



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)Nos.10532 & 11099 of 2020 and
WMP(MD) Nos.9316,9313 & 9719 of 2020

W.P (MD)No.10532 of 2020:-

Tirunelveli CMS-Evangelical Church,
Registered Society No.2/1925-1926,
(Cheranmahadevi District Registrar Office,
New No.4/1982),
Idayankulam,
Nanguneri Taluk,
Tirunelveli District,
Rep by its Secretary S.Thomas Walker

Petitioner

Vs

The District Registrar (Administration),
Registration of Societies,
Cheranmahadevi, Tirunelveli District.

Respondent

W.P (MD)No.11099 of 2020:-

Tirunelveli C.M.S.Evangelical Church,
Idyankulam Head Office,
Represented by its Secretary,
R.PaulGeorge,
KeelaOmanallur & Post,
Palayankottai Taluk,
Tirunelveli District.

Petitioner

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2.The District Registrar,
Cheranmahadevi,
Tirunelveli District.

3.S.Thomas Waker,
South Street,
Karisalpatti,Cheranmahadevi Taluk,
Tirunelveli District - 627 414



4.D.Simon,
Near Ration Shop,
Karisalpatti, Cheranmahadevi Taluk,
Tirunelveli District - 627 414.

Respondents

WEB COPY

PRAYER in W.P (MD)No.10532 of 2020:-Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the respondent District Registrar (Administration) in Na.Ka.No.1275/Aa2/2020 dated 29.06.2020, quash the same and further direct the respondent District Registrar (Admin) to approve the Form VII submitted by the petitioner on 26.11.2019 for the triennium 2019-2022.

PRAYER in W.P (MD)No.11099 of 2020:-Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the recods of the second respondent in Na.Ka.No.1275/Aa2/2020 dated 29.06.2020 and quash the same as it is illegal, invalid.

For Petitioner (in W.P(MD) No.10532 of 2020)	Mr.Veerakathiravan Senior Counsel for Mr.S.Xavier Rajini
For Petitioner (in W.P(MD) No.11099 of 2020)	Mr.M.S.Suresh Kumar
For Respondent (in W.P(MD) No.10532 of 2020)	Mr.K.Sathiya Singh Additional Government Pleader
For R1 & R2 (in W.P(MD) No.11099 of 2020)	
For R3 (in W.P(MD) No.11099 of 2020)	Mr.Veerakathiravan Senior Counsel for Mr.S.Xavier Rajini

C O M M O N O R D E R

Heard the learned Senior Counsel Mr.Veerakathiravan for Mr.S.Xavier Rajini appearing for the petitioner in W.P(MD) No.10532 of 2020 and for the third respondent in W.P(MD) No.11099 of 2020, Mr.M.S.Suresh Kumar, learned counsel for the petitioner in W.P(MD) No.11099 of 2020, Mr.K.Sathiya Singh, the learned Additional Government Pleader appearing for the official respondents in both writ petitions.

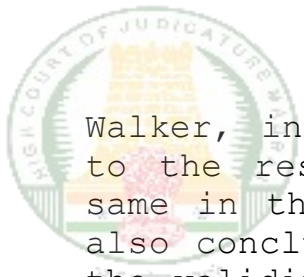
2.These Writ Petitions concern the management of Services rendered in hcs/GMS/ Evangelical Church, Idayankulam. It is a Society



registered under the Tamil Nadu Societies Registration Act. Though the registered Society is the petitioner in both these Writ Petitions, it is represented by two different individuals in each of the Writ Petitions. In W.P.(MD) No. 10532 of 2020, the Society is represented by S.Thomas Walker, who claims that he was elected as Secretary in the election said to have been held on 16.11.2019. In the other Writ Petition i.e W.P.(MD) No.11099 of 2020, the Church is represented by R.Paul George, who claims that he was elected as Secretary in the election said to have been held on 15.12.2018. In both these Writ Petitions, the order dated 29.06.2020 passed by the District Registrar (Administration), Cheranmahadevi is under challenge.

3.The impugned order came to be passed pursuant to the direction dated 28.02.2020 made in W.P(MD)No.2924 of 2020. The said Writ Petition was filed by the Church represented by S.Thomas Walker. The request made in the said Writ Petition was that the District Registrar, Registration of Societies, Cheranmahadevi should pass orders on the proposal submitted by S.Thomas Walker on 26.11.2019. Pursuant to the said direction, the District Registrar, Registration of Societies, Cheranmahadevi took the stand that since the annual returns in respect of the previous years have not been filed, Form VII submitted by S.Thomas Walker can be taken on file, only after the omission in respect of the previous years is regularised. Aggrieved by the aforesaid stand taken by the authority, S.Thomas Walker has filed W.P.(MD) No.10532 of 2020. The reason for R.Paul George to file W.P(MD) No.11099 of 2020 is that the authority appears to have acknowledged the election of S.Thomas Walker. There is also a finding in the impugned order that R.Paul George has been disqualified. Therefore, R.Paul George feels aggrieved by the impugned order.

