

Reserved on : 23.09.2020

Delivered on : 04.11.2020

O.A.Nos.977, 978 & 979 of 2019

in

C.S.No.628 of 2019

P.T.ASHA, J.,

The plaintiffs in a suit for declaration regarding the proposed election and other injunctive reliefs has taken out three interlocutory applications praying for interim orders pending the suit.

O.A.No.977 of 2019 is filed seeking an injunction directing the respondent to conduct elections to the Executive Council of the respondent Sabha by appointing a retired High Court Judge to act as an Election Officer as well as an Administrator of the respondent Sabha in accordance with the legal constitution and bye-laws of the Sabha dated 02.11.2019.

O.A.No.978 of 2019 is filed for an injunction restraining the existing officer bearers from functioning as a members of the Executive Council till such time a valid election or selection takes place.

O.A.No.979 of 2019 is filed seeking an interim injunction restraining the respondent / defendant from holding the election on 02.11.2019.

Case of the Applicants

2. The averments contained in the plaint and the affidavit filed in support of all the three applications contain the same averments. It is the case of the applicants that the 1st applicant is a member of the donor family and the 2nd applicant is a representative of the Vaishnav Samaj, which is a member of the respondent Sabha. The respondent Sabha was established in the year 1963 and was registered as a Society with various objects. Education was the primary object of the

respondent Society. Two persons, namely, Jumnadoss Dwarakadoss and Amichanddoss Dwarakadoss had made a conditional settlement on 15.10.1964 in favour of the respondent Sabha in and by which the lands were settled in favour of the respondent Sabha. The lands were settled on condition that the respondent Sabha sets up an Arts and Science College in the said lands. The other condition that had been stipulated while making the gift was that the settlors' uncle's family shall have two or more male members as the members of the College Executive Committee and 10% or more seats were to be allotted to the Chief Donors family.

3. The applicants would contend that 14 acres of land were given by Jamnadoss and Amichand Doss and 6 acres were jointly given by Ramdoss Purushothamdoss, Purushothamdoss Gocooldoss and late Srimathi Bagirathihai. According to the applicants the Chief donors were Jamnadoss Dwaraka Doss, Purushotham Doss, Ram Doss

Purushomtham Doss, Shrimathi Bagirathibai @ Devakibai and three other members of the Purushotham Doss family. Considering the fact that the Chief Donors had settled their property, the bye-laws of the Society provided that the Chief Donor and four members nominated by the founder from amongst any of the donors would be life members, and they would not retire for life. Fifteen members were to be elected or selected to form the Executive Committee along with the life members. The Sabha had started two colleges, namely, D.G.Vaishnav College and M.O.P. Vaishnav College and three Schools, Kola Perumal School, Kola Saraswati School and M.O.P. Vaishnav School.

4. The applicants would submit that Rule 12 of the Bye-laws deals with the election of the Executive council. As per the bye-laws the Executive Council shall consist of members not less than 7 and not more than 15. One member was to be nominated once in every two years by the Chief Donor subject to retirement at the end of two years.

The Chief Donor Jamnados Dwarakadas and four members nominated by the founder from amongst the donors were life members without retirement. Three members were to represent those persons who had donated lands and their tenure was for a period of two years.

5. The Bye-laws provided that after the demise of the Chief Donor, the senior most member of his family by lineal descent was to be a life member of the Executive Council of the respondent Sabha. Rule 13 provided that from amongst the Executive Council members, the Chairman, Vice-Chairman, the Secretary, the Joint Secretary and the Treasurer would be the members who are not more than 75 years of age. The remaining members were to be less than 80 years of age. The cap on age was not there in the original bye-laws.

6. The amendment regarding the cap of age was brought about by an amendment dated 09.05.2015. However, the amendment has not

been notified and filed with the Registrar of Societies. That apart, two amendments whereby Rule 13 (a) and 13 (b) were introduced was not communicated or entered with the Registrar of Societies. According to the applicants such an amendment has not taken place.

7. They would further submit that one of the permanent members, Mr.P.Haridas had filed a suit in C.S.No.354 of 2017 with respect to the election of the Executive Council of the respondent Sabha and ultimately the matter was settled in appeal. The applicants would allege collusion and connivance between the plaintiff therein and the office bearers of the respondent Sabha. As a result of this compromise a retired Judge of this Court was appointed as the Election Officer by orders of the Division Bench dated 04.09.2017. The 1st applicant would submit that when he tried to put things in perspective before the Judge Commissioner regarding the procedure of election he was prevented from doing so stating that he was not a party

to the suit.

