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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 20.10.2021

ORDER PRONOUNCED ON : 28.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

WRIT PETITION NO.19742 OF 2019

AND

WMP.NO.19259 OF 2019

Kumara Rajah Muthiah School of
Traditonal Arts and Crafts
Rep by its Secretary
Mrs. Meena Muthiah
'Chettinad House'
Rajah Annamalaipuram
Chennai - 600 028

.. Petitioner

Versus

1. Secretary to the Government
Commercial Tax and Registration Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai-9
2. The District Registrar (Admin)
(AIG Cadre)
Office of the Registrar of Societies
Chennai-Central
Bharathi Salai
Royapettah
Chennai - 600 014
3. Geetha Muthiah
"Chettinad House "
Rajah Annamalaipuram
Chennai - 600 028.
4. V. Chandramoleeswaran
No.886/E, Kambar Colony
Anna Nagar East
Chennai - 600 040



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5. S. Hariharan
Shruthi Apartment
Flat B, No 77, Natarajan Street
Vadapalani
Chennai - 600 026
6. V. Valliammai
A3/23, Tristar Residency
Mogappair West
Chennai - 600 037
7. T.R. Meyyappan
209, B-1 Krishnamachari Nagar Main Road
Valasaravakkam
Chennai - 600 087
8. M.A.M.R. Muthiah
"Chettinad House "
Rajah Annamalaipuram
Chennai - 600 028.
9. V. Palaniappan
Flat B, First Floor
Prem's Classic Apartments
No.95, Yamuna Street
Chinmaya Nagar Stage-1
Chennai - 600 092

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order of the 2nd Respondent in Reference No.1838/D2/2018 dated 02.07.2019 and to quash the same insofar as the relief granted to the Respondents 3 to 9 herein to continue them to be the members of the Petitioner society, alone is concerned.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr. K.R. Ramesh Kumar

For Respondents : Mr.Stalin Abhimanyu
Government Counsel for RR1 and 2
Mr.R.Bharanidharan
for Mr.R.Karthikeyan for RR3 and 8
Mr.V.Raghavachari
for Mr. T. Balaji for RR4 and 9
Mr. M.S. Krishnan, Senior Counsel
for Mr. Anirudh Krishnan for RR5, 6 and 7



ORDER

The petitioner calls in question the order of the second respondent in Proceedings No.1838/D2/2018 dated 02.07.2019, insofar as it relates to the removal of the respondents 3 to 9 as not valid and treating them as continuing members of the society.

2. The brief facts leading to the filing of this writ petition are as follows:

2.1 The petitioner society was formed in the year 1979 and it was duly registered before the Registrar of Societies in Serial No. 220 of 1979. Ever since the formation, they have been scrupulously following the bye-laws of the society and also complying with all the statutory requirements as contemplated under the Tamil Nadu Societies Registration Act, 1975 (in short, 'the Act').

2.2 According to the petitioner, at the time of formation of the society, there were only six members and by virtue of subsequent induction of new members and removal of some of the members, the society has reached the strength of 50 members. It is further stated that the respondents 3 to 9 were inducted as members of the society on 29.09.2011. However, the respondents 4, 5, 6, 7 and 9 were removed from the basic membership of the society on 23.10.2017, while the respondents 3 and 8 were removed on 27.01.2018 as they did not participate in the meetings convened by the society for a long time; and the same was also informed to the second respondent by filing Form VII. After receipt of the Form VII pertaining to the removal of the respondents 3 to 9, the second respondent did not call for any further particulars / explanation from the petitioner.

2.3 While so, the respondents 3 to 9 started sending representations / complaints to the petitioner society, with a copy marked to the second respondent. The eighth respondent by letter dated 03.11.2018 addressed to the petitioner, sought for certain details with respect to the audited financial statements for the preceding five years from 2013-14 to 2017-18 and the particulars relating to receipt of fees from the students in the school administered by the society, besides furnishing copies of Form VI and VII submitted before the Registrar of Societies for the last five financial years, including the copy of the bye-laws of the society.

2.4 Subsequently, on 14.11.2018, the respondents 4 to 7 sent a letter to the petitioner calling upon them to convene an Extraordinary General body meeting, within a period of 30 days, which was also reiterated by the respondents 3 and 8 in their



respective communications sent to the petitioner. In this regard, the petitioner sent a reply stating that all the signatories to the letter dated 14.11.2018 fail to qualify under the provisions of the Act to invoke the bye laws of the society and hence, their request could not be complied with. Despite the same, the respondents 3 to 9, issued a notice dated 03.12.2018, informing about the convening of Extraordinary General Body meeting on 28.12.2018. Upon receipt of the same, the petitioner sent a letter dated 06.12.2018 to the second respondent stating that the respondents 3 to 9 ceased to be members of the society by virtue of their removal after following the due procedure as contemplated under the Act and Bye-laws of the society and hence, their request to convene an Extraordinary General body meeting of the society lacks authority and is a clear act of interference with the internal affairs of the society by non-members and third parties.

2.5 Knowing fully well that they are no longer members of the petitioner society, the respondents 3 to 9 alleged to have convened a meeting among themselves claiming to be Extraordinary General Body meeting on 28.12.2018 and resolved to hold Annual General Body meeting of the petitioner society on 23.01.2019 and in furtherance of the same, they conducted an annual general body meeting on 23.01.2019, in which, the election for the executive committee of the society was done and the same was also intimated to the second respondent.

