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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2021

PRONOUNCED ON : 22.04.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 959 of 2008

M/s. Nilgiri Petroleum Company
A partnership firm represented by
its Managing Partner
Madan
Charring Cross Villa
Charing Cross,
Ootacamund.

...Appellant

Vs.

The Nilgiri Diocesan Society
A Registered Christian Public
Charitable Society, represented
by its Secretary, R.V. Father
A.Anthonysamy
Bishop House, Ootacamund

... Respondent

Prayer: Second Appeal is filed under Section 100 of CPC, 1908 against the judgment and decree dated 08.03.2005 and made in A.S.No.6 of 2004 on the file of the District Judge of Nilgiris at Udthagamandalam confirming the judgment and decree dated 30.09.2003 and made in O.S.No.115 of 1998 on the file of the Subordinate judge of Udthagamandalam.

For Appellant : Mr. Sarath Chandran
for M/s. V. Arul

For Respondent : Mr. S. Kingston Gerold

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 08.03.2005 passed in A.S.No.6 of 2004 on the file of the District Judge of Nilgiris at Udthagamandalam, confirming the judgment and decree dated 30.09.2003 passed in O.S.No.115 of 1998 on the file of the Subordinate Court, Udthagamandalam.



2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendant in O.S.No.115 of 1998 is the appellant in the second appeal.

4. The second appeal has been admitted on the following substantial question of law.

"Whether the plaintiff-society is a juristic person and entitled to maintain the suit against the defendant in its name?"

5. Considering the scope of the issues involved between the parties qua the substantial question of law formulated in the second appeal, it is unnecessary to dwell into the facts of the case in detail.

6. Suffice to state that the plaintiff-society has laid the suit against the defendant for the possession, past and future damages. The plaintiff is the Nilgiri Diocesan Society, a registered Christian Public Charitable Society, represented by its Secretary Rev. Fr.A.Anthonyswamy. Claiming that the defendant is the tenant under the plaintiff qua the suit property and seeking possession of the suit property from the defendant for the reasons assigned in the plaint as well as the damages, the plaintiff has laid the suit against the defendant. It has been averred in the plaint by the plaintiff that the plaintiff-society is exempted from the provision of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 as per G.O.MS.No.2000 Home dated 16.08.1976 and accordingly put forth that the Civil Court has the jurisdiction to grant the reliefs sought for by the plaintiff.

7. The defendant resisted the plaintiff's suit inter alia contending that the parties are governed by the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 and therefore, the plaintiff can seek eviction of the tenant only before the Rent Controller, Ootacamund, and accordingly raised the question of jurisdiction of the Civil Court to entertain the plaintiff's suit.

8. In support of the plaintiffs' case P.W.1 was examined and Exs. A1 to A13 were marked. On the side of the defendant D.W.1 was examined and no document has been marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth by them, the courts below were pleased to grant the reliefs in favour of the plaintiff. Impugning the same, the present second appeal has been laid by the defendant.



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10. On an appreciation of the reasons and conclusions of the courts below, it is found that the plaintiff is falling under exemption vide G.O.MS.No.2000 Home dated 16.08.1976 and accordingly, rightly held that the civil court has jurisdiction to entertain the suit laid by the plaintiff and accordingly granted the reliefs in favour of the plaintiff. As far as the reliefs granted in favour of the plaintiff by the courts below, it is found that the same had been determined by the courts below on the appreciation of the materials placed on record as well as the principles of law in respect of the issues involved between the parties and accordingly, in my considered opinion,, no reason is warranted to interfere with the abovesaid determination of the courts below.

11. At the time of admission of the second appeal, the counsel for the defendant contended that the very suit laid by the plaintiff is not maintainable in law as according to him, the plaintiff is not a juristic person and therefore, not entitled to maintain the suit for the relief claimed by it.

12. Inasmuch as the abovesaid question raised by the defendant is a pure question of law, accordingly, the second appeal has been admitted on that question of law.

