tenure and not with respect to the management of the affairs of the Association. Further, the impugned order clearly states that the fourth respondent will manage the affairs of the Society until the election related issues pending before the High Court comes to an end or within a period of one year, whichever is earlier. Hence, there is no illegality in the order superseding the Committee by appointing the Special Officer and prayed for dismissal of the Writ Petitions.

25. Mr.A.L.Somayaji, learned Senior Counsel appearing for Mr.V.Vasanthakumar, Mr.R.Thiagarajan, learned Senior Counsel appearing for

M/s.AAV Partners, Mrs.Hema Sampath, learned Senior Counsel appearing for M/s.V.Anantha Natarajan, Mr.R.Subburaj, Mr.R.Sagadevan, learned counsels, Mr.N.Umapathi, learned counsel, Mr.S.Siva Shanmugam, learned counsel, appearing for the petitioners in the impleading petitions have submitted that the impugned orders came to be passed in pursuance of their complaints made to the Registrar of Societies and hence they are necessary and proper parties to these Writ Petitions.

26. According to the learned counsels, the Government and the Registrar of Co-operative Societies have authority to pass the orders impugned in the Writ Petitions and no interference is required.

27. Mr.S.S.Rajesh, learned counsel for the applicant, while adopting the arguments of the learned Additional Advocate General would submit that the erstwhile office bearers of the Association without proper agenda and without following By-laws of the Association and without providing opportunity to the members have brought some of the members from professional to non-professional category depriving their right of voting. According to the learned counsel, the removal of the members and changing the status of the members from professional to non-professional category are illegal and hence, the

plaintiffs are entitled for interim order in the applications. According to the learned counsel, there is ambiguity in the final voters' list, unless it is set right, election cannot be conducted.

28. Mr.V.P.Sengottuvel, learned counsel appearing for the Association submitted that the plaintiffs have not approached this Court with clean hands. It is further contended that the plaintiffs have made several bald and unsustainable allegations without any documentary evidence to substantiate the same. It is true that the term of the office had ended on 18.10.2018, but prior to the expiry of the 3 year term, the Annual General Body Meeting was held on 19.08.2018, which was attended by over 1510 members including the plaintiffs in the present suit and in the said meeting it was unanimously decided by all the members present that the election process shall be deferred by 6 months, since the building work was at the crucial stage. It is further submitted that in a Society, the General Body is the supreme and the General Body elects the Committee and office bearers once in every 3 years. Hence, when the General Body with sufficient quorum has taken certain decisions unanimously, which have not been challenged so far by any one of the members, the same is valid.

29. The learned counsel would further add that the plaintiffs in the suits are only pawns at the hands of the official persons, who cannot win and want to derail the democratic process of election and they are trying to take control of the defendant-Association through back door method. A duly elected body must be installed at the earliest to take forward the construction of the building of the defendant-Association. The balance of convenience is in favour of dismissing the present applications and allowing the election process to conclude and hence, prayed for dismissal of the interim applications.

30. Heard all the parties.

31. The petitioner Association (South Indian Artists Association) has preferred WP.No.17583 of 2019 questioning the proceedings of the first respondent, Registrar of Societies, dated 19.06.2019, thereby restraining them to continue the election process. Through WP.Nos.31752 and 31755 of 2019, they have also challenged the order passed by the first respondent in G.O.(Ms)No.177 Commercial Taxes and Registration (M1) Department, dated 06.11.2019, under which, the fourth respondent was appointed as Special Officer to manage the affairs of the petitioner Association till the adjudication

of election related disputes that are pending before this Court or for a period of one year whichever is earlier.

32. Whereas, the suits have been preferred by the members of the petitioner Association for declaration declaring the actions taken by the petitioner Association after 18.10.2018, the date on which the Executive Committee has ceased to hold office, as bad in law and not binding on the members of the Association and for permanent injunction. They have also taken out the original applications for interim injunction and application seeking appointment of an Adhoc Committee to administer the petitioner Association for the purpose of conducting free and fair election of Executive Committee.

33. The facts remain undisputed herein are that the term of office bearers of the petitioner Association had expired on 18.10.2018. But prior to expiry of the three year term, an Annual General Body Meeting was convened on 19.08.2018, in which, over 1510 members have attended and the term of the office bearers was extended by another six months and the election process shall be deferred by six months i.e., till April 2019. Subsequently, in the meeting held on 28.04.2019, the Hon'ble Mr. Justice E.Padmanabhan (Retd) was

appointed as an Election Officer to conduct election for the office bearers of the petitioner Association. Thereafter, election notification dated 29.05.2019 came to be issued by the petitioner Association. While so, based on the complaints received from the members, the first respondent has passed the order impugned in WP.No.17583 of 2019 restraining the petitioner Association from continuing the election process. However, pursuant to the interim order passed by this Court dated 21.06.2019 in WMP.No.17059 of 2019 in WP.No.17583 of 2019, the election was held on 23.06.2019 at St.Ebbas School, Chennai and the ballot boxes were kept in safe custody. In such circumstances, the petitioner Association on one hand and two members of the said Association on the other hand, have approached this Court with the respective writ petitions and civil suits.