2.6 In the mean while, the respondents 3 to 9, by letter dated 17.12.2018 addressed to the second respondent, a copy of which was marked to the petitioner, made a request to conduct an enquiry under Section 36 (2) of the Act with respect to the affairs of the petitioner society. On receipt of the same, the petitioner submitted a detailed explanation on 17.12.2018 to the second respondent and the second respondent conducted an enquiry, in which, all the parties participated and submitted their written submissions. Thereafter, the second respondent passed an order dated 02.07.2019 holding that the Registrar cannot conduct a roving enquiry and examine the various statements made by the respondents 3 to 9 and further rejecting the claim of the respondents 3 to 9 to remove the members of the society, who got inducted after the year 2012-13 and also holding that only the court can decide such complex issues. With regard to election, the second respondent directed the parties to approach the civil court. However, he ordered that the removal of the respondents 3 to 9 from the membership is not valid and hence, they are to be treated as continuing members of the society, which part of the order alone is impugned in the present writ petition.



3. This court by order dated 15.07.2019 directed the parties to maintain status quo, till 22.07.2019. Thereafter, on 03.12.2019, the said interim order was extended until further orders.

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4.1 On notice, the respondents 1 and 2 filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner society has filed its annual returns upto the year 2019-20, but the annual returns upto the year 2003-04 alone, have been recorded in the register maintained in the office of the second respondent; and the annual returns and Form VII filed by the petitioner society from the years 2004-05 to 2019-20 have been kept pending for certain delayed filings. The counter affidavit further proceeds to state that the respondents 3 to 9 have addressed a letter dated 14.11.2018 to the petitioner society to convene an Extraordinary General Body meeting, a copy of which was marked to the second respondent, wherein, it was claimed that the respondents 3 to 9 are the members of the petitioner society and after the demise of Dr. M.A.M. Ramaswamy on 02.12.2015, they were not informed about the activities of the society and that, the petitioner society has been acting contrary to the bye-laws. It is also stated that on 03.12.2018, a notice was sent by the respondents 3 to 9 in unison, intimating that they are going to convene an Extraordinary General Body Meeting on 28.12.2018. In the said notice, it was further stated that the signatories thereof are proposing to conduct election for the executive committee of the society, to amend the bye-laws of the society and to place the Secretary's report and Auditor's report for the periods from 2011-2012 to 2017-2018. Accordingly, the respondents 3 to 9 convened the Extraordinary General Body meeting on 28.12.2018 and resolved to conduct the Annual General Body Meeting on 23.01.2019, in which, executive committee election was conducted and necessary Form VII to that effect was also filed in the office of the second respondent on 27.02.2019, but the same is kept pending along with the pending files relating to the petitioner society. Adding further, it is stated therein that pursuant to the complaint dated 17.12.2018 lodged by the respondents 3 to 9, the second respondent conducted enquiry and after following due process of law, rightly passed the order impugned herein, which does not call for any interference by this court.

4.2 On the side of the private respondents viz., R3 & R8, R4 & R9, and R5, R6 & R7, three separate counter affidavits have been filed. The common averments made therein would run thus:

(i) A preliminary objection was raised with respect to locus standi of Dr. Meena Muthiah, to file this writ petition claiming herself as secretary of the petitioner society, in view of the



fact that the ninth respondent is the duly elected secretary of the petitioner society by virtue of the election conducted in the annual general body meeting held on 23.01.2019.

(ii) During the life time of the founder / President of the society Dr.M.A.M.Ramaswamy, the respondents 3 to 9 were inducted as members of the society in the meeting convened on 29.09.2011 and the same was also duly informed to the second respondent through Form VII; and the newly inducted members were actively participating in all the affairs of the society, without any default.

(iii) After the death of the said Dr.M.A.M.Ramaswamy on 02.12.2015, no election to the post of the President was conducted; the affairs of the society came to a standstill; and no records were placed before the second respondent. Further, Dr.Meena Muthiah continued the post of Secretary until 23rd January, 2019, even after expiry of her three years term as early as in the year 2016 itself, without any election; and she did not even conduct a single statutory meeting and she was acting contrary to the provisions of the Act; and she also refused to accede to the request of the respondents 3 to 8 to convene Extraordinary general body meeting.

(iv) Owing to the serious misconduct of Dr.Meena Muthiah and her failure to respond the requisition to convene Extraordinary General body meeting, the respondents 3 to 9 after issuing due notice to all the members, conducted the extraordinary general body meeting on 28.12.2018 and resolved to convene annual general meeting on 23.01.2019 and accordingly, annual general body meeting was convened on 23.01.2019, in which, election was conducted and the office bearers were elected and the same was duly informed to the second respondent by filing Form VI and VII under due acknowledgment.

(v) It is for the first time, by letter dated 06.12.2018 addressed to the second respondent, Dr.Meena Muthiah informed that the respondents 3 to 9 were removed and they are no longer the members of the society, but the said letter did not contain any supporting documents nor any records were referred to or furnished to show the transactions taken place in a meeting that was lawfully conducted by the society and hence, the same would disclose that no resolution was passed with regard to the removal of these respondents.

(vi) According to these respondents, Dr.Meena Muthiah totally misused her power on the ill-advice of a total stranger to the society viz., K.T.R.Karuppan Chetty @ Karuppiyah, and she allowed him to manage the society and to have access to the books of



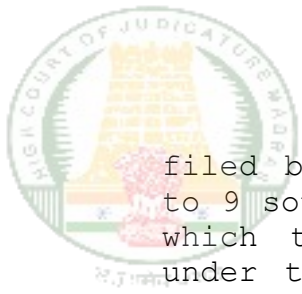
accounts, financials of the society, etc., which led to a criminal offence much less defiance of the statutory provisions. It is their further case that the said Karuppiyah, under the guise of Dr.Meena Muthiah, co-opted new members without the consent of these respondents and hence, the induction of new members and removal of existing members at the whims and fancies of Dr.Meena Muthiah and her aide, without following the procedure as contemplated under the Act and Bye laws of the society has constrained the petitioner society to become defunct.

