

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.522 OF 2020

AND

WMP.NOS.8531 AND 613 OF 2020

S.Senthil alias Dhanapalan

.. Petitioner

Vs

1. The Secretary to Government
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
St. Fort George,
Chennai.
2. The Inspector General of Registration,
Santhome, Chennai.
3. The Registrar of Societies,
Erode.
4. C.Duraisamy
5. P.Gopalakrishnan
6. Erode Lorry Owner's Association
Represented by its President
2/95N, Bhavani Main Road,
Erode.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the 1st respondent to appoint a Special Officer by invoking Section 34 (A) of Tamil Nadu Societies Registration Act, 1975 to supersede the Executive Committee which has been acting in contravention of the Tamil Nadu Societies Registration Act 1975

For petitioner ... Mr.N.C.Ashok Kumar

For respondents ... Mr.T.M.Pappiah
Special Government Pleader for
RR1 to 3
Mr.V.Lakshminarayanan
for M/s.M.Guruprasad for R4 to R6

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the 1st respondent to appoint a Special Officer by invoking Section 34 (A) of the Tamil Nadu Societies and Registration Act, 1975 to supersede the Executive Committee of the 6th respondent Society, which according to the petitioner has been allegedly acting in contravention of the Tamil Nadu Societies and Registration Act, 1975 and the rules framed therein.

2. It is the case of the petitioner that the 6th respondent Society has amended the bye-laws without passing a special resolution as contemplated under Section 12(2) of the Tamil Nadu Societies and Registration Act, 1975, Rules (hereinafter referred to as "the Act"). Further it is the contention of the petitioner that there are several irregularities committed by some of the office bearers of the 6th respondent Society and several cases have been lodged against them including lodging of criminal complaints with regard to their irregularities. In such circumstances, this writ petition has been filed for a Mandamus seeking for appointment of a Special Officer under Section 34 (A) of the Act to supersede the existing Executive Committee of the 6th respondent Society.

3. The 3rd respondent in his counter affidavit filed on behalf of the respondents 1 to 3 has stated as follows :-

a) He has admitted that the amendment to the bye-laws of the 6th respondent Society was registered on 19.08.2018 as per the provisions of Section 12 (4) of the Act.

b) He has stated that the President of the Society is not barred in law in convening the general body meeting.

c) He has stated that the petitioner without specifically pointing out the irregularities of the 6th respondent Society and without any documentary evidence has raised bald allegations.

d) He has also stated that there is no necessity for passing of a resolution for appointment of Members of the Executive Committee of a registered Society.

e) Section 34(A) of the said Act will come into play only if an enquiry is conducted under Section 36 of the said Act and there is a prima facie evidence as to the mismanagement and financial irregularities in the Society to take suo motu action by the 3rd respondent / Registrar

of the Societies. According to the 3rd respondent, the case on hand will not fall under the said category. Hence, Section 34(A) of the Act will not get attracted.

4. The respondents 4 to 6 have also filed their counter affidavit. In their counter affidavit, they have stated that the writ petition is not maintainable on the ground of suppression of material facts. According to them, the petitioner has participated in all the meetings convened by the 6th respondent Society, including the meeting convened for the purpose of amending the bye-laws of the Society. They have also denied the allegations of the petitioner that they have committed irregularities while acting as office bearers of the 6th respondent Society. It is also their case that the criminal complaints lodged against them is false and a frivolous one. They have also stated that the petitioner has already approached the District Munsif Court, Erode by filing a Civil Suit in O.S No.10 of 2020 in the name of one E.R.Rajendran. In the said suit, according to them, I.A. No.2 of 2020 was filed by the said Rajendran to restrain the respondents 4 and 5 in this writ petition from conducting the Annual General Meeting on 12.01.2020. It is their case that the petitioner has suppressed all these facts before this Court. Further, it is their case that cheques were also signed by the petitioner on behalf of the 6th respondent Society and payments were also made only with his knowledge by the 6th respondent Society. According to them, I.A. No.2 of 2020 filed by E.R.Rajendran in O.S No.10 of 2020 on the file of the District Munsif, Erode referred to supra also got dismissed. According to them having failed in his unlawful attempts to prevent the Society from running smoothly, the petitioner has filed this instant writ petition.

5. Heard Mr.N.C.Ashok Kumar, learned counsel for the petitioner, Mr.T.M.Pappaih, Special Government Pleader appearing for respondents 1 to 3 and Mr.V.Lakshminarayanan representing Mr.M.Guruprasad, learned counsel for the respondents 4 to 6.

6. The learned counsel for the petitioner drew the attention of this Court to Section 12(2) of the Act and would submit that without passing a special resolution, the 3rd respondent has registered the amended bye-laws of the 6th respondent Society.

7. The learned counsel for the petitioner drew the attention of this Court to the various complaints given by the Members of the Society against the present office bearers of the 6th respondent/Society with regard to the financial irregularities which have been filed as documents along with this writ petition.

