

O.A.Nos.1194 and 1195 of 2019 and
A.Nos.9890 and 9891 of 2019

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in
C.S.No.737 of 2019

SENTHILKUMAR RAMAMOORTHY,J

In a suit for declaration that the order dated 26.12.2019 of the Stewards Committee of the first Defendant against the Plaintiff is illegal, null and void and for consequential permanent injunctive relief, these four applications have been filed by the Plaintiff. These applications are filed to restrain the Respondents from, directly or indirectly, enforcing the order dated 26.12.2019 of the Stewards Committee against the Applicant and for consequential orders' inter alia, directing the Respondents to permit the Applicant to pay the necessary entry fee and participate in the races conducted by the first Respondent in the 2020-2021 season and also to restrain the Respondents from preventing the Applicant from taking out any of its horses from the premises of the first Respondent if it is deemed fit by the Applicant.

2. I heard Mr.R.Srinivasan, the learned counsel for the Applicant/ Plaintiff, Mr.P.S.Raman, the learned senior counsel for the

first Respondent and Mr.V.Raghavachari, the learned counsel for the second Respondent.

3. Before dealing with the contentions of the learned counsel/senior counsel, it is relevant to set out a brief overview of the facts and circumstances leading to the suit and these applications. Dr.M.A.M.Ramaswamy was the owner of a large number of horses which participated in races conducted by the first Respondent and other race clubs throughout India and even abroad. On 01.04.2008, he executed a special power of attorney in favour of a trainer, namely Mr.Foley, who was authorised to undertake various actions qua the horses of Dr.M.A.M.Ramaswamy as regards the first Respondent. Thereafter, it appears that disputes arose as between Dr.M.A.M.Ramaswamy and his adopted son, namely, the second Respondent herein. On 09.02.2015, Dr.M.A.M.Ramaswamy established a Trust under the name, Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust(the Public Trust). The objects of the trust are to establish educational institutions, hospitals, homes for destitute widows, and various other activities. On 16.02.2015, another Trust was constituted by Dr.M.A.M.Ramaswamy under the name, Dr.M.A.M.Ramaswamy Chettiar Trust(the Private Trust). On

16.11.2015, it appears that the horses owned by Dr.M.A.M.Ramaswamy were transferred to the Private Trust under documents executed by the agent, Mr.Foley, but the validity of this transfer is disputed by the second Respondent. By letter issued on the same date, the Private Trust, through its trustee, requested the first Respondent to permit the horses belonging to the Private Trust to race with the gold brown colour belt. As per clause 9.3 of the Trust Deed of the Private Trust, upon the death of Dr.M.A.M.Ramaswamy, all his properties would stand vested in the Public Trust. Dr.M.A.M.Ramaswamy died on 02.12.2015 and his death was notified to the first Respondent on 03.12.2015. It appears that the first Respondent collected transfer charges in respect of the transfer of the horses from Dr.M.A.M.Ramaswamy to the Private Trust and, thereafter, from the Private Trust to the Public Trust. The Public Trust also procured/purchased horses directly from breeders and handed over custody of such horses to the first Respondent for maintenance, training and racing. It is also the admitted position that the charges for the maintenance, medical care and training of the horses were debited to the ledger account of the Public Trust, which is maintained by the first Respondent. The second Respondent was elected as the Chairperson of the first Respondent in 2019.

4. In these facts and circumstances, a representation dated 17.12.2019 was given by the second Respondent to the first Respondent levelling allegations in respect of the illegal transfer of the horses owned by Dr.M.A.M.Ramaswamy to the Private Trust and thereafter to the Public Trust and requesting that appropriate action be taken by forming a commission to enquire into the issue and cancel the transfer of ownership of all the horses from the name of Dr.M.A.M.Ramaswamy to the Private Trust and, thereafter, to the Public Trust and for consequential orders to transfer the said horses to the second Respondent and also to permit the second Respondent to use the gold brown belt jersey colour, which was used by Dr.M.A.M.Ramaswamy. In response to this representation, by order dated 26.12.2019(the Impugned Order), the first Respondent directed the Applicant to apply to the first Respondent for ownership/usage of racing colours and held that the Applicant is ineligible to race horses pending registration of ownership and also ineligible to use the racing colour. As against the decision, the Applicant filed an appeal on 28.12.2019 before the Board of Appeal of the first Respondent along with a request for stay of the Impugned Order. The said appeal was listed for hearing on 01.01.2020 at 6 p.m. The present applications were filed in the said facts and circumstances.