8. While so, on 07.10.2019, a notice was circulated informing the members about the Annual General Body Meeting of the respondent that was to be held on 02.11.2019. One of the agenda notified in the notice was the proposed election to be held on the date of the meeting i.e., 02.11.2019. The membership of the Executive Council had also been increased to 24 by an ordinary meeting dated 07.01.1974 and an extraordinary meeting dated 02.06.2017. The applicants would submit that this amendment has not been given effect to since it is to date not notified with the Registrar of Societies. Hence the application.

Counter of the respondent:

9. The respondent at the outset questioned the locus standi of the applicants to file the suit and the subject applications. According to the respondent, the 1st applicant had been removed from the membership

on 11.01.2010 since they had not kept up their promise of donating one acre of land, which was the reason for which they had been inducted as members. On the basis of this assurance, the 1st applicant and three other members were made members of the Executive Council. However, even after the lapse of ten years, the applicants had not come forward to donate the lands as promised and therefore it was decided by the members of the Executive Council that they should not be continued as members. Therefore, with effect from 11.01.2010, the 1st applicant ceased to be a member of the respondent Sabha and consequently does not have the locus standi to file the suit and the instant applications.

10. As regards the 2nd applicant, the respondent would submit that the 2nd applicant is only a representative of the Vaishnav Samaj, which is the member of the respondent Sabha. The respondent would contend that the 2nd plaintiff did not have the authorisation of the

Vaishnav Samaj to file the suit and he being a representative of a member cannot independently file the suit and the application.

11. The respondent would further submit that the applicants are guilty of suppression in as much as they have not set out the legal proceedings that are pending to date. The 1st applicant has filed C.S.No.334 of 2013 and one of the issues which has been framed in the said suit is whether the 1st applicant is a member of the respondent Society and whether he had been removed in the meeting dated 11.01.2010. In the said suit the 1st applicant has taken out an application in A.No.2220 of 2015 to grant life membership to the 1st applicant.

12. That apart in C.S.No.354 of 2017 filed by Mr.P.Haridas, the 1st applicant had file an application to implead himself in A.No.7197 of 2017. This application was dismissed by the learned single Judge by

orders dated 25.01.2018. An appeal was filed challenging the same in O.S.A.No.374 of 2018. This appeal was also dismissed. Both the Learned Single Judges as well as the Division Bench had dismissed the application on the ground that the 1st applicant cannot seek to be impleaded in the suit as he is not a member of the respondent Sabha. In addition to the above, the 1st applicant had sent a letter dated 20.03.2019 enclosing a demand draft for Rs.25,000/- requesting that he be made a member of the respondent Sabha. This would clearly show that as on date of the filing of this suit the 1st applicant was not a member and therefore cannot institute the above application.

13. The 2nd applicant has also instituted the suit O.S.No.325 of 2017 on the file of the V Assistant City Civil Court, wherein he has challenged the amendment/introduction of Rules 13 (a) and 13 (b), once again the subject matter in this suit. The 2nd applicant had also taken out an application for an appointment of a retired Judge as an

Administrator of the respondent Sabha which was rejected and C.M.A.Nos.46 & 47 of 2017, filed before the XV Additional City Civil Court also ended in a dismissal. The respondent would submit if the pleadings in O.S.No.325 of 2017 and the instant suit are compared it would clearly establish that by and large the very same pleadings are found in both the suit.

14. The applicants have questioned the notice on the ground that the election was sought to be held with reference to the increased membership and the increase in membership has not been intimated to the Registrar of Societies. The respondent would submit that the 1st applicant was a member of the respondent Sabha from 2000 to 2010 and in the interregnum several general body meeting and Executive council meeting have been held on the basis of the amended bye-laws. The 1st applicant is therefore very much aware about the increase in membership. That apart, he was the Secretary for a period 2004 to

2007 and he had run the respondent Sabha only on the basis of the amended Rules. In 2004, the 1st applicant was a party to the proceedings of the respondent Sabha declaring the elections. The election of the Executive Council members was based only upon the amended Rules.