(vii) Perceiving the illegal and malicious actions of the said Dr.Meena Muthiah and her aide, these respondents lodged a complaint dated 17.12.2018 seeking interference of the second respondent to ensure that the records are kept intact and whether the management is sought to be hijacked through deceit or records are tampered to include all and sundry without proper meetings and keeping the members ignorant and in dark and therefore, necessarily to appoint a special officer under section 36 (2) of the Act and to conduct a detailed probe into the affairs and management of the society.

(viii) During the pendency of the writ petition in WP.No.13245 of 2019 filed by the fourth respondent, praying for a direction to the second respondent to conduct an inquiry under section 36(1) of the Act, the second respondent, after issuing notice to all the parties and providing them reasonable opportunities to substantiate their respective submissions, has conducted the enquiry proceedings and passed the order dated 02.07.2019, which is impugned herein.

(ix) Section 36 of the Act empowers the Registrar to hold an enquiry into the constitution, working and financial conditions of the petitioner society and it does not merely imply that the Registrar is only a clerk and should file whatever papers that were sent to him by the members of the society. The Registrar on finding any doubt about the correctness and validity of the papers submitted, can very well probe into the authenticity of the same. Therefore, the order passed by the second respondent is perfectly valid in law and this writ petition seeking to quash the said order, is liable to be dismissed.

5.(i) Mr. AR.L. Sundaresan, learned senior counsel appearing for the petitioner would contend that the respondents 3 to 9 were inducted as members of the society on 29.09.2011. Since they have not participated in the proceedings of the society for a very long period, the respondents 4, 5, 6, 7 and 9 were removed from the basic membership of the society on 23.10.2017, while the respondents 3 and 8 were removed on 27.01.2018, after following due procedure of law and necessary Form VII was also



filed before the second respondent. However, the respondents 3 to 9 sought to convene an Extraordinary General Body Meeting, to which the petitioner duly replied that they fail to qualify under the provisions of the Act to invoke the bye-laws of the society to call for any meeting as they are no longer members of the society. Adding further, the learned senior counsel submitted that as per clause 35 of the Bye laws of the society, to call for the Extraordinary General Body meeting, 1/3rd of the total members of the society has to make a requisition, i.e., minimum of 16 members or the committee may any time call for the Extraordinary General Body Meeting. In this case, the respondents 3 to 9 ceased to be the members of the society by virtue of their removal and hence, they were not qualified to call for such a meeting, for want of quorum. It is also submitted that the respondents 3 to 9, who are not the members of the society, have no locus standi to file any petition against the petitioner society to the second respondent and the remedy available to them for any grievance is only before the appropriate civil court.

(ii) The learned senior counsel for the petitioner would further contend that the powers of the second respondent in scrutinising Form VII is very limited and he can only call for further explanation with respect to Form VII submitted under Section 34 (1) of the Act and keep the said information and explanation received by him as annexure to the original document. Whereas, in this case, the second respondent totally overstepped and acted beyond the jurisdiction conferred upon him in conducting enquiry with regard to the genuineness of Form VII submitted by the petitioner, based on the complaint / representation filed by the respondents 3 to 9. In this context, the learned senior counsel invited the attention of this court to Section 34 of the Act and contended that the Registrar, on perusal of any document presented, can form an opinion that certain other particulars are necessary and call for explanation from the registered society; and on receipt of such other particulars, he may annex the same to the original documents presented and he cannot go further to adjudicate on the same. It is also contended that the Registrar has got power to conduct an enquiry under Section 36 either on his own or on the application of majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society or at the instance of the District Collector or persons authorised by the Registrar, by order in writing; for holding such an enquiry, he may summon any person, who, he has reason to believe, has knowledge of any of the affairs of the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents; and the result of the enquiry shall be



communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the enquiry does not warrant any action under Section 37, he may issue such direction to the registered society, or any member of the registered society, as the Registrar may deem fit. On the other hand, in the instant case, the second respondent has conducted enquiry at the instance of the respondents 3 to 9, who were already expelled from the primary membership of the petitioner society. While so, such enquiry conducted by the second respondent and the consequential order passed on 02.07.2019 are vitiated in law.

(iii) Referring to the decisions of this court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee v. The District Registrar, Cheranmahadevi and others [2005 (2) CTC 161 = (2005) 2 Law Weekly 550] (FB) and R. Muralidharan and 6 others v. The District Registrar, South Madras and another [2008-2 LW 75] (DB), the learned senior counsel for the petitioner would urge that the second respondent has to arrive at a prima facie conclusion with regard to acceptance of the Form VII submitted by the petitioner and if for any reason, he does not accept Form VII, then he has to issue a direction relegating the parties to approach the civil court for appropriate orders. Instead of doing that, the second respondent, at the instance of the expelled members, conducted enquiry, adjudicated upon the correctness of Form VII submitted by the petitioner society and ultimately, permitted the respondents 3 to 9 to continue as members of the petitioner society, thereby exceeding the powers conferred upon him, under Section 34 of the Act.

With these submissions, the learned senior counsel appearing for the petitioner sought to set aside the order impugned herein and allow this writ petition.