4.It is seen that the dispute in respect of the petitioner's church was the subject matter of S.A.No.543 of 2019. A learned Judge of this Court by order dated 21.01.2020, took the view that since the issue pertains to the period 2012-2014 the entire matter has become infructuous. On that ground, the Second Appeal was dismissed. Mr.M.S.Suresh Kumar, the learned counsel states that aggrieved by the said outcome in S.A.(MD)No.543 of 2019, R.Paul George has filed SLP before the Honourable Supreme Court and the same is pending. What is important is that, in the said second appeal, CMP(MD) No.203 of 2020 came to be filed by S.Thomas Walker representing the Church. In the said CMP, assertion was made that in the election held on 16.11.2019, he was elected as Secretary. Though the High Court declined to go in to the question of validity of the election and the issue was left open to be decided in appropriate proceedings, a significant observation was made. It is specifically observed in the said



Walker, in regard to the election held on 16.11.2019, it is open to the respondents in CMP(MD) No.203 of 2020, to challenge the same in the manner known to law. Likewise, the second appeal was also concluded with the observation that the question relating to the validity of the election said to have been held on 16.11.2019 is left open to be decided in appropriate proceeding, if the parties choose to challenge it.

5.The claim of the R.Paul George is that election was held on 15.12.2018 and that he was elected in the said election and that necessary Form VII was also submitted to the Registrar on 28.01.2019. He would also draw my attention to the fact that O.S.No.222 of 2019 has been filed before the jurisdictional Civil Court challenging his election. Questioning the election said to have been held on 16.11.2019, O.S.No. 207 of 2020 has been filed before the II Additional District Munsif Court, Tirunelveli.

6.The contention of Shri.M.S.Suresh Kumar, who represents R.Paul George in W.P(MD)No.11099 of 2020 is that as on date, two civil suits are pending, one challenging the election of R.Paul George and the other challenging the election of S.Thomas Walker. Therefore, he would state that the issue should be left open to be decided by the concerned jurisdictional Civil Court. He also wants the finding made in favour of S.Thomas Walker in the impugned order to be vacated.

7.On the other hand, the contention of the learned Senior counsel is that if the judgment dated 21.01.2020 dismissing the Second Appeal(MD) No.543 of 2019 is properly construed, it would mean that, it is for those who challenge the election held on 16.11.2019, to move the Civil Court and that burden has not been cast on S.Thomas Walker. He would further point out that before this Court in the said second appeal, R.Paul George had not chosen to make any claim regarding the so called election said to have been conducted on 15.12.2018. He would call upon this Court to note the fact that the second suit challenging S.Thomas Walker's election was instituted only after the present writ petition was filed.

8.I am of the view that these contentions made by the learned Senior counsel are having considerable substance. At the same time, I may not lose sight of the fact that the impugned order endorses the stand of S.Thomas Walker and is totally adverse to the claim of R.PaulGeorge. Therefore, the District Registrar, Cheranmahadevi ought to have heard R.Paul George before passing any orders. I must also take note of the fact that the Honourable Full Bench in the decision reported in 2005 (2) CTC 161 has held as follows:-



"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



9. Therefore, it cannot be said that the District Registrar is toally bereft of authority. He has to conduct a summary enquiry on prima facie basis. Therefore, the impugned orders in these writ petitions are set aside. The matters remanded back to the file of the District Registrar (Administration), Registration of Societies, Cheranmahadevi, Tirunelveli District. The Registrar will hold a fresh enquiry and will pass orders afresh in accordance with law after hearing both parties. It is also open to the District Registrar (Administration) to issue notice to other interested persons also. This is because the suits have been filed by different persons and they may be heard in representative capacity also. These Writ Petitions are accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Inspector General of Registration,
Santhome High Road, Chennai - 600 028.

2.The District Registrar (Administration),
Registration of Societies,
Cheranmahadevi, Tirunelveli District.

+1 CC TO MR.M.S.SURESHKUMAR, (SR-18306[F] dated 29/09/2020)

+1 CC to M/s.GP (SR-18340 & 18341[F] dated 29/09/2020)

Common order made in
W.P (MD)Nos.10532 & 11099 of 2020 and
WMP(MD) Nos.9316,9313 & 9719 of 2020
28.09.2020

SRK(CO)

TR(07.10.2020) 6P 5C