13. It is mainly argued by the defendant's counsel that the plaintiff-society, not being the juristic person, is disentitled to maintain the suit and therefore, on that ground alone, the plaintiff has to be non suited. For the abovesaid proposition of law, the counsel for the defendant mainly relied upon the decision of the Apex Court reported in (2003) 8 Supreme Court Cases 413 (Illachi Devi (dead) by Lrs and others vs. Jain Society, Protection of Orphans India and others) and the decision of the Division Bench of our High Court reported in 2010 (4) CTC 129 (Tamil Nadu Technical Education Department Staff Cooperative House Building Society rep. by its Secretary vs. The Secretary to Government , Housing and Urban Development Department, Govt. of Tamil Nadu, Chennai 9 and others), as well as the decision of the Apex Court reported in (2005) 10 Supreme Court Cases 760 (Church of North India) vs. Lavajibhai Ratanjibhai and others). The defendant's counsel also relied upon the decisions reported in 2012 2 Mah LJ 177 (Gorakh Hilal Patil and another vs. Parit Samaj Seva Mandal, Shirpur and another) and 2003 3 SCC 472 (Chief Conservator of Rorests, Govt. of A.P. vs. Collector and others).

14. In the decision reported in (2003) 8 Supreme Court Cases 413, it has been held that the Society registered under the Societies Registration Act, 1860 cannot enjoy the status of the Company and thus it is not a juristic person. The abovesaid principles of law enunciated by the Apex Court has been followed in the subsequent decision reported in (2005) 10 Supreme Court



Cases 760 and the Division Bench of our High Court reported in 2010 (4) CTC 129.

15. Per contra, according to the plaintiff's counsel, the plaintiff- Society, being a registered Society, is entitled to maintain the suit through his Secretary in accordance with the Rules and Regulations of the Society and therefore, contended that the courts below having granted the necessary reliefs in favour of the plaintiff by holding that the plaintiff's suit is legally sustainable, according to him, no interference is warranted in the determination of the courts below and thereby sought for the dismissal of the second appeal.

16. As above pointed out, the plaintiff is described as the Nilgiri Diocesan Society, a registered Christian Public Charitable Society, represented by its Secretary Rev. Fr. A. Anthonyswamy. In support of its case, the plaintiff has filed Ex.A5, which is the Memorandum and Rules and Regulations of the plaintiff-Society. On a perusal of Ex.A5, it is found that, as per Rule 13, the plaintiff Society shall be entitled to sue in the name of its Secretary and to defend the proceedings against the Society by its Secretary. Therefore, it is noted that the plaintiff-society shall be entitled to maintain the suit through its Secretary in accordance with Rule 13 of the Memorandum and Rules and Regulations of the plaintiff-Society marked as Ex.A5. Ex.A5 is neither disputed nor challenged by the defendant as such.

17. The question as to whether the society is entitled to maintain the suit through proper persons came up for consideration before this Court before Hon'ble Justice V. Ramasubramanian (as He then was) in Application Nos. 2450 of 2007 and 2894 of 2006. In that matter, Application No.2450 of 2007 has been preferred under Order 7 Rule 11 CPC to reject the plaint in C.S.No.590 of 2006 filed by the plaintiff-Society and in that matter, the plaintiff-Society has been described as the Uttar Pradesh Cricket Association represented by its Honorary Treasurer Shri. Imran Ullah. The applicant in the abovesaid applications contended that the plaintiff-society, not being a juristic person, inasmuch as the society is not a legal entity dis-entitled to sue or be sued except by virtue of and in accordance with the provisions of the Act under which it is registered and accordingly questioned the maintainability of the plaintiff's suit. Per contra, it had been contended by the plaintiff's counsel therein that though the plaintiff society may not be a legal entity, the suit is nevertheless maintainable in view of the resolution passed by the General Body at the extraordinary General Meeting held on 02.07.2006, by virtue of the provisions of Order 1 Rule 10 CPC.