6. (i) Reiterating the averments made in the counter affidavit, Mr. Stalin Abhimanyu, learned counsel appearing for the respondents 1 and 2, submitted that the question arisen for consideration herein is whether the respondents 3 to 9 are members of the petitioner society. In order to ascertain the status of the respondents 3 to 9, after conducting enquiry and providing due opportunity to all the parties, the second respondent passed the order dated 02.07.2019, on merits and in accordance with law.

(ii) The learned Government counsel further submitted that the petitioner society accepted all the decisions arrived at by the second respondent in the order impugned herein, except the one treating the respondents 3 to 9 as continuing members of the society in the context that the removal of the members without



being heard is against the principles of natural justice. It is also submitted that according to the petitioner, the respondents 3 to 9 were already removed from the primary membership of the society, however, no document was produced to show that the respondents 3 to 9 were either put on notice regarding the proposed expulsion or after their expulsion from the primary membership of the society. The Supreme Court in *Sarabjith Singh v. All India Fine Arts and Crafts Society* [AIR 1990 NOC 26 (Delhi)], has categorically observed that before expulsion, a member has to be served notice and explanation has to be sought. Therefore, in the absence of adherence to such a procedure, it can be presumed that the so-called expelled members can continue as members of the society and the second respondent is wholly justified in directing their continuance as members of the petitioner society.

(iii) According to the learned Government counsel, the Registrar is empowered by section 36 of the Act to look into the constitution, working and financial condition of the society and hence, no interference is required to the order passed by the second respondent.

7. (i) Mr. Bharanidharan, learned counsel representing the learned counsel on record for the respondents 3 and 8 would contend that the petitioner society being not a juristic person and it could not sue in its own name and therefore, it lacks authority to maintain the present writ petition, as laid down by the supreme court in *Illachi Devi (D) by Lrs and others v. Jain Society, Protection of Orphans India and others* [(2003) 8 SCC 413]. Adding further, it is contended that the deponent Dr. Meena Muthiah, has filed this writ petition claiming herself to be the secretary of the petitioner society. On the other hand, the ninth respondent is the elected secretary of the petitioner society as per the provisions of the Bye-laws and the Act, by virtue of the election conducted on 23.01.2019 in the annual general body meeting of the petitioner society. Hence, the said Dr. Meena Muthiah has no locus standi to represent the petitioner society as its secretary.

(ii) The learned counsel would further contend that after the death of the founder / President of the society on 02.12.2015, the said Dr. Meena Muthiah as a Secretary, did not conduct a single meeting and the members of the petitioner society were kept in complete dark with respect to the affairs of the society. Even though the respondents 3 to 9 were actively participating in all the general body meetings of the society until the demise of the then president, it was projected by the petitioner as if they did not continuously attend the meetings and therefore, they were expelled from the primary membership of



the society. However, in the enquiry conducted by the second respondent, no piece of material has been produced by the said Dr.Meena Muthiah, to show that the so-called expulsion was preceded by a notice or after following due procedure thereof. While so, the second respondent concluded that there was no merit in the submission of the said Dr.Meena Muthiah with respect to the expulsion of the respondents 3 to 9 and therefore, ordered that their removal from the membership of the society is not valid and they are to be treated as continuing members of the petitioner society.

(iii)The learned counsel also submitted that Section 36 of the Act empowers the Registrar to oversee the management and administration of the registered society and if it is found that the same is not in order, he is empowered to cause an enquiry into the constitution, working and financial condition of such society. In this case, the second respondent noticed that there was gross financial mismanagement in the petitioner society and even then, he directed the parties to the proceedings, to approach the competent civil Court to set right those anomalies. At the same time, the second respondent having found that there was nothing to show connected to Form VII, that the expulsion of the private respondents was after adhering to the principles of natural justice, permitted them to continue as members of the petitioner society. The very object of restitution is to put the affairs of the petitioner society in accordance with the provisions of the Act, so that the members can conduct the affairs of the society in terms of the Act. Therefore, the second respondent has rightly conducted enquiry upon the complaint lodged by the respondents 3 to 9 and after giving opportunity to all the parties, concluded that there cannot be any embargo for the private respondents to continue as members of the petitioner society and left the other issues raised, open to the parties to approach the competent Civil Court. Thus, according to the learned counsel, the order passed by the second respondent, which is impugned in this writ petition, does not require any interference at the hands of this Court.

8.(i)Mr.V.Raghavachari, learned counsel representing the learned counsel appearing for the respondents 4 and 9 submitted that the second respondent is wholly justified in passing the order, which is impugned in this writ petition. It is his contention that the petitioner society was originally founded by Late. Dr. M.A.M. Ramasamy and ever since its formation, Dr.Meena Muthiah, was functioning as Secretary. The land upon which the petitioner society is functioning, belongs to one Public Charitable Trust called as "Rajah Muthiah Chettiar Charitable and Educational Trust". The land was given to the petitioner society for imparting education to poor and downtrodden. Though



the petitioner society, through the schools run by it, has imparted education to the students belonging to lower strata in the society, gradually the society started running the schools with the aim of deriving profit like a commercial entity.

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(ii) The learned counsel further contended that the Registrar has power to see that the constitution, working and financial condition of the society is in order. The scope of enquiry empowers the Registrar to have access to the records of the society and summon any person in possession of, or responsible for the custody of any record. The Registrar is also empowered under Section 36 (6) to initiate such action calling upon the officers of the society to produce the books, accounts, documents and other information. In the present case, the second respondent, upon conducting an enquiry and on perusal of the written submissions made by all the parties, passed the order dated 02.07.2019 holding that the removal of the respondents 3 to 9 is arbitrary and hence, they are to be treated as continuing members of the society.