15. Similarly, the 2nd applicant as a representative of Shri Vaishnav Samaj has been a part of the Executive Council from 08.02.2010 till 29.01.2018. During this tenure, he has attended several Executive Council meeting as well as Annual General meeting, at no point of time has he questioned the amended rules on the basis of which all these meeting were conducted. The applicants having acted upon, acquiesced and accepted the amended bye-laws is estopped from challenging the same. In fact, the present suit is liable to be stayed under the provisions of Section 10 of the Code of Civil Procedure in the light of the pendency of O.S.No.325 of 2017 and C.S.No.334 of

2013. Even in the suit C.S.No.334 of 2013, the 1st applicant has filed an application for appointing a retired High Court Judge as an interim Administrator and this application is pending. While the same is pending the respondent has filed O.A.Nos.977 & 978 of 2019. This is nothing but an abuse of process of law.

16. The respondent would further submit that the election which is now sought to be held is on the very same lines of the election held by the Judge Commissioner. The electoral list is being updated every year since the respondent Sabha submits Form VI, showing the list of members with the Registrar of Societies every year. The election which is conducted by the Judge Commissioner was also on the basis of the list of members provided to the Judge Commissioner as per the Form VI list. Thereafter, the Judge Commissioner had finalised the same after hearing objections of Mr.P.Haridas, the plaintiff in the suit C.S.No.354 of 2017. There were no other objections to the list that had

been finalised by the Judge Commissioner.

17. The members who had been elected in the said election held by the Judge Commissioner are the persons who are holding office to date and they are therefore entitled to conduct the elections in keeping with the bye-laws. In fact, the election itself was held on the basis of the directions issued by the Division Bench in O.S.A.No.208 & 209 of 2017 and the results of the election held has also been placed before the Court in the report of the Learned Judge Commissioner. The applicants had once again filed C.M.P.No.16492 of 2018 in the above appeal for appointing an interim Administrator which was dismissed. That apart an application in A.No.4117 of 2015 was filed in C.S.No.334 of 2013 for the very same relief and this application is still pending. The 2nd applicant has moved similar applications in the suit filed by him before the City Civil Court. The applicants had also taken out an application in C.M.P.No.16491 of 2018 for a direction that the

office bearers should not function and this application was dismissed. O.S.A.No.374 of 2019 filed by the applicants was also dismissed. Therefore, these applications are clearly hit by res judicata.

18. The reply to the counter which has been filed by the applicants does not directly address the averment contained in the counter statement but the applicants would submit that they have no personal interest in the litigation but were only championing the cause of the other members who are keen to contest in the election. The applicants would further submit that the Secretary and the other office bearers have not donated even an inch of land to the Sabha. A rejoinder was also filed by the applicants.

Submissions:

19. Though the issue involved in the above applications is limited to just two grounds, extensive arguments have been advanced on both

the sides particularly on the side of the respondent.

20. Mr.R.Thiagarajan, learned counsel appearing on behalf of the applicants would submit that the applicants being stakeholders have the locus standi to file the above suit. He would argue that the Judgement in O.S.A.No.374 of 2018, in and by which the Learned Judge Commissioner had been appointed and the election held was not an order passed on the merits of the case but was only an order by consent. Therefore, the issue which are raised in the present suit have not been considered in the Judgement of the Division Bench.

21. He would submit that the amendment that has been introduced unilaterally without the knowledge of the members is totally in contravention of the conditions imposed in the settlement deed dated 15.10.1964. The settlement under which the land was given to the respondent Sabha was subject to the condition that the settlors' uncle's

family should have two or more male members as members of the College Executive Council and 10 % or more seats to be allotted to the Chief Donors.

22. The learned counsel would submit that Bye-laws increasing the number of members has been passed without properly convening a meeting for the purpose and by a proper resolution. Therefore, the same cannot be given effect as was it is not a validly passed resolution. The Bye-laws have not been given effect to as the same has not been filed before the Registrar of Societies. He would further argue that the Bye-laws that have now been filed by the respondent does not relate/confirm to the Bye-laws, a copy of which the applicants had received in response to their query under the Right to Information. He would further argue that, in response to the query raised by the applicants to the Registrar of Societies, they have received a response that no amendment has been carried out to the original By-laws of the

respondent Society. Therefore, he would submit that the impugned notice relating to the election for the Executive Council proposing to elect 15 members in addition to the 3 permanent members runs contrary to the Bye-laws Rule No.12.