5. The learned counsel for the Applicant, Mr.Srinivasan, commenced his submissions by providing an overview of the facts and circumstances of the case. Thereafter, he made the following submissions/contentions. His first submission was that all the horses that were owned by the late Dr.M.A.M.Ramaswamy were transferred to the Private Trust under application for transfer dated 16.11.2015. He further submitted that this transfer application was duly signed by Mr.R.Foley, as an agent of Dr.M.A.M.Ramaswamy when the principal was alive, and that the agent was duly authorised to effect the transfer as per the power of attorney dated 01.04.2008. By referring to a letter dated 18.11.2015 from the first Respondent to the Bangalore Turf Club Limited, he pointed out that the first Respondent accepted the Private Trust as the approved owner under the rules of the first Respondent on 16.11.2015. He, thereafter, referred to clause 9.3 of the Trust Deed of the Private Trust so as to contend that it provides that all the movables will be transmitted to the Public Trust upon the death of Dr.M.A.M.Ramaswamy. In terms of clause 9.3, he submitted that all movables, including the horses, stood vested in the Public Trust with effect from the date of death of Dr.M.A.M.Ramaswamy. On this basis, he submitted that the Public Trust became the owner of the horses that were earlier owned by Dr.M.A.M.Ramaswamy. However, he

pointed out that, out of all the horses that were earlier owned by Dr.M.A.M. Ramaswamy, only five horses are still eligible to participate in races. Even as regards those five horses, he submitted that it is not proposed to field the said horses during the current racing season of the first Respondent.

6. The next contention of the learned counsel for the Applicant is that a large number of horses, about 62, were purchased by the Public Trust directly from various breeders on various dates commencing from December 2015 and that passports were issued in respect of these horses by the Stud Book Authority of India. All the original passports are in the custody of the first Respondent because the said horses are also in the custody of the first Respondent. He further submitted that the Applicant has regularly paid the charges that were levied by the first Respondent towards maintenance, medical care and training for these horses from December 2015 onwards. Therefore, he contends that the Applicant/Public Trust is the duly registered owner of these horses and that the first Respondent recognized the status of the Applicant as the owner by collecting necessary charges in this regard. In support of this submission, the learned counsel referred to the ledger account of the first Respondent

at pages 225 to 376 of volume-I of the typed set of papers filed by the Applicant. As proof of the purchase of these horses, he referred to the respective sale forms at pages 137 to 224 of volume-I of the typed set of papers filed by the Applicant. He also referred to the passports at pages 1 to 139 of volume-II of the typed set of papers filed by the Applicant. By referring to the passports, he pointed out that the name of the owner, namely, the Applicant\Public Trust is reflected overleaf in the passport and that it has been counter signed by an office bearer of the first Respondent. By relying upon the aforesaid documents, he pointed out that the horses of the Applicant were permitted to participate in races conducted by the first Respondent from December 2015 onwards and that the first Respondent is not entitled to contend that the Applicant was not duly registered as the owner of the horses or that the horses owned by the Applicant are not entitled to participate in the races conducted by the first Respondent. He, thereafter, referred to the election of the second Respondent as the Chairperson of the first Respondent and to the representation dated 17.12.2019 of the second Respondent thereafter.

7.The third contention of the learned counsel for the Applicant is that the Impugned Order was issued without waiting for or

considering the reply of the Applicant to the representation of the second Respondent and without providing a show cause notice to the Applicant. By referring to the Impugned Order, he pointed out that the order conclusively decides that the Applicant is not registered as an owner of horses by the first Respondent. He further pointed out that the applicant has been prevented from participating in horse races by the Impugned Order without even providing an opportunity of hearing to the Applicant. He also pointed out that the Impugned Order states that an appeal may be filed before the Board of Appeals and that this indicates that the order is in the nature of a final order and not an ad interim order.