(iii) To substantiate his contentions, the learned counsel referred to the decisions of this court (a) in C.Dharmalingam v. The District Registrar, Madurai South, Madurai and others [2010 SCC Online Mad 1416] (Division Bench of this court), wherein, it was held that "the Registrar can only look into the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form VII in order to effect changes in the register maintained by him"; and (b) in Theni Melapettai Hindu Nadarkal Uravinmurai v. The District Registrar (Societies), Periyakulam, Theni District and others [2007 (5) CTC 421] (Madurai Bench of Madras High court), wherein, it was observed that "the duty of the Registrar to satisfy himself about the particulars furnished in Form VII, is not larger than that of ministerial act".

(iv) That apart, the learned counsel raised the issue relating to maintainability of the writ petition. According to him, the writ petition filed by Dr.Meena Muthiah, who is the erstwhile Secretary of the petitioner society, is not maintainable under law. In the election conducted on 23.01.2019, the ninth respondent was elected as Secretary and considering her age, the said Dr.Meena Muthiah was elected as President of the petitioner society and she also expressed her consent to the election and signed the documents on 23.01.2019. In such circumstances, the said Dr.Meena Muthiah ought to have approached the Civil Court, if she has any grievance with regard to the reliefs granted by the second respondent in the order dated 02.07.2019, which is impugned herein. In any event, the conduct of the enquiry by the second respondent is proper and



the decision taken by him with regard to removal of the private respondents from the primary membership as not valid, is perfectly correct. The learned counsel therefore prayed for dismissal of the writ petition.

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9.(i) Mr.M.S.Krishnan, learned senior counsel representing the learned counsel for the respondents 5, 6 and 7, would contend that Dr.Meena Muthiah is the erstwhile Secretary of the petitioner Society and inspite of demands, she did not convene any statutory meeting and thereby breached the provisions of the Act and bye-laws of the society. Therefore, the respondents 4, 5, 6, 7 and 9 along with the 1/3rd members of the society, submitted a letter dated 14.11.2018 to Dr.Meena Muthiah in terms of Clause 35 of the Bye-law of the society and as per Section 28 (1) of the Act to conduct the Extraordinary General Body Meeting. However, she refused to convene the meeting. Therefore, the private respondents decided to convene the Extraordinary General Body meeting on 28.12.2018 and issued the statutory notice to all the eligible members in advance with an explanatory note indicating the reason for convening the meeting. It is at this stage the said Dr.Meena Muthiah, has come out with the theory, through a letter dated 06.12.2018, that the private respondents were already expelled from their primary membership and they have no locus standi to convene the meeting. In the mean while, aggrieved by the inaction on the part of the said Dr.Meena Muthiah, the private respondents and other office bearers of the society submitted a complaint to the second respondent on 17.12.2018 with a request to conduct appropriate enquiry. After due enquiry, the second respondent noticed that there was no proof to show the expulsion of the private respondents and therefore, permitted them to continue as members of the petitioner society through the order impugned herein.

(ii)Relying upon the counter affidavit, it is submitted that no co-option of new members could be done without the consent of the respondents 4, 5, 6, 7 and 9. In the absence of electing a new President, after the post of President fell vacant on 02.12.2015, the question of adding new members does not arise. Further, no person could have been inducted into the society as member. Therefore, the so-called removal of the private respondents, that too, without adhering to the principles of natural justice cannot be sustained.

(iii)It is also submitted that the private respondents, has, in fact opted for appointing a Special Officer under Section 36 (2) of the Act to conduct a detailed probe into the affairs and management of the society. This is more so that the society is running an educational institution under the style of Chettinad Vidhashram School at R.A.Puram and in the guise of management



and/or administration of the school and the private respondents reliably learnt that Dr.Meena Muthiah and her aide have been extracting huge ransoms as donation contrary to the various judgments of this Court as well as the Supreme Court.

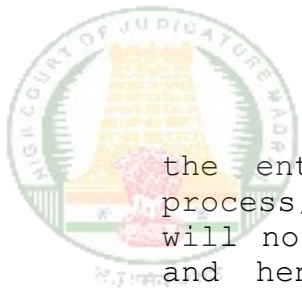
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(iv) It is further contended that the private respondents have duly conducted the election in which Dr.Meena Muthiah, considering her age, was given the post of President of the Society. The annual returns of the society, the minutes of the meeting of the Annual General Body Meeting along with Form VI and VII were duly submitted before the second respondent. Despite her election to the post of President, Dr.Meena Muthiah has filed the present writ petition in her capacity as Secretary though the tenure of such post expired long back. Therefore, the writ petition itself is not maintainable under law and she is no longer entitled to represent the petitioner society as its Secretary.

(v) Apart from that, the learned senior counsel submitted that the second respondent, upon due enquiry, found that there was no proof to show that the respondents 3 to 9 were expelled by following due procedure as contemplated under law. Even in this writ petition, the petitioner has not furnished any document to that effect. In the absence of any concrete material, the second respondent has rightly concluded that the removal of the respondents 3 to 9 from the membership is arbitrary and hence, they are to be treated as continuing members of the petitioner society. Thus, according to the learned senior counsel, the second respondent has acted within the scope and limitations of his power as conferred under Section 36 of the Act and hence, the order so passed by him, need not be interfered with.