34. In the light of the aforesaid factual backdrop, this Court is inclined to first deal with the original applications and application taken out by the plaintiffs in the civil suits. There is no dispute as regards the establishment and registration of the petitioner Association. Further, the present office bearers were elected in the election held on 18.10.2015 and they assumed office on 19.10.2015 and the term of the office is 3 years. Before the expiry of three years, the petitioner Association convened its Annual General Body Meeting on

19.08.2018, in which, 1510 members including the plaintiffs herein, have attended and after detailed discussion and deliberation, the following two resolutions were passed:

(i)The AGM in the interest and development of the association and its objectives, unanimously resolved to authorise the existing EC to administer the society, carry on with the ongoing construction of the building, raise funds, to decide on conducting elections, to defend the litigations if any, until a new EC for the year 2018-2021 is elected and assumes office.

(ii)As the tenure of present EC 2015-18 comes to an end in October, 2018, the AGM unanimously resolved to postpone the election to the EC of the 1st defendant (petitioner Association) by 6 months from November, 2018 upon completion of the building (April 2019).

35. According to the plaintiffs, since the tenure of the EC came to be ended on 18.10.2018, the working of EC beyond the said period is not recognised under bye-laws and the Election Officer appointed by the petitioner Association in its meeting on 14.05.2019 is not sustainable in law. It is their further case that since voters' list was finalised only on 14.06.2019, there was no possibility to despatch the ballot papers earlier to 15.06.2019; no proper notice was issued with regard to the conduct of election on 23.06.2019; the

petitioner Association failed to communicate to all the members about the change in venue of the election. It is also their case that the Executive Committee failed to conduct the election for next term during the extended period of six months; there were inconsistencies and discrepancies in the voters' list; the election was not conducted in free and fair manner. Thus, the plaintiffs sought for declaration and injunction against the petitioner Association.

36. The reliefs sought for by the plaintiffs were seriously resisted by the first defendant / petitioner Association, stating *inter alia* that the plaintiffs have approached this Court with unclean hands by suppressing the material facts that they have participated in the meeting held on 19.08.2018 and agreed for the resolutions; and the election was conducted in free and fair manner and 80% of the members have cast their votes. It is their further contention that in a Society, the General Body is Supreme and it is the General body, which elects the committee and office bearers every three years and hence, when the general body, which was duly convened within the term and with sufficient quorum of about 50% of the total members, has taken certain valid, unanimous decisions, which have also not been challenged till date by any one including the plaintiffs, the same has become final and is well within the law. It is also submitted that the delay in receiving the ballot papers is beyond the control of

the office bearers or the election officer and the petitioner Association has given a complaint to the postal department in this regard; and the construction of the building by the petitioner Association is at crucial stage and the duly elected body must be assumed office at the earliest to complete the work.

37. This Court has anxiously considered the rival submissions and carefully perused the materials available on record.

38. It is an admitted fact that the present office bearers of the petitioner Association were elected in the election held on 18.10.2015 and they assumed office on 19.10.2015 and their tenure came to be ended on 18.10.2018. As such, the question that lies in narrow campus is that the actions taken by the petitioner Association after expiry of their tenure i.e., on 18.10.2018, are valid in law and binding on the members of the Association. In this connection, it is relevant to refer to Section 15(4) of the Act, which reads as follows:

“The term of office of the members of the committee shall not exceed three years from the date of their appointment.”

Further, Clause 37 of the Bye-laws of the Association provides for the conduct of the election of the office bearers once in three years. Such being the legal position, the term of the Executive Committee cannot be extended by way of

resolution at the General General Body Meeting, that too, on the ground that the construction of convention hall and office premises are in progress. Even the petitioner Association has not conducted the election within the extended period of six months. That apart, the observation made by the Division Bench of this Court in the case of *The Music Academy v. The Inspector General of Registration and another* (cited supra) that there is no scope for holding that any person could be nominated as Trustee nor it can be held that the nominated trustee can hold office for six years, because the Act is very categorical that the members of the Managing committee should hold office for three years, is squarely applicable to the facts of the present case. Thus, it is very clear that the Executive Committee of the petitioner Association has no power to convene the meeting on 28.04.2019 for the purpose of conducting election for the forthcoming terms.