23. The other ground on which the notice is sought to be challenged is on the ground that the Electoral Roll is not a valid electoral roll since already dead persons and unauthorised persons featured as valid voters and their votes have been cast at the annual general meeting.

24. The learned counsel would rely on the following Judgements in support of his argument regarding the amendment:

(i) Ram Kumar Agarwalla and others Vs. State of West Bengal and others - ***AIR 1963 Cal 534.***

(ii) Shiksha Samiti Degree College, Garua Maksudpur and others

Vs. Registrar, Firms, Societies and Chits, U.P. Lucknow - **AIR 1990**

All 110

(iii) Rai Ram Charan Agarwala and others Vs. Shridhar Misra and others - **AIR 1962 All 610**

(iv) Allahabad High School Society Vs. State of Uttar Pradesh and others - **2011 (6) SCC 118.**

(v) P. Venugopal Vs. The Music Academy, Madras, represented by its Executive Trustee - **(2001) 3 LW 710**

(vi) The Music Academy, Rep. by its Executive Trustee, No. 168, TTK Road, Chennai 600 014 Vs. Inspector General of Registration, Santhome High Road, Chennai 600 028 and others - **2005 (4) MLJ 608.**

25. Per contra, Mr.S.Vijayaraghavan, learned counsel appearing for the respondent Sabha would submit that the two grounds on which the applicants seek to assail the notice calling for a meeting is perse an

abuse of process of Court and the applicants are guilty of suppression of material fact. The learned counsel would contend that the objection to the increase in the membership by the applicants is absolutely misdirected and a total abuse since the 1st applicant has himself been a party to the resolution under which the membership had been increased to 24.

26. That apart, the 1st applicant has himself applied the amended Bye-laws during his tenure as a member and as a Secretary of the respondent Sabha. The learned counsel would submit that the applicants are guilty of suppressing the pendency of the suits filed by them against the respondent Sabha, wherein issues raised in the instant suit are already pending decision. The 1st applicant has filed C.S.No.334 of 2013 in which the prayers (f), (g) and (h) relates to the issues which are the subject matter in the present suit as well. The 1st applicant had sought for a declaration that he continues to be a life

member in the respondent Sabha with all rights and privileges conferred upon a life member, for an injunction restraining the 1st respondent Sabha from interfering with his rights to discharge his duties as a Secretary of the respondent Sabha and as Joint Secretary of the D.G. Vaishnav College and also for a mandatory injunction directing the defendants 1 to 3 therein, which includes the respondent Sabha herein to restore his status as Joint Secretary of D.G.Vaishnav College and as a member of the Executive Committee of the respondent Sabha. The 1st applicant has also moved interlocutory applications in this regard.

27. That apart, he has filed an application in A.No.2220 of 2015 in the said suit to include himself and his brother as a life members of the respondent Sabha. He had also filed A.No.4117 of 2015 to appoint a retired Judge as an interim Administrator. After having lost in his efforts to get favourable orders, the 1st applicant has once again

initiated the present suit with the very same relief. This is nothing but re-litigation.

28. Likewise, the 2nd applicant is also guilty of suppression. The 2nd applicant is only a representative of Vaishnav Sabha, which is a member of the respondent Sabha. The 2nd applicant along with three others had filed O.S.No.325 of 2017 on the file of the V Assistant City Civil Court, Chennai questioning the amendment of Rule 13 by introducing Rules 13 (a) and 13 (b). The applicants had moved interlocutory applications for appointing an interim Administrator, injunction restraining the respondent Sabha from enforcing or invoking the amended rules, injunction restraining the respondent Sabha from interfering with functioning of the office bearers belonging to the Chief Donors family and injunction restraining the co - opted members from functioning as members of the Executive Council. The interlocutory applications for an injunction restraining the respondent therein from

interfering with the functioning of the members of the Chief Donors family who are office bearers and the application seeking an injunction from enforcing or invoking the amended rules was dismissed and this order was confirmed in appeal in C.M.A.Nos.46 and 47 of 2017.