10. This court has considered the submissions made by all the parties and also perused the materials placed on record.

11.1 During the course of argument, it was brought to the notice of this court that the mediation process is going on between the parties, by virtue of the order passed by this court in C.S.No.138 of 2019 in OP No.894 of 2016 dated 09.08.2019. However, the learned senior counsel for the petitioner submitted that the disposal of this writ petition will in no way prejudice the outcome of the mediation proceedings, as the dispute arisen for consideration in the present writ petition is with respect to the internal affairs of the members of the petitioner society, whereas the mediation proceedings is going on relating to the land dispute. In response to the same, it was submitted on the side of the private respondents that in the event of the writ petition being heard by this court pending the mediation,



the entire purpose of ordering mediation would scuttle the process; at the same time, referring the context of mediation will not subvert the rights of the parties in the writ petition and hence, the same is without prejudice to their rights, contentions and other remedies available in the pending proceedings. To that effect, the petitioner as well as the private respondents / R3 & 8, R4 & 9 and R5,6, and 7, filed separate affidavits before this court. In the affidavit dated 30.01.2020 filed by the respondents 3 and 8, it is further stated that the following cases are pending between the parties: (i)OS No.320 of 2017 on the file of XV Assistant City Civil Court, Chennai (ii)CS No.198 of 2016 on the file of this court (iii)CS No.11 of 2019 on the file of this court (iv)CS No.20 of 2019 on the file of this court and (v)CS No.138 of 2019 on the file of this court.

11.2 Recording the affidavits so filed by the parties, this court is of the view that the mediation and other civil proceedings shall go on independently, without prejudice to the rights, contentions and other remedies available to them in the same.

12. Having noticed the rival pleadings, submissions and the evidence available on record, the emerging undisputed facts are that the petitioner viz., Kumara Rajah Muthiah School of Arts and Traditional Crafts is a registered society having registration no.220 of 1979. It was established by Dr.M.A.M.Ramaswamy with an avowed object to promote the art of handicrafts, painting of all styles, cottage industries, crafts and other arts for the welfare of the public at large. It runs a school in the name and style of Chettinad Vidhyasharam, to impart free and transparent education to the poor and the downtrodden people. After the demise of the founder / President of the petitioner society Dr.M.A.M.Ramaswamy on 02.12.2015, the post of President became vacant, however no election was conducted by the Managing Committee. So, the respondents 3 to 9 made requests to Dr.Meena Muthiah claiming herself to be the secretary of the petitioner society, to convene Extraordinary General body meeting, which was not acceded to. While so, pursuant to the complaint dated 17.12.2018 made by the respondents 3 to 9 against the petitioner society, the second respondent conducted enquiry under section 36 of the Act and ultimately passed the order dated 02.07.2019, rejecting all the reliefs sought by the private respondents, except holding that the removal of the respondents 3 to 9 from the membership is not valid and hence, they are to be treated as continuing members of the society. That part of the order alone is under challenge in the instant case.



13. As stated earlier, the second respondent conducted enquiry and passed the order dated 02.07.2019 which is impugned herein, based on the communication dated 17.12.2018 sent by the respondents 3 to 9, the contents of which, are usefully extracted below:

"...The erstwhile secretary had failed in her duties to comply with the statutory obligation of convening any AGM of the society and it had forced us to call for the EGM on 28.12.2018 vide the notice dated 03.12.2018 and in default informed her that the EGM would be convened.

The erstwhile secretary in order to aggrandize the authenticity and misuse the office, she has taken a hostile stand that we have been 'removed' following due procedure as contemplated under the Societies Act and of the byelaw of the society. We are not aware of any such resolution and we did not get any information on this subject. We are keen on running the institutions that are managed by our society and our erstwhile secretary is on treating it as her private holding, totally oblivious of her duties casted towards the society. At the first instance, she has failed to understand that to remove any member of the society, a notice calling for removal of such member has to be issued and an opportunity to be given to such member before removal. When even the fundamental of how a society should be run is unknown to her, it is trite to hold an enquiry. Tampering records or inducting men of her choice is dangerous. Apart from being proceeded under the Tamil Nadu Societies Registration Act, 1975, the said person could also be hauled up for cheating and breach of trust. That apart, the claim and events as sequenced in the letter of the erstwhile secretary clearly shows that she is up to manipulate records to overcome the fraud played.

The fraud is so apparent as she has claimed in her letter addressed to you that the EGM requires a minimum of 17 members to constitute 1/3rd. We have not co-opted any persons. Nor are we aware of it. No person could have been inducted into the society as member unless strictly adhering with the statutory compliances. In addition, the Society has defuncted for non-compliance of the statutory provisions. As per the records available with the society till date, it is only 14 General body members, including us. In fact, there is no conflict with the provisions of the Act, as pointed out by the erstwhile secretary in her letter. The



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erstwhile secretary should not forget that she is holding the office of a Public Institution and she cannot act unilaterally.

She had financially deprived the institutions of its legitimate income and caused diversion of funds. It is time to probe into the affairs of the society. We are only seeking of your benevolent interference to ensure, the records are kept properly and whether the management is sought to be hijacked through deceit or records are tempered to include all and sundry without proper meetings and keeping the members ignorant and in dark. It is high time to appoint a special officer under section 36(2) of the Tamil Nadu Societies Registration Act, 1975 and to conduct an inquiry on the records of the society. This is a clear case of falsifying documents and committing fraud on the statutory documents. ...

Admittedly, the society is running an educational institution under the guise of Chettinad Vidhayasharam School at R.A.Puram, Chennai. We also understand that the erstwhile secretary is involved in extracting huge ransoms as donation contrary to various judgements of Hon'ble High Court of Madras and Hon'ble Supreme Court of India. In fact, the Hon'ble High court of Madras made an adverse comments and observation against the management in WP.No.20336 of 2011 in its order dated 28th October 2011 and also confirmed by the Hon'ble Division Bench of the Hon'ble High Court of Madras in Rev.Appln.No.174 of 2014 vide its order dated 3rd November 2014.