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18. The applicant in the abovesaid matter mainly relied upon the decision of the Apex Court reported in (2003) 8 Supreme Court Cases 413, which is also now mainly relied upon by the defendant's counsel in the present second appeal. The abovesaid decision of the Apex Court was considered by His Lordship in the abovesaid Applications and held that, as in the abovesaid decision of the Apex Court, it had been held that the Society in a litigation must be represented through a person authorised in that behalf either in terms of its Bye-laws or otherwise and accordingly after considering the Bye-laws of the Society in question as well as the provisions contained in the Sports Act which empowered the Society/Association to frame its constitution consisting of Memorandum and Bye-laws and held that the plaintiff cannot be held to be dis-entitled to institute a suit through the person contemplated under the Bye-laws and further held that as in the Bye-laws of the plaintiff society in the abovesaid matter did not permit the plaintiff to lay the suit through the treasurer, on that reasoning alone, held that the suit has not been instituted through the proper person authorised under the Bye-law. The position of law has been discussed in the abovesaid matter as follows:

8. Elaborating on his first submission that the plaintiff is not a juristic person, entitled to maintain a suit, Mr. K. Parasaran, learned Senior Counsel for the applicant/second defendant invited my attention to the various provisions of the Sports Act as well as to the provisions contained in the several State Enactments relating to the Registration of Societies. In all State Enactments relating to Registration of Societies, a suitable provision is incorporated enabling Registered Societies to sue or be sued in the name of any one of the Office Bearers or Trustees of the Society. Such a provision under the heading "suits by and against Societies" is found in Section 7 of the A.P. (Telungana Area) Public Societies Registration Act, Section 6-A of the Jammu and Kashmit Societies Registration Act, 1998, Section 15 of the Karnataka Societies Registration Act, 1960, Section 22 of the Madhya Pradesh Society Registrikaran Adhiniyam, 1973, Section 19 of the Meghalaya Societies Registration Act, 1983, Section 6 of the Rajasthan Societies Registration Act, Section 20 of the Tamil Nadu Societies Registration Act, 1975 and Section 9 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

9. Though a Society registered under the Central Act or any of the State Acts, is not a juristic person, it is permitted to sue and be sued in the name of any one or more of the Office Bearers or Trustees, by the Statute itself. Alternatively, the Statute enables the Society to frame Bye-laws naming and authorising one of the Office Bearers or Trustees to sue and be sued on behalf of the Society. But the Uttar Pradesh (Registration, Recognition and Regulation of Associations) Act,



2005, does not contain a similar provision. In other words, the Sports Act does not contain a provision enabling a Sports Association registered under the Sports Act, to sue or be used in the name of any one or more of its Office Bearers. The Act does not even contain a provision enabling the Association to frame Bye-laws for the said purpose. Section 7 of the Sports Act mandates every Sports Association to frame its Constitution consisting of Part-A and Part-B, containing the Memorandum of Association and the Bye-laws respectively. Section 8(1) and (2) lists out the matters relating to which a Sports Association shall make provisions in its Bye-laws. But the manner in which a Sports Association can sue or be sued is not listed as one of the matters for which a provision is required to be made in the Bye-laws of a Sports Association, registered under the Sports Act.

10. The absence of such a provision in the Sports Act for enabling such an Association to sue or be sued, assumes significance in view of the judgment of the Supreme Court in *Illachi Devi (dead) by Lrs and others vs. Jain Society, Protection of Orphans India and others* ((2003) 8 SCC 413). The Supreme Court held in the said case that "a Society registered under the Societies Registration Act, is not a Body Corporate as is the case in respect of a Company registered under the Companies Act. Therefore, such a Society is not a juristic Person". After extracting the provisions contained in various State Enactments relating to suits by and against Societies, the Supreme Court held in para-31 of its judgment as follows:

"31. A bare perusal thereof would show that a society registered under the Societies Registration Act as contra-distinguished from a company registered under the Companies Act cannot sue in its own name. It is to be sued in the name of the president, chairman, or principal secretary or trustees as shall be determined by the rules and regulations of the society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name."

11. Therefore, the quintessence of the first submission of the learned Senior Counsel for the applicant/second defendant is that the plaintiff registered under the Sports Act, is not authorised by law to institute a suit and that therefore, the plaintiff cannot be said to have had a cause of action against the defendants. If the plaintiff, not being a juristic person, did not have a cause of action against the defendants, it cannot claim that a part of the cause of action arose within the jurisdiction of this Court, so as to maintain the present suit.



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12. But, I am unable to countenance the aforesaid submission of the learned Senior Counsel for the applicant/second defendant. Sections 7 and 8 of the Sports Act, 2005 mandates every Sports Association to frame its constitution consisting of (a) its Memorandum containing aims, objectives and area of operation under Part-A and (b) the Bye-laws under Part-B. Section 8(1) and (2) merely lists out the matters relating to which provisions should be made in the Bye-laws of a Sports Association. Section 8(1) and (2) make it clear that the list is not exhaustive. Section 8(1) reads as follows:

"Subject to the provisions of this Act, every Sports Association which seeks Registration under this Act, shall make, amongst other things, the following provisions in its Bye-laws".