8. He also submits while referring to the counter affidavit

filed by the respondents 4 to 6 that the respondents 4 to 6 have themselves admitted in their counter affidavit that no special resolution passed for amending the bye-laws of the Society. Hence, according to him, the 3rd respondent has not followed the procedure contemplated under Section 12 (2) of the Act.

9. Per contra, the learned counsel appearing for the respondents 4 to 6 would refer to Section 12(4) of the Act and would submit that once the 3rd respondent is satisfied about the amendment to the bye-laws made by the Society, it shall be conclusive evidence that the amendment has been duly registered. According to him, the petitioner has suppressed several material facts while filing this writ petition. He drew the attention of this Court to the suit filed by one Rajendran before the District Munsif Court, Erode in O.S. No.10 of 2020, in which the petitioner herein is arrayed as 2nd defendant in the said suit. He would also submit that the suit was filed on 06.01.2020 and the counter affidavit was filed by the petitioner herein, who is the 2nd defendant therein on 08.01.2020. Thereafter, I.A. No.2 of 2020 came to be dismissed by the District Munsif Court, Erode on 09.01.2020. He would then refer to the affidavit filed in support of this writ petition and would submit that the petitioner has suppressed all these material facts in this writ petition and has approached this Court with unclean hands.

10. He would also submit that the dispute raised by the petitioner is a private dispute and no public law remedy can be granted by this Court under Article 226 of the Constitution of India. If at all the petitioner is having any grievance against the functioning of the Society, his only remedy is to file a civil suit.

11. Section 12 (2) and (4) of the Tamil Nadu Societies and Registration Act, 1975, reads as follows :

12.Amendment of memorandum and bye-laws.

(2)A registered society may, by special resolution, amend its bye-laws.

(4) If the Registrar is satisfied that any amendment of the memorandum or the bye-law is not contrary to the provisions of this Act, or the rules made thereunder, he may register the amendment. When the Registrar registers an amendment of the memorandum or the bye-laws, he shall issue to the registered society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered.

12. Admittedly, the bye-laws of the 6th respondent Society

has been registered by the 3rd respondent as per the provisions of Section 12 (4) of the Act. The petitioner seeks for an appointment of a Special Officer under Section 34(A) of the Act, to supersede the Executive Committee of the 6th respondent Society on the ground that no special resolution was passed by the 6th respondent Society for amending the existing bye-laws. However, the 3rd respondent has registered the amendment of the bye-laws as per the provisions of Section 12 (4) of the Act. In the counter affidavit filed by the respondents 1 to 3 before this Court, they have stated that there is no necessity for any special resolution for registering the amendment of bye-laws. They have also not stated that the 6th respondent Society has violated the statutory procedure, while seeking for registration of amendment of bye-laws of the Society. As per Section 12 (4) of the said Act, once the Registrar is satisfied that the bye-laws is not contrary to the provisions of the Act or the rules made thereunder, he may register the amendment of the bye-laws and on registration, it shall be a conclusive evidence that the amendment has been duly registered. When there is no admission on the part of the respondents 1 to 3 that the 6th respondent Society has not followed the procedure established under law for registration of the amendment of the bye-laws, this Court under Article 226 of the Constitution of India cannot interfere with regard to the registration of the amendment of bye-laws made by the 3rd respondent. The only remedy available to the petitioner is to challenge the same in a Civil Court as there are disputed questions of fact involved. Further the petitioner has also not disclosed the suit in O.S. No.10 of 2020, relating to the same subject matter, which was pending on the file of the District Munsif Court, Erode in which the petitioner was arrayed as the 2nd defendant. Infact as seen from the documents filed in support of the writ petition, the petitioner has also participated in various meetings convened by the 6th respondent Society and he was also a signatory to some of the cheques issued by the 6th respondent Society.

13. The petitioner has claimed in the writ petition that the present office bearers of the 6th respondent Society have been committing various financial irregularities in the functioning of the 6th respondent Society. When there are disputed questions of fact involved, the allegations raised by the petitioner in this writ petition cannot be looked into by this Court under Article 226 of the Constitution of India. If at all the petitioner is having any grievance, his only remedy is to approach the Civil Court.

14. For the foregoing reasons, this Court is of the considered view that there is no merit in this writ petition and accordingly, the writ petition is dismissed. However, liberty is granted to the petitioner, if aggrieved by the functioning of

the 6th respondent Society to approach the Civil Court, if he so desires. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary to Government
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
St. Fort George,
Chennai.
2. The Inspector General of Registration,
Santhome, Chennai.
3. The Registrar of Societies,
Erode.

+1cc to M/s.M.Guruprasad, Advocate, S.R.No.2355
+1cc to M/s.M.Narayanaswamy, Advocate, S.R.No.2206
+1cc to the Government Pleader, S.R.No.2255

W.P.No.522 of 2020

SSV(CO)
CS/10/02/2021

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