39. In the ultimate analysis, this Court has no hesitation to hold that the decisions taken by the Executive Committee of the petitioner Association in the meetings held after the expiry of their tenure i.e., on 18.10.2018 and the actions taken pursuant to the same are invalid in law and not binding on the members of the Association. As such, the appointment of the Election Officer and the election conducted on 23.06.2019 are null and

void. In such view of the matter, the other contention raised by the plaintiffs need not be gone into now by this Court, and the same are left open to the plaintiffs during the hearing of the suit.

40. As a sequel, in the interest of the effective administration of the petitioner Association, this Court issues the following directions:

(i) The Hon'ble Mr. Justice B.Gokuldas (Retd), High Court of Madras, having residence at No.11, Kuppusamy Pillai Street, Jesupadam Nagar, Guduvancherry, Chengalpattu Taluk, Kancheepuram District - 602 203. (Phone Nos.044-27461360 & 27461375) is hereby appointed as Election Officer, who shall conduct the fresh election of the office bearers of the Executive Committee of the petitioner Association.

(ii) The Election Officer shall be paid a sum of Rs.2,50,000/- [Rupees Two Lakhs and Fifty Thousand only] towards initial remuneration by the petitioner Association.

(iii) Fresh voters' list shall be prepared, after verification and the same shall be notified.

(iv) fresh election notification shall be issued, as per the Bye-law.

(v) The Election Officer shall take steps to conduct the fresh election of the office bearers of the Executive Committee.

(vi) The members of the petitioner Association and the Government of Tamil Nadu shall provide all the assistance including police protection and extend fullest co-operation to the Election Officer for the conduct of free and fair election.

(vii) The decision of the Election Officer is final with regard to the issues relating to the election process.

(viii) If there is any dispute/grievance/clarification, it is open to all the parties to approach this Court for getting appropriate orders.

(ix) The Special Officer appointed by the Government shall continue to discharge her duties as such, as per G.O.(Ms.)No.177 Commercial Taxes and Registration (M1) Department, dated 06.11.2019, till declaration of the results and the new office bearers assume office.

(x) The entire election process shall be completed within a period of three months.

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41. All the original applications and application filed by the plaintiffs are ordered in the above terms.

42. Insofar as W.P.Nos.31752 and 31755 of 2019 are concerned, though the learned Senior Counsel appearing on either side have made extensive arguments for and against the order passed by the Government, appointing the fourth respondent as Special Officer, arising out of the complaints lodged by some of the members of the petitioner Association with regard to the alleged irregularities and mismanagement of the Executive Committee, this Court is not inclined to go into the same in detail, having regard to the order now passed by this Court, directing fresh election to be conducted for the Executive Committee of the petitioner Association for the ensuing years. Moreover, the scope of appointment of the Special Officer and the power and authority of the Special Officer over the affairs of the petitioner Association are very limited. As such, the writ petitions are liable to be dismissed and are accordingly, dismissed. In view of the aforesaid orders passed in the original applications and application, the order impugned in WP.No.17583 of 2019 will have no effect and hence, the writ petition is closed. No costs. The interim order granted by this Court shall stand vacated. Consequently, connected Miscellaneous Petitions are also dismissed. Impleading petitions in W.M.Ps.18775, 19007, 19017, 19118, 19124, 19135, 19138, 22500 of 2019 are closed.