8. He further submitted that the appeal was scheduled for hearing on 01.01.2010 at 6.00 p.m. although the races were commencing on the morning of 01.01.2020. In the above facts and circumstances, he submitted that the Applicant lost faith in the dispute resolution process of the first Respondent.

9. The learned counsel also pointed out that the Trust Deed of the Public Trust was amended by a Deed of Amendment dated 27.12.2016 so as to include the procurement of horses and

participation in horse races in the objects of the Public Trust. He also pointed out that the first Respondent had collected the requisite charges from the Applicant as evidenced by letter dated 30.08.2016 from the Applicant to the Respondent (Page 127 of Volume 1 of the typed set of papers). He also referred to the ledger account at Page 371 to establish that the requisite charges were collected in respect of gold brown colour jersey also.

10. The last submission of the learned counsel for the Applicant was that some of the horses were given on lease by the Applicant and that the respective lessee has been permitted to participate in the races. According to the learned counsel, this establishes that the first Respondent acted *mala fide* in refusing to allow the Applicant's horses to participate in the races.

11. In support of these submissions, the learned counsel relied upon paragraph 9 of the judgment of the Hon'ble Supreme Court in **T.P.Daver vs. Lodge Victoria & Others (Lodge Victoria), CDJ 1962 SC 442**, wherein it was held that a civil court can interfere if a private club acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. He also relied upon

the judgment of the Hon'ble Supreme Court in **Mohinder Singh Gill vs. The Chief Election Commissioner, (1978) 1 SCC 405**, wherein, at paragraph 8, it was held that the validity of an order should be tested by examining the order and that the order cannot be justified by filing affidavits containing the justification. He also relied upon the judgment of the Karnataka High Court in **V.Krishnamurthy and another vs Sri Hanumantha Devaru Trust, Regular First Appeal No.1248 of 2003, order dated 28.09.2012**, wherein, at paragraph 8, it was held that the suit may be filed by a single trustee if the co-trustees are impleaded in the suit as defendants.

12. In response, Mr.P.S.Raman, the learned senior counsel made submissions on behalf of the first Respondent. His first submission was that the first Respondent took all necessary steps to avoid conflict of interest in view of the fact that the second Respondent/complainant is the Chairperson of the first Respondent. Towards this end, he submitted that the 12 member Committee of Management(CoM), which considered the representation of the second Respondent, did not include the second Respondent. He further pointed out that the said 12 member CoM, in turn, constituted the 6 member Stewards Committee to examine the representation of the

second Respondent. By adverting to the composition of the Stewards Committee, he pointed out that the members of the said committee are persons with a sterling reputation and unimpeachable integrity. As regards the current secretary, he submitted that he is a qualified company secretary with over 35 years experience in horse racing. Thus, he contended that the integrity of the Stewards Committee that issued the Impugned Order cannot be questioned.

13. His second submission was that there was a massive factional dispute in the first Respondent and that elections could not be conducted on account of such dispute. Therefore, an interim administrative committee had been appointed and that such committee was headed by a retired Judge of this Court. Eventually, he submitted that about 640 members were expelled from the first Respondent before elections were conducted. At such election, he pointed out that three persons were elected from the Applicant's group and 9 persons from the second Respondent's group. The third contention of the learned senior counsel was that the current racing season consists of about 17 races and extends up to March 2020. In this situation, he submitted that the Applicant should have prosecuted the appeal before the Board of Appeals. He pointed out that the Board

of Appeals consists of three persons of repute and that the scheduling of the hearing in the appeal on 01.01.2020 was not unreasonable given the fact that the appeal was filed on 28.12.2019.

14. On the merits of the dispute, the learned senior counsel pointed out that an owner is defined in Rule 1 of the Rules of Racing of the Madras Race Club (the Rules) as a legal owner and not an equitable owner. He also pointed out that there are three recognized categories of owners, namely, individuals, syndicates and companies. Consequently, he submitted that the Appendix to the Rules only contains provisions relating to companies and syndicates. In this connection, he also pointed out that a recent amendment was made so as to enable limited liability partnerships to be registered as owners. However, he submitted that the Rules do not permit the registration of a public charitable trust as an owner. He relied upon the judgment of the Hon'ble Supreme Court in **Municipal Corporation of Hyderabad vs. Hyderabad Race Club (Hyderabad Race Club), MANU/SC/0361/1986**, in support of the contention that horse racing is not a charitable activity.