Section 8(2) reads as follows:

"Every Sports Association shall incorporate a procedure for Election in its Bye-law which shall among other provisions comprise the following".

13. Thus the Sub Sections (1) and (2) of Section 8 use the expressings "amongst other things" and "among other provisions". Therefore, it is clear that the legislature left it to the Associations to make suitable provisions in their Bye-laws, even with regard to matters not listed under these Sub Sections (1) and (2) of Section 8. Consequently, what was left out by the Act, cannot be construed as "a vacuum", but only "an elbow space" for the Associations themselves to fill up. As a matter of fact, the plaintiff, in exercise of the power conferred under Section 7 of the Sports Act, has framed its Constitution, consisting of a Memorandum and Bye-laws. This Memorandum and Bye-laws have been filed by the plaintiff as a Document No.7. Bye-law No.34 deals with suits by and against the Association and it reads as follows:

"34. Suit by or against the Association

The ASSOCIATION shall sue or be sued in the name of the ASSOCIATION. However in case of any dispute between a member and the ASSOCIATION regarding the Election, the decision and any instruction to be given to the counsels appearing on behalf of the ASSOCIATION shall be taken only with the consent of the General Body. The decision of the General Body would be final and binding. However, in case the General Body is not available then the President may take the decision on behalf of the ASSOCIATION and his decision would have the same effect as that of the General Body"

14. Therefore, I am of the considered view that the plaintiff was entitled to institute the suit, in accordance with Bye-law No.34 of its Bye-laws, de hors the absence of a specific provision in the Sports Act dealing with suits by or against the Associations registered under the Sports Act.



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15. But unfortunately for the plaintiff, my above conclusion does not go to the rescue of the plaintiff, for a different reason. Though this reason was not projected by the applicant/second defendant, I cannot ignore it, as a Court of Original Jurisdiction. It is seen from the plaint that the present suit has been instituted by the Honorary Treasurer of the plaintiff-Association and not by the Honorary Secretary of the plaintiff-Association. Though Bye-law No.34 enables the Association to sue through the Honorary Secretary, it is not known as to why and how the suit was instituted through the Honorary Treasurer. As a matter of fact, a Resolution passed at the Extraordinary General Meeting of the plaintiff-Association on 02.07.2006 at Lucknow, filed as Document No.1 along with the plaint, discloses that the Honorary Treasurer was authorised to sign all papers and pleadings in connection with any legal proceedings. But this Resolution filed as Document No.1 runs contrary to the provisions contained in Bye-law No.34. Bye-law No.34 as extracted above, gives no scope for any tinkering. Primarily, Bye-law No.34 mandates the Association to sue or be sued in the name of the Association through the Honorary Secretary only. The only exception carved out by Bye-law No.34, is with regard to a dispute between a Member and the Association. In the case of a dispute between a Member and the Association regarding the Election, the Association is directed to go to the General Body for a decision. This exception under Bye-law No.34 is not applicable to the present suit, since the present suit is not one between a member and the Association. The plaintiff has not made a whisper in the entire plaint as to how and why the suit was instituted through the Honorary Treasurer and not through the Honorary Secretary. Therefore, in my considered view, the suit has not been properly instituted.

16. In *Illachi Devi (dead) by Lrs and others vs. Jain Society, Protection of Orphans India and others* ((2003) 8 SCC 413), while holding that a Society is not a Juristic person, the Supreme Court made it clear that in a litigation, a Society must be represented only through a person authorised in terms of its Bye-laws. Paragraph 51 of the said judgment, extracted below, makes it very explicit:-

51. Grant of probate in favour of society registered under the Societies Registration Act is refused, as discussed hereinbefore, inter alia on the ground it is not a juristic person. It, in a litigation, must be represented through a person authorised in this behalf either in terms of its bye-laws or otherwise."