...It is for the time, that the erstwhile secretary has intimated us that we have been removed from the membership of the society. No such communication was ever issued to us at earlier point of time. Hence, we cannot be denied of our status as member unless following due procedure as contemplated under law. Taking into consideration of the facts and conduct of the erstwhile secretary, our action of convening the meeting of the society has become correct and necessary...."

14. Pointing out the aforesaid allegations, the private respondents sought the following reliefs to the second respondent:

- ♦ Hold an enquiry on the financial irregularity committed by the erstwhile secretary Dr.Kumararani Meena Muthiah
- ♦ Exclude those persons names, whose names are not found in Form VI & VII as available with Registrar of societies



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before the year 2012

- ◆ Dr.Kumararani Meena Muthiah or related person to hand over the records to V.Palaniappan (present Secretary of society)
- ◆ to allow and permit only those persons whose names are reflected in Form No.VI as was existing in the year 2012
- ◆ to pass such further orders and render justice.

15. The petitioner society stoutly refuted the aforesaid allegations raised before the second respondent by stating that the complainants / respondents 3 to 9 ceased to be the members of the society by virtue of their removal after following due procedure as contemplated under the Act and Bye-laws of the society and hence, they lacks authority to convene extraordinary general body meeting; and the private respondents, who are aware of their removal from the society and abstained themselves from any involvement with the affairs of the society, have come forward with these false informations with an intent to use the lawful power of the second respondent to cause injury and annoyance to the respected members of the society.

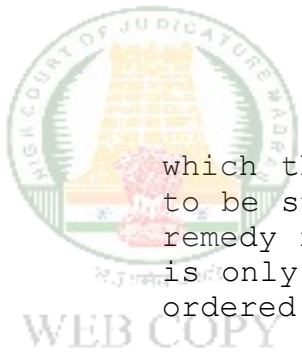
16.1 The second respondent after examined the respective submissions and having provided due opportunity of hearing to all the parties, has passed the impugned order dated 02.07.2019. For the sake of convenience, the conclusions arrived at by the second respondent with respect to the six issues involved are summarised as under:

As regards the issue (1) 'to hold an enquiry on the mismanagement and financial irregularity committed by Smt.Kumararani Meena Muthiah',

"In the light of the fact that the allegation is in the form of a mere statement and is not supported with any prima facie evidence, it is hereby decided that an enquiry by the Registrar on the alleged mismanagement and financial irregularity in the affairs of the society is not warranted at this stage and it is ordered accordingly."

As regards the issues (2) 'to remove the names of those members of the society who are added to the society after the financial year 2012-13 and the issue (5) 'to allow and permit only those persons whose names are reflected in Form No.VI as was existing in the year 2012 to represent the society'

"In the light of the complainants' allegation that they were not served with due notices for any meeting and that the society too has not produced any proof to counter it, applying the general principles of law and of the relevant statute, the induction of new members after 2012 and the method and manner in



which they have been brought in as members of the society seems to be surrounded with suspicion. However, it is decided that the remedy for this complaint does not lie with the Registrar and it is only the Court which can decide such complex issues and it is ordered accordingly."

As regards issue (3) 'to declare the 7 members viz., 1) Mr.V.Palaniappan 2)Mr.V.Chandramoleeswaran 3)Mrs.V.Valliammai 4) Mr.M.A.M.R.Muthiah 5)Mrs.Geetha Muthiah 6)Mr.S.Hariharan 7) Mr.TR.Meyappan as members of the society'

"The contention of the society that the complainants were informed of their removal and that for this reason, their removal is valid, is not justifiable in the light of the principles of natural justice.

The society has claimed that the removal of the complainants is in consonance with the byelaw no.11 of the society, which reads as, "The Managing Committee shall have power to remove any member of the society if in its opinion such member is an undesirable person and no appeal shall lie before any authority against such removal".

In the opinion of the Registrar, such a provision in the byelaw of the said society, "does not" and "cannot" override the principles of natural justice. One of the principles which reads as "Audi Alteram Partem" (which means both sides should be heard and implies that the delinquent should be given an opportunity of being heard) has been violated. As per the citation in Sarabjith Singh v. All India Fine Arts & Crafts Society, AIR 1990 NOC 26 (Delhi), "before expulsion, a member has to be served notice, otherwise he would continue as member". Hence for the reasons stated above, it is decided that their removal is not valid and for that reason, it is ordered that the said 7 complainants are to be treated as continuing members."

As regards the issue (4) 'to direct Smt.Kumararani Meena Muthiah or related person to hand over the records to Mr.V.Palaniappan claiming as present secretary of the society'

"For the reasons stated in para thereunder, it is decided that the Registrar is not empowered to decide the genuinity of any election and that the remedy for the rival groups lies only in a court of law and it is ordered accordingly."

As regards the issue (6), 'to direct Smt.Kumararani Dr.Meena Muthiah to produce the preceding five years minutes book before the Registrar'



in the

17. At the outset, the learned counsel appearing for the private respondents viz., R3 to R9 raised the preliminary objection with regard to maintainability of the writ petition, stating that the ninth respondent alone is the elected secretary of the petitioner society in the annual general body meeting held on 23.01.2019 and Dr.Meena Muthiah is not a secretary of the petitioner society and hence, she has no locus standi to file this writ petition representing the petitioner society. This court is not inclined to delve into this issue in detail, taking note of the other contentions raised by the parties.