15. With regard to the transfer of horses owned by Dr.M.A.M.Ramaswamy to the Applicant/Public Trust, he submitted that

these transfers were effected in highly suspicious circumstances inasmuch as Dr.M.A.M.Ramaswamy died at about 4.00 p.m. on 02.12.2015 and the transfer was endorsed by the then Secretary of the first Respondent on the same date.

16. By reference to the Impugned Order, and, in specific, paragraph 3 thereof, he pointed out that the basis of the order is the fact that the Applicant had not applied to be registered as an owner and that the racing colours were also not registered in the name of the Applicant as per the records of the first Respondent. In the circumstances, he submitted that the Impugned Order is justified and that it is always open to the Applicant to duly submit an application for registration so as to enable the first Respondent to consider such application.

17. Mr.V.Raghavachari, the learned counsel for the second Respondent, made submissions thereafter. His first contention was that the purported transfer of the horses owned by Dr.M.A.M.Ramaswamy to the Private Trust is not valid. In this connection, he pointed out that the Rules of the first Respondent envisage the filing of an application for registration as an owner and that such application should be accompanied by a deposit of

O.A.Nos.1194 and 1195 of 2019 and
A.Nos.9890 and 9891 of 2019

Rs.50,000/- for individual members and Rs.1,00,000/- for company members. The second contention was that Dr.M.A.M.Ramaswamy did not disown the second Respondent and that this is evidenced by the Will of Dr.M.A.M.Ramaswamy.

18. The next contention of Mr.V.Raghavachari was that the Applicant cannot be permitted to maintain two parallel proceedings, namely, the appeal before the Board of Appeals and the civil suit before this Court. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court in **Delhi Gate Auto Service Station and others vs. Bharat Petroleum Corporation Limited (2009) 16 SCC 766** and, in specific, paragraph 3 thereof, wherein, it was held that two parallel remedies could not have been pursued by the applicant at the same time. He also relied upon the judgment of the Hon'ble Supreme Court in **Orissa Power Transmission Corporation Limited and others vs Asian School of Business Management Trust and others (2013) 8 SCC 738**, wherein, at paragraph 33, it was held that the court would not allow a party to pursue two remedies simultaneously. The judgment of the Court of Appeals in **Regina vs. Disciplinary Committee of the Jockey Club, 1 W.L.R. 909** was also relied upon for the proposition that the

decision of the Jockey Club is not amenable to judicial review. With regard to the transfer of the horses, the learned counsel submitted that Dr.M.A.M.Ramaswamy died during the heavy and unprecedented floods in the year 2015 and that the transfers were made illegally and fraudulently during that period. The next submission was that the passport is not a document of title and that it is merely a document of identity as regards horses. He also submitted that the transfer of horses from the Private Trust to the Public Trust in December 2015 is invalid because the objects of the Public Trust were amended only on 27.12.2016. With specific reference to the power of attorney dated 01.04.2008, he submitted that the agent was authorised to pay and receive and pay and sell but not to gift the horses to the Private Trust. With reference to Clause 9.3 of the Trust Deed, he referred to the order passed in W.P.No.11045 of 2017, on 13.07.2018, whereby it was held that the ownership of vehicles cannot be established in a Writ Petition on the basis of clause 9.3 of the Trust Deed of the Private Trust.

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19. By way of rejoinder submissions, the learned counsel for the Applicant submitted that the Impugned Order is not in the nature of an ex-parte ad interim order and that it records the definitive or

conclusive decision that the Applicant is not registered as an owner. He also pointed out that the Applicant/Public Trust was recognized as the leading owner by the first Respondent over several racing seasons, as reflected in Page 86 of volume 2 of the typed set of documents filed by the Applicant. His next submission was that the first Respondent did not produce the minutes of the meetings of the Stewards Committee so as to establish that the Applicant was not registered as an owner. He also referred to the counter of the first Respondent and, in particular, paragraph 36 thereof so as to point out that the first Respondent had agreed that a public charitable trust could be registered as an owner. He distinguished the judgments that were relied upon by the learned counsel for the second Respondent by pointing out that those judgments were in the context of service law and the Electricity Supply Act, respectively and, therefore, cannot be applied to this context. He concluded his submissions by pointing out that in the facts and circumstances of the case, the Applicant lost faith in the dispute resolution process of the first Respondent.