17. The words "or otherwise" used by the Supreme Court in paragraph 51 of its judgment extracted above, cannot also be



used to mean that a person authorised by a Resolution of the Extraordinary General Meeting (or Annual General Meeting) will be entitled to sue. Any authorisation by a Resolution of the Annual General Meeting or Extraordinary General Meeting can be used only in the absence of a specific provision in the Bye-laws or if the Bye-laws themselves provide for the Annual General Meeting or Extraordinary General Meeting to grant such authorisation. The Annual General Meeting or Extraordinary General Meeting cannot pass a Resolution contrary to the Bye-laws. This position is also made clear by the Supreme Court in the very same judgment in paragraph-31, which has been extracted in paragraph-10 above. In the said paragraph-31, the Supreme Court made it clear that a Society "is to be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by the Rules and Regulations of the Society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination". Therefore, in the first instance, a Society can sue only in the name of a person as appointed by the Bye-laws. In the absence of any such appointment under the Bye-laws, it can sue in the name of a person appointed by the Governing Body. In the present case, the Bye-law No.34 specifically authorises the plaintiff-Society to sue through the Honorary Secretary. Hence, it cannot institute a suit through the Honorary Treasurer on the basis of a Resolution of the Extraordinary General Body.

18. Coming to the second contention of Mr.K.Parasaran, learned Senior Counsel for the applicant/second defendant that if the plaintiff is not a juristic person, it cannot have a cause of action and that consequently the plaintiff is not entitled to claim a part of the cause of action to have arisen at Chennai, it is seen that this contention is actually an off-shoot of the first contention. As I have observed in the previous paragraphs, though the Uttar Pradesh Cricket Association is not a legal entity, the Sports Act has enabled the said Association to frame its Constitution consisting of a Memorandum and Bye-laws. The plaintiff has been registered under the Sports Act of the State of Uttar Pradesh and it has framed for itself a set of Bye-laws. Bye-law No.34 contains an authorisation for the Association to institute a suit in the name of the Honorary Secretary. Therefore, it cannot be said that the plaintiff is not entitled to institute a suit in the name of the Honorary Secretary. Therefore, it cannot be said that the plaintiff is not entitled to institute a suit and that it cannot complain of a cause of action. But unfortunately for the plaintiff, the suit has not been instituted through the Honorary Secretary as per Bye-law No.34. Hence, though I am unable to appreciate the logic behind the contention of the learned Senior Counsel for the applicant/second defendant, I have no alternative except to accept his conclusion, on the basis of a different reasoning viz., that the suit has not been



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instituted through the person authorised under Bye-law No.34. In the light of the abovesaid position of law enunciated in the matter, it is found that the plaintiff-Society is entitled to maintain the suit through proper person as per the Rules and Regulations of the Society and in such view of the matter, the contention now put forth by the defendant's counsel that the plaintiff society is not entitled to maintain the suit, as such, cannot be countenanced.

19. In the decision reported in 2003 8 SCC 413, it is noted that the respondent society therein had been formed for the protection of orphans in India and was registered under the Societies Registration Act, 1860 and one R executed a Will on 15.10.1977 bequeathing a part of his estate to an orphanage run by the respondent society and on the demise of R, the respondent society submitted an application before the Court for the grant of Letter of Administration in pursuance of the abovesaid Will under Section 276 of the Succession Act, 1925 and the said application was contested by the appellant therein and on her death by her legal representatives on the ground that in view of Section 236 of the Act, the application was not maintainable. The Delhi High Court rejected the said objection and held that although a society was not a corporation it was also not a mere association of individuals and thereby held that since the Society could sue and be sued in a representative capacity, it could be entrusted with the responsibility of carrying out the wishes of the testator and also further held that the taking of a view to the contrary might frustrate the purpose of a Will in favour of the Society. Challenging the abovesaid decision of the Delhi High Court, an appeal has been preferred by the appellant and in the abovesaid appeal, the Apex Court has held that the Society Registered under the Societies Registration Act cannot enjoy the status of the company and it is not a juristic person. In para 31 of the judgment of the abovesaid Apex Court, it has been held that the litigation of a Society must be represented only through a person authorised in terms of its Bye-laws as follows.

31. A bare perusal thereof would show that a society registered under the [Societies Registration Act](#) as contra-distinguished from a company registered under the [Company Act](#) cannot sue in its own name. It is to be sued in the name of the president, chairman, or principal secretary or trustees as shall be determined by the rules and regulations of the society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name.