29. The learned counsel would submit that after having participated in the resolution and having failed in their attempts to obtain orders from the Court in the earlier proceedings, the applicants have come forward with the present applications. The learned counsel would further argue that after the elections were conducted pursuant to the orders of the Division Bench in O.S.A.Nos.208 and 209 of 2017, the 2nd applicant had sought for particulars regarding the identity of the persons who had voted and the Learned Judge Commissioner has by his reply dated 26.03.2018 rejected the request stating that the entire election had been conducted in a transparent manner in the presence of all the stakeholders and the request made by the 2nd applicant, 52 days

after the elections had been declared, cannot be acceded to. The 2nd applicant has not sought to file any objections to the above.

30. The learned counsel would further submit that if the 1st applicant had continued to be a member, there was no necessity for him to issue a demand draft for a sum of Rs.25,000/- towards his membership fees vide his letter dated 20.03.2019 pending the above suit. The learned counsel would further argue that as against the order in application in A.No.7197 of 2017, wherein the 1st applicant request for impleadment in the suit C.S.No.354 of 2017 was rejected, the appeal, O.S.A.No.374 of 2018 also ended in a dismissal and the learned Judge had observed that the 1st applicant cannot maintain the application in the light of his ceasing to be a member of the respondent Sabha.

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31. Therefore, the learned counsel would submit that the applications deserve to be dismissed on the grounds of suppression of material fact, re-litigation and abuse of process of Court.

Discussion:

32. Heard the learned counsels and perused the documents. The two grounds which forms the basis of these applications are as follows:-

a) That the notice dated 07.10.2019 which proposes to elect the Executive Council consisting of members over and above 15 is contrary to the Bye-laws of the respondent Sabha; and

b) The membership of the respondent Sabha has not been updated and does not reflect the true state of affairs.

(i) Election contrary to the Bye-laws of the respondent Society:

To consider this issue it is necessary to extract Rule 12 of the

Bye-Laws:

33. Rule 12 of the Bye-laws as it originally stood reads as follows:

"12. The Executive Council which is the Governing Body of the Sabha shall consist of not less than 7 and not more than 15 members constituted in the following manner:

(i) One member nominated once in every two years by the 'Chief Donor' and subject to retirement at the end of two years.

(ii) The Chief Donor Shri Jamna Doss Dwarka Doss and four other members nominated by the "Founder" from any of the 'Donors' who shall be life members of the Council, not subject to retirement.

(iii) Three members elected once in two years from among the "'Donors' of the Sabha.

(iv) Six members elected once in two years. from among the life and ordinary members of the Sabha.

(v) After the life-time of the "Chief Donor" the Senior-most Member of his family by lineal descent shall be a life member of the Executive Council of the Sabha"

34. Thereafter an extraordinary general meeting was held on 02.06.2007, in which the 1st applicant has participated and signed as the 5th member. The agenda of this meeting besides other subjects were as follows:

"1.To amend clause 10 of the Rules and Regulations of Shri Vallabhacharya Vidya Sabha for increasing the strength of Executive Council members to 24 instead of the present 20 members.

To pass the following proposed special resolution with or without modification:

"Resolved that Clause 10 of the Rules and Regulations of Shri Vallabhacharya Vidya Sabha be amended in the following manner.

The Executive Council which is the Governing Body of the Sabha shall consist of not less than 11 and not more than 24 members constituted in the following manner"

2. To amend clause 10 (f) of the Rules and Regulations of Shri Vallabhacharya Vidya Sabha to enable '20 members' elected once in two years from among the life members of the Sabha instead of '14 members'

To pass the following special resolution with or without modification:

"Resolved that Clause 10 (f) of the Rules and Regulations of Shri Vallabhacharya Vidya Sabha be amended in the following manner

20 members elected once in two years from among the life members of the Sabha”.

35. In the meeting i.e., on 02.06.2007, in which the 1st applicant had participated, these agendas were unanimously approved by the general body which is evident from a reading of minutes of the extraordinary general meeting dated 02.06.2007. The learned counsel for the applicants sought to impute malice/manipulation in this meeting by pointing out that in the list of members present, the word "*Annual*" has been struck off and the word "*extraordinary*" has been inserted. This argument falls flat for the simple reason that notice dated 10.05.2007 and resolution dated 02.06.2007 clearly refers to the general body meeting as an extraordinary general meeting and not as an annual general body meeting. Therefore the correction was in keeping with the nature of the meeting.

36. Thereafter, it is seen that in a later meeting of the Executive Council dated 10.11.2009, in which the 1st applicant is present, the number of members who are present for the meeting are 24 which clearly shows that the amendment carried on 02.06.2007 has been given effect to and the 1st applicant has acquiesced to the same.