20. The records were examined and the submissions of the learned counsel for the respective parties were considered carefully.

21. At this juncture, the limited question that arises for

consideration is whether the Applicant has made out a case for the grant of interim relief in these applications. The horses of the Applicant may be divided into two categories: (i) horses that were purportedly transmitted to the Applicant as per clause 9.3 of the Trust Deed of the Private Trust; and (ii) horses that were directly procured by the Applicant from the respective breeders. The title of the Applicant over the first category of horses is fiercely contested by the second Respondent and the said disputed issue and the consequential rights of the contesting parties cannot be decided at this juncture. The other contentious aspect is the use of the gold brown colour racing jersey. As regards this aspect, however, the record discloses that the Private Trust requested permission to use the gold brown colour belt by letter dated 16.11.2015 and, later, the first Respondent collected the necessary charges from the Applicant and permitted the Applicant to use these colours. As regards the second category of horses, the admitted facts are that the Applicant/Public Trust procured a substantial number of horses from the respective breeders from December 2015 and the passports of the said horses duly reflect the name of the Applicant with the counter signature of an office bearer of the first Respondent. Secondly, it is evident from the ledger account of the first Respondent that the Applicant paid and the first

Respondent received the charges for the maintenance, medical care and training of horses owned by the Applicant over the aforesaid period of about 4 years. From these admitted facts, it appears prima facie that the first Respondent, by conduct, recognized the Applicant as the registered owner of these horses and collected necessary charges from the Applicant, including charges in respect of the gold brown colour racing jersey. After allowing this situation to continue for 4 years, it is the contention of the first Respondent that the Applicant did not submit an application for registration as an owner and that the Rules of the first Respondent do not permit the registration of a public charitable trust. Moreover, on that basis, the Stewards Committee issued the Impugned Order, whereby the Applicant has been prohibited from participating in races pending the registration of the Applicant as an owner. It is also the admitted position that the Impugned Order was issued without providing a personal hearing to the Applicant and without issuing a show cause notice to the Applicant.

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22. In view of the above stated facts, I find that the Applicant has clearly made out a strong prima facie case for the grant of interim orders pending disposal of the suit as regards the horses directly

procured by it. Given the fact that the Applicant paid the requisite charges to the first Respondent and has been participating in races over the last 4 years, the balance of convenience is also, undoubtedly, in favour of the Applicant. On perusal of the Rules of the first Respondent, including the definition of owner, I find that an owner is defined as a legal and not an equitable owner and the documents on record prima facie evidence legal ownership by the Applicant. Moreover, I do not find that there is a prohibition as regards the recognition or registration of a public charitable trust as an owner although it is clear that specific reference is made only to syndicates and companies and specific requirements are included in the Appendix to the Rules only for syndicates and companies. In this regard, as pointed out by the learned counsel for the Applicant, it is stated in the counter affidavit of the first Respondent, at paragraph 36, that even non-eligible bodies could be approved as owners by the Stewards of the Club, and that consequential rules could be framed. Meanwhile, if interim orders are not granted, the loss caused to the Applicant cannot be remedied subsequently. I also find that the Applicant satisfies the requirements specified in paragraph 9 of the judgment in **Lodge Victoria** with regard to interference in the affairs of a private club such as the first Respondent. The judgment in **Hyderabad Race Club**

turned on the fact that Section 202 of the Hyderabad Municipal Corporation Act provided for exemption from tax to buildings used for religious, educational and charitable purposes and is, therefore, not an authority for the broad proposition that a public trust cannot be a horse owner or cannot participate in horse races. As regards the parallel remedy contention and the judgments in that context, the learned counsel for the Applicant clarified that it is not intended to pursue the remedy under the Rules of the first Respondent.