...

50. We may state that, as noticed hereinbefore, in terms of rules framed by the States under the [Societies Registration](#)



Act, a society may sue or may be sued through its President or Secretary or in the absence of any specific provisions in that behalf, any person authorised by the Society.

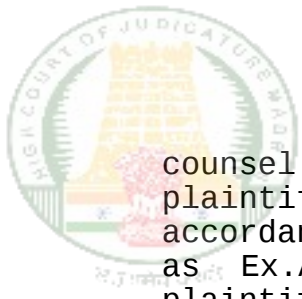
51. Grant of probate in favour of society registered under the Societies Registration Act is refused, as discussed hereinbefore, inter alia on the ground it is not a juristic person. It, in a litigation, must be represented through a person authorised in this behalf either in terms of its bye-laws or otherwise."

After holding so, the Apex Court in the abovesaid decision held that the Society registered under the Societies Registration Act play an important role in the Society and they discharge various functions which are beneficial to the society and they run education and other institutions and work in public interest and act in aid of the state functions and have their own accountability and some incur liabilities and Public Interest litigations filed by societies are galore and resultantly remitted the matter back to the High Court with a liberty to the respondent society to amend the petition for the grant of Letter of Administration and further directed that it would be open to the respondent society to nominate any of its office bearers to whom the Letter of Administration is to be granted.

20. It is thus found that the society is found to be entitled to maintain the litigation through a proper person as envisaged under its Rules and Regulations.

21. In the decision of the Division Bench of our High Court reported in 2010 4 CTC 129 , it is found that an unregistered Society has filed the Writ Petition involved in the abovesaid matter challenging the acquisition proceedings initiated by the State Government. The Society in that matter was found to be represented by its Secretary. However, as in that matter the society had not filed proper records to evidence that as to how the Secretary was authorised to file the Writ Petition on behalf of the society, on that reasoning, following the decision of the Apex Court reported in 2003 8 SCC 413, held that the Writ Petition preferred by the Society is not legally sustainable.

22. Insofar as the present case is concerned, as above noted, when the plaintiff-Society has marked its Memorandum and Rules and Regulations as Ex.A5 and when the same is not challenged in any manner and when in accordance with Rule 13 it is found that the plaintiff society is entitled to sue in the name of its secretary and to defend the proceedings proceeded against the society by its Secretary, in such view of the matter, even as per the decisions relied upon by the defendant's



counsel as above referred to, when it is seen that the plaintiff-Society had been represented by the proper person in accordance with its Memorandum and Rules and Regulations marked as Ex.A5 and accordingly when as above pointed out, the plaintiff-Society has laid the suit through proper person i.e. its Secretary, in such view of the matter, as rightly contended by the plaintiff's counsel, the framing of the plaintiff's suit cannot be held to be bad in law or not legally sustainable.