37. This Court is not looking into the legality or otherwise of the amendment, since the Court is only looking into the prima facie case for granting interim orders. Once again in the Executive Council meeting in which a decision was taken to remove the 1st applicant, the number of members present were 24 and the 1st applicant has also participated in the said meeting. Therefore, it does not lie in the mouth of the 1st applicant to contend that the amendment to the number of members has not been given effect to.

38. The 2nd applicant is also estopped from questioning the amendment in the light of his participating in the meetings dated 08.02.2010, 09.04.2010, 14.08.2010, 30.04.2011, 07.10.2011 etc. In the light of the above, the contentions of the applicants with regard to the amendment of the By-laws, prima facie appear to be false.

39. As regards the 2nd issue regarding the electoral rolls, it is seen that by an order of the Division Bench in O.S.A.Nos.208 and 209 of 2017 dated 04.09.2019, a retired Judge of this Court had been appointed as the Electoral Officer and he had finalised the electoral roll in consultation with the members. Further, it is seen that the respondent Sabha has been filing Form VI with the Registrar of Societies every year. At no point of time has there been any objections to the list so forwarded and recorded with the Registrar of Societies. Therefore, on this ground also the argument of the applicants fail.

40. The respondent has raised the contention that the applicants are guilty of suppression. There is considerable force in this argument especially in the light of the suit in C.S.No.334 of 2013 and the various applications filed therein as well the suit in O.S.No.325 of 2017 filed by the 2nd applicant which is pending on the file of the V Assistant City Civil Court. It is clearly evident that the very same reliefs which are sought for in those proceedings, namely, appointing an interim Administrator and restraining the office bearers from functioning of the office bearers of the respondent Sabha have already been rejected in the earlier proceedings.

41 In the result the applications are all dismissed.

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Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
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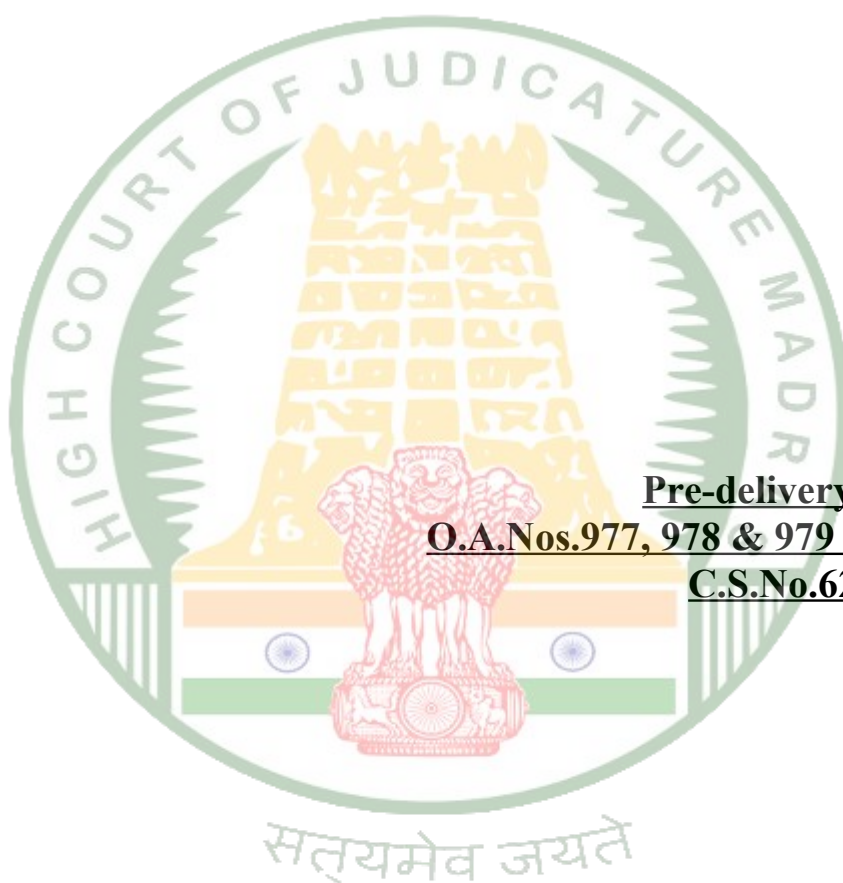
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