18. It is the specific contention of the learned senior counsel for the petitioner that the respondents 3 to 9 were already removed from the membership of the petitioner society, after following due process of law and hence, they have no authority to convene the Extraordinary general body meeting. It is his further contention that the power of the Registrar to hold an enquiry into the affairs of the society is only for his own satisfaction and the said power cannot be construed as the power of appeal; and as per section 36, the Registrar can look into the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. Whereas, in this case, the second respondent has overstepped his jurisdiction conferred upon him under the Act by conducting enquiry and passed an order for continuance of the private respondents as members of the petitioner society, which is totally unwarranted.



19. The sum and substance of the arguments advanced on the side of the private respondents are that no document was filed by the petitioner society to support its stand that the respondents 3 to 9 were already removed from the membership of the petitioner society, after following due procedure as laid down under the Act and the bye-laws of the society; and the private respondents came to know about their removal from the membership of the society only through a letter dated 06.12.2018 addressed to the second respondent by the petitioner society. They were not issued with any communication / notice, before or after their removal. Thus, in the absence of any concrete material, the second respondent arrived at the decision that the removal of the private respondents was in violation of the principles of natural justice and hence, they are to be treated as continuing members, which decision is very well within his power conferred upon the Act and the same need not be interfered with by this court.

20. Before venturing into the rival contentions, to effective adjudication of the issue involved herein, it is necessary to look into the provisions of the Act, which confer certain powers on the second respondent.

20.1 Under Section 14 of the Act, it is mandatory for every registered society to maintain a register containing the names, addresses and occupations of its members. The form of register of members, filing of copy of the register of members and notice of change of members or committee have been stated in Rules 16 and 17 of the Tamil Nadu Societies Registration Rules, 1978 (in short, 'the Rules').

20.2 Under Rule 17, a copy of the register of members maintained by the society under Section 14 of the Act shall be filed with the Registrar within one month from the date of registration of a society. Rule 17(2) states that the notice of any change among the members of the society or the committee shall be filed in Form No. VII within three months from the date of such change. The notice of change among the members of the committee shall be accompanied by the resolution of the committee, if any effecting such change. Form No. VII has been prescribed in the Rules in order to comply with Sub Rule (2) of Rule 17.

20.3 Under Form No.VII, the particulars required to be submitted are (i) the name of the society (ii) the date of registration (iii) the registration number and the year of registration and (iv) importantly, the details of change. Under the head 'Details of change', Form No. VII requires the name of



the members of the society or of the committee affected by the change to be specified, the nature of change (registration, removal, death or otherwise and new appointment, etc.) to be specified along with the date of change and remarks. A cursory glance at the Rules as well as Form No. VII to give effect to the Rules, show that the legislation requires the details of change as well as the reasons for change to be specified while submitting Form VII to the Registrar.

20.4 Under Section 34 of the Act, the Registrar is empowered to call for information or explanation, when he is of the opinion that such information or explanation is necessary with respect to any matter to which a document filed before him relates to. He may, by order in writing, call on the registered society filing the document to furnish in writing such information or explanation within such time as he may specify in the order. Sub-section (2) of Section 34 makes it a duty of all persons who are or have been the officers of a registered society to furnish such information or explanation as called upon to furnish by the Registrar, to the best of their power.

20.5 Under Section 36 of the Act, the Registrar has also been given powers to enquire into the affairs of a registered society either on his own motion or on an application by a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society, or if so moved by the District Collector, hold an enquiry into the Constitution, working, and financial condition of that registered society.

20.6 Now, it is important to consider the provisions of the Tamil Nadu Societies Registration Act, 1860 as well, the central legislation governing the registration of societies in India. Under section 4 of the Societies Registration Act (hereinafter referred to as 'the Central Act'), the annual list of the governing body of the society is to be filed with the Registrar. A perusal of the various State amendments to this provision would show that certification of the correctness of such annual list or the list of change of its members has been made as mandatory. Further, if any information provided is false, the same has to be made punishable as an offence.

21. There are various judgments rendered by this Court on the scope of the powers of the Registrar under Section 34 and with specific reference to the acceptance of Form No. VII in accordance with Rule 17 of the Rules. In C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee (cited supra), while considering the powers of the Registrar under Section 36 of the Act i.e. to enquire into the affairs of the society, the

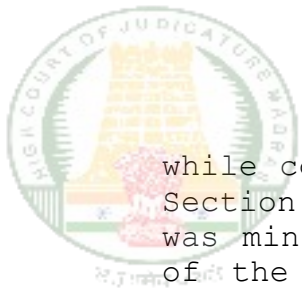


Full Bench has categorically held that the Registrar has the power to prima facie look into the correctness of the details and particulars furnished before him under Form No. VII. What has been held to be outside the scope of the powers of the Registrar is only to decide or otherwise intrude into the issue of validity of an election of the members of the society. The Full Bench therefore concluded that the role of the Registrar was ministerial in nature. The relevant portion of the said decision is extracted below:-

"18. The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the writ jurisdiction."

It is seen from paragraph No.18 of the decision as extracted above, which dealt with the power of the Registrar that since Section 36 empowers the Registrar to conduct an inquiry, the Full Bench concluded that the exercise of such power by the Registrar should not be arbitrary, as the orders passed by the Registrar would be amenable to challenge in writ jurisdiction. But insofar as the power under Section 34 is concerned, the Registrar is not expected to conduct any enquiry except to call for additional information or explanation and that too, just for the purpose of filing it as annexure to the original document. That is why the Full Bench held that the power of the Registrar is incidental and is only for the purpose of maintaining correct records.

22. Following the judgement