23. The plaintiff's counsel in support of his contentions placed reliance upon the following decisions reported in

- 1) CDJ 2003 SC 891 (Illachi Devi (D) by LRs & others vs. Jain Society, Protection of Orphans India & Others.
- 2) CDJ 2012 SC 631 (State of Rajasthan & others vs. Aanjaney Organic Herbal Pvt. Ltd.)
- 3) CDJ 1987 SC 747 (Bal Niketan Nursery School vs. Kesari Prasad)
- 4) CDJ 1964 SC 291 (Commissioner of Income Tax, Kerala & Coimbatore vs. L.W.Russel)
- 5) CDJ 2000 SC 202 (Shiromoni Gurudwara Prabandhak Committee vs. Som Nath Dass)
- 6) CDJ 1956 SC 098 (Dulichand Lakshminarayan vs. Commissioner of Income Tax, Nagpur)
- 7) CDJ 2016 SC 084 (Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc.)
- 8) CDJ 1961 SC 065 (Board of Trustees, Ayurvedic & Unani Tibia College Vs. State of Delhi & Another)
- 9) CDJ 2021 MHC 703 (Arulmigu Thirunageshwaraswamy Devasthanam, Kundrathur, Rep. by Fit person/Executive Officer vs. Anna Kaithari Nesavu Thozhilalar Sangam, by its President & Secretary, Kundrathur & another)
- 10) CDJ 1950 ALL HC 044 (Ganga Sahai vs. Bharat Bhan)
- 11) CDJ 1949 ALL HC 160 (Benares Hindu University vs. Gauri Dutt Joshi)
- 12) CDJ 2001 DHC 1221 (Jain Society for the Protection of Orphans for India vs. State of Delhi)
- 13) CDJ 1969 BIHAR HC 030 (K.C. Thomas vs. R.L.Gadeock)
- 14) CDJ 2001 MHC 1264 (Vijayakumar vs. Roman Catholic Church, represented by Rev. Father J. Anthony Joseph)
- 15) (2001) 1 LW 652 (Mulla Gulam Ali and Safiabai D. Trust vs. Deelip Kumar and Co.)
- 16) (1996) 1 LW 533 (Ranjan Devasahayam vs. Hindustan Bible Institute of India)
- 17) CDJ 1995 MHC 760 (Ranjan Devasahayam vs. Hindustan Bible Institute of India)
- 18) (1909) ILR (Madras) 469 (Shaik Atham Sahib vs. Daoud Sahib).
- 19) S.A.(MD) No.27 of 2017 (V. Irudhayaraja vs. The procurator of Society of St. Mary's East Veli Street, Madurai)
- 20) S.A(MD) Nos, 56 to 60, 73 & 74 of 2020 (J. Asolin vs. The Society of Francis Xavier, Palayamkottai)



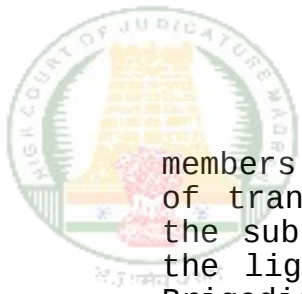
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- 21) S.A.No.1306 of 2008 (M/s. Sundaram Co-opoerative Credit Societies Limited, rep. by its Secretary, Chennai 2 vs. M/s. Associated clearing and forwarding agencies and others)
- 22) RSA No.776 of 2007 (Sebi Joseph vs. The Ernakulam District Postal Telecom)
- 23) Writ Petitions (PIL) No. 140 of 2015 (High Court of Uttarakhand (Lalit Miglani vs. State of Uttarkhand & others)
- 24) (1941) AIR (Bombay) 312 (A.S.Krishnan vs. M. Sundaram)
- 25) (1946) AIR (Bombay) 516 (Satyavart Sidhantalankar vs. The Arya Samaj)
- 26) Suit No.2231 of 1986 (High Court Judicature at Bombay) (Rathunath Namdeo Nikam & Ors vs. Smt. Padmavati Mohanlal Parekh)
- 27) (1940) AIR (Madras) 949 (Boppana Rukminamma and another vs. Maganti Venkata Ramadas)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

24. The Apex Court in the decision reported in 2010 9 SCC 354 (New Okhla Industrial Development Authority (Noida) vs. Army Welfare Housing Organisation and others) has held that the Society Registered under the Societies Registration Act, 1860, is capable of holding the property and for the same relied upon the decision of the Constitution Bench reported in AIR 1962 SC 458 (Ayurvedic and Unani Tibia College v. State of Delhi), wherein it has been held that the Society involved in that matter though registered under Societies Registration Act, has certain characteristics which would enable it to hold the property and therefore transfer of the land cum superstructure would be by way of a sub lease from the lessor i.e. Noida to the lessee which is AWHO to the sub lessees who are the individual allottees, by way of a stamped and registered document. In the abovesaid decision i.e. 2010 9 SCC 354 the Apex Court has also distinguished the decision of the Apex Court reported in (2003) 8 SCC 413 and followed the Constitution Bench of the Apex Court reported in AIR 1962 SC 458 and held that the Constitution Bench while dealing with Sections 5 and 6 of the Societies Registration Act and the question as to whether the Tibia College Board set up under the Tibia College Act, 1952 was a corporation in law and consequently held that the Board was indeed, not a corporation but had the characteristics of a quasi corporation and though a registered society could not hold property but a quasi corporation would be deemed to be a separate legal entity and entitled to hold property. The position of law has been discussed in the abovesaid decision as follows:

39. Mr. Anand, has however, submitted that a society registered under the Societies Registration Act was not a body corporate or a juristic person and the Society i.e AWHO and its