23. Therefore, these Applications are allowed on the following terms pending disposal of the suit:

(i) The Applicant shall not be prevented, directly or indirectly, from fielding the horses procured directly by and owned by the Applicant in races conducted by the first Respondent on the basis of the Order dated 26.12.2019 of the Stewards Committee or otherwise.

(ii) The first Respondent shall collect the necessary entry and other fees so as to enable the participation of the horses of the Applicant in the classic races conducted by it for the 2020 – 2021 season.

(iii) The Applicant shall not be prevented from taking its horses from the custody of the first Respondent for the purpose of

participating in other races subject to necessary compliances, in that regard, as per the Rules of the first Respondent.

(iv) The Applicant shall not field any horses that were originally owned by the late Dr.M.A.M.Ramaswamy in any of the races of the first Respondent.

(v) The Applicant shall not be prevented from using the gold brown colour racing jersey.

.01.2020

When the order was being pronounced it was brought to my notice by the learned counsel for the applicant submits that the handicapping for the next spell of races commencing on 14.01.2020 starts today and that therefore, the applicant should be permitted to participate in such handicapping and thereafter in the races. In the light of the order already passed, this submission is accepted and the first respondent is directed to permit the applicant to participate in the races commencing on 14.01.2020 by completing the handicapping and other necessary procedures in time for the above purpose.

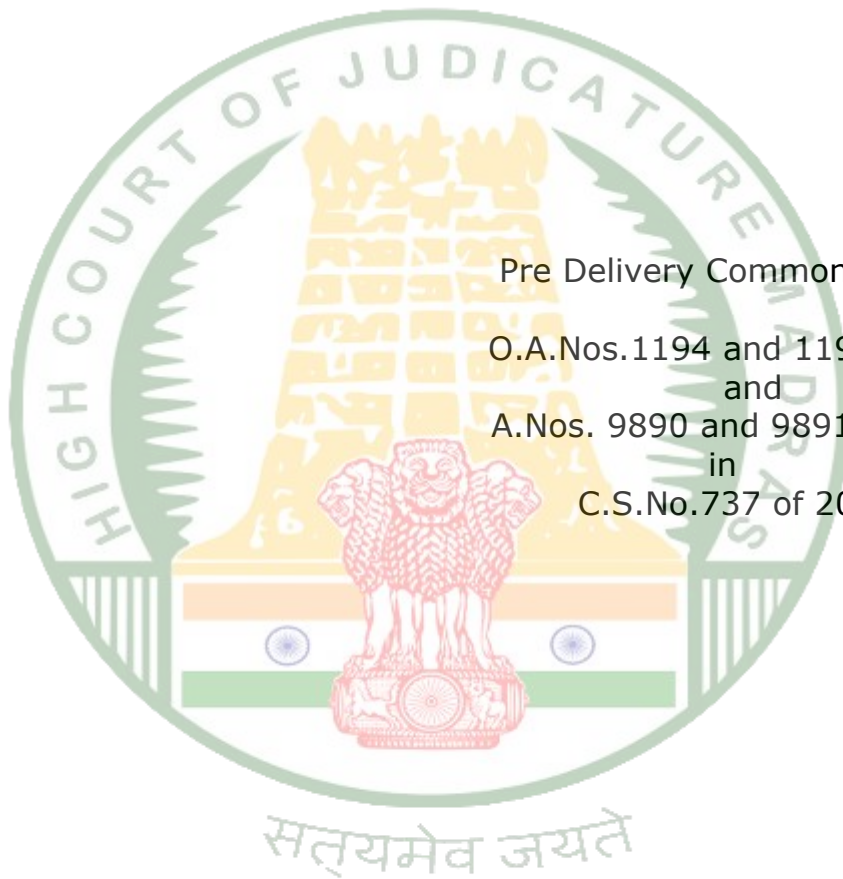
10.01.2020

Speaking/non Speaking order
Index : Yes/No
Internet : Yes/No

O.A.Nos.1194 and 1195 of 2019 and
A.Nos.9890 and 9891 of 2019

SENTHILKUMAR RAMAMOORTHY.J,

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Pre Delivery Common Order in
O.A.Nos.1194 and 1195 of 2019
and
A.Nos. 9890 and 9891 of 2019
in
C.S.No.737 of 2019

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