43. Post the Civil Suits in usual course.

24 / 01 / 2020

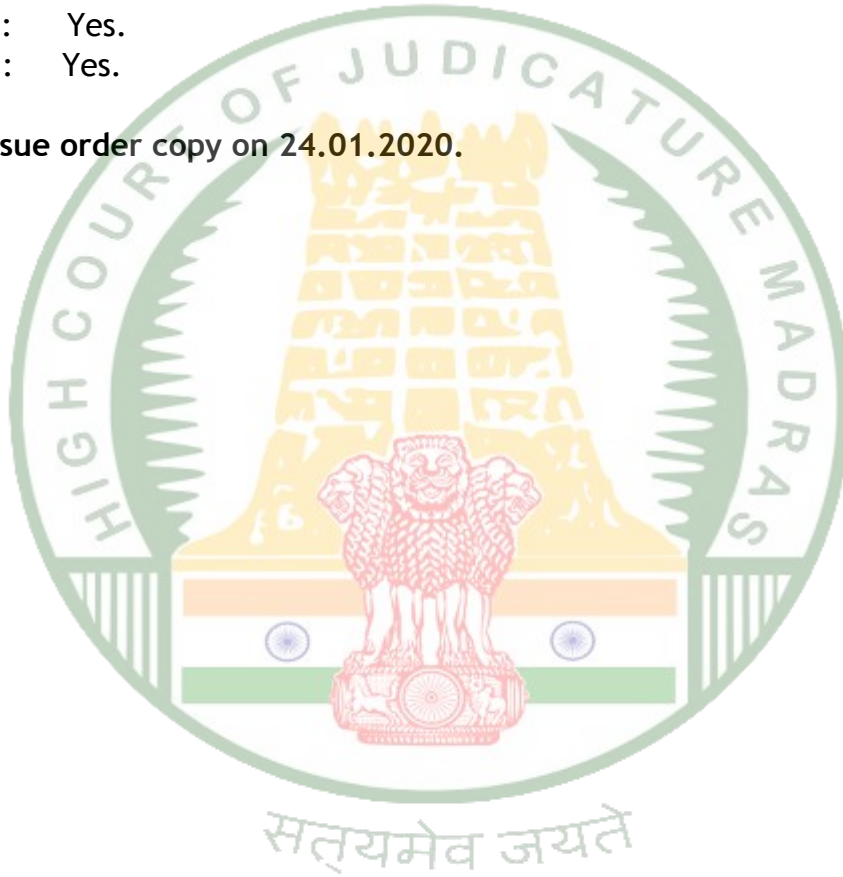
Speaking Order / Non Speaking Order

Index : Yes.

Internet : Yes.

Note: Issue order copy on 24.01.2020.

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To

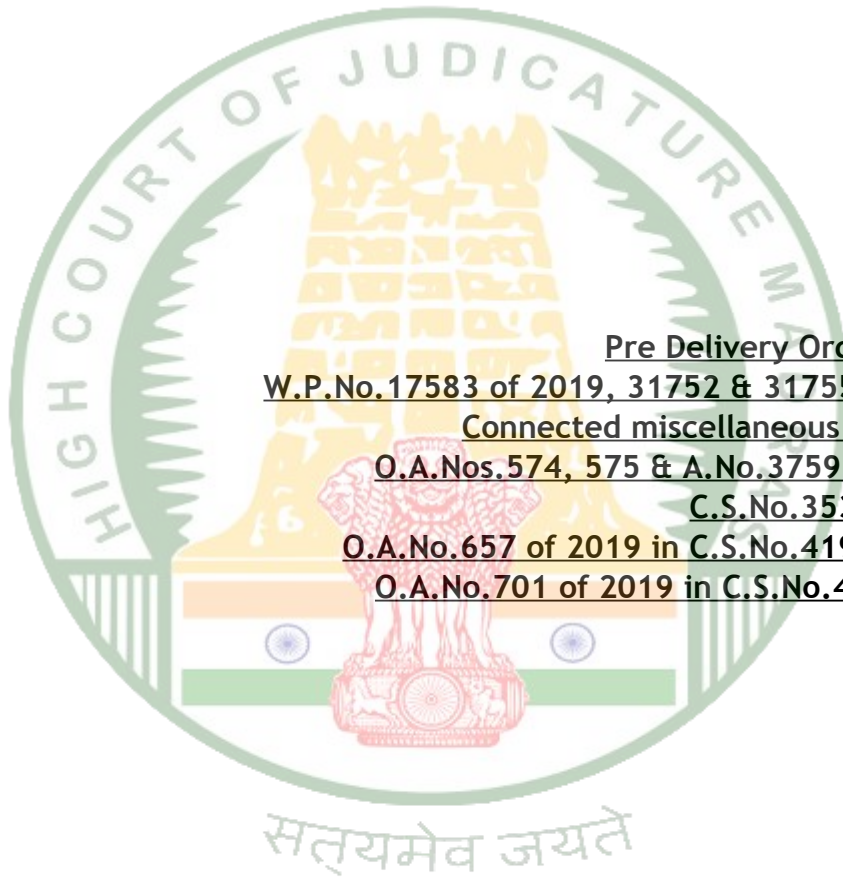
- 1.The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai - 600 032.
- 2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.



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K.KALYANASUNDARAM, J.

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Pre Delivery Order made in
W.P.No.17583 of 2019, 31752 & 31755 of 2019 &
Connected miscellaneous petitions &
O.A.Nos.574, 575 & A.No.3759 of 2019 in
C.S.No.353 of 2019 &
O.A.No.657 of 2019 in C.S.No.419 of 2019 &
O.A.No.701 of 2019 in C.S.No.441 of 2019

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