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members were one entity and there was, accordingly, no question of transferring by way of sub-lease any property from AWHO to the sub-lessees. This argument to our mind is without force in the light of what has been held above and that in the case of Brigadier Gur Dyal the stand taken was that the sub-lessees should execute a document directly with NOIDA bypassing AWHO, as that was deemed to be the right procedure. Mr. Anand's reliance on Illachi Devi case is misplaced for the simple reason as no ownership has been transferred to the cooperative society i.e. AWHO by NOIDA

40. In this background it must be held that the word "vest" in Section 5 of the Societies Registration Act does not envisage a lease deed and the matter would, if at all, be covered by Section 5-A, an amendment pertaining to the State of Uttar Pradesh alone which provides:

"5-A Restriction on transfer of property - (1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer, without the previous approval of the court, any immovable property belonging to any such society.

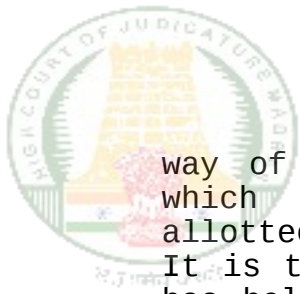
(2) Every transfer made in contravention of sub-section (1) shall void".

We are, however, not inclined to examine the implication of Section 5-A for the simple reason that many of those who are likely to be affected by its interpretation are not parties to the writ petition.

41. Mr. Gupta has further submitted that a society was a legal entity in law distinct from its members as the property vested in living members, trust or board and as such the society could hold property, although it may not be a juristic person. For this argument, Mr. Gupta has placed reliance on Ayurvedic and Unani Tibia College vs. State of Delhi.

42. In Ayurvedic and Unani Tibia College Case, the Constitution Bench was dealing with Sections 5 and 6 of the Societies Registration Act and the question as to whether the Tibia College Board set up under the Tibia College Act, 1952 was a corporation in law. The Bench held that the Board was, indeed, not a corporation but had the characteristics of a quasi corporation and though a registered society could not hold property but a quasi corporation would be deemed to be a separate legal entity and entitled to hold property.

43. We are, therefore, of the opinion that AWHO, though registered under the Societies Registration Act, has certain characteristics which would enable it to hold the property and therefore transfer of the land- cum-superstructure would be by



way of a sub-lease from the lessor i.e. Noida to the lessee which is AWHO to the sub-lessees who are the individual allottees, by way of a stamped and registered document.

It is thus found that in the abovesaid decision, the Apex Court has held that the Society registered under the Societies Act is the legal entity deemed to be quasi corporation and entitled to hold the property.

25. In the light of the abovesaid discussions, when it is found that as per Section 6 of the Societies Registration Act, every Society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal Secretary or trustees as shall be determined by the Rules and Regulations of the Society and, in default of such determination, in the name of such persons as shall be appointed by the Governing Body for the occasion and also further provided that it shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant and thereby when it is seen that the Society must sue or be sued through a person nominated in that behalf and accordingly when as above pointed out, when as per the Memorandum and Rules and Regulations of the plaintiff Society, the plaintiff Society is entitled to sue through its Secretary as above noted, in such view of the matter, in my considered opinion, in the light of the decision of the Constitution Bench of the Apex Court reported in AIR 1962 SC 458 and the decision reported in 2010 9 SCC 354, the plaintiff society is entitled to maintain the suit through its Secretary in accordance with the Memorandum and Rules and Regulations marked as Ex.A5 and accordingly, the substantial question of law is answered.

26. In the light of the abovesaid discussions, the judgment and decree dated 08.03.2005 passed in A.S.No.6 of 2004 on the file of the District Judge of Nilgiris at Udhagamandalam, confirming the judgment and decree dated 30.09.2003 passed in O.S.No.115 of 1998 on the file of the Subordinate Court, Udhagamandalam, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
ASSISTANT REGISTRAR

TRUE COPY

SUB ASSISTANT REGISTRAR



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To

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1. The District Judge of Nilgiris at Udhagamandalam.
2. The Subordinate Judge, Udhagamandalam.
3. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.K.Raghunathan, Advocate Sr.24578

S.A.No.959 of 2008

sv[co]
srg 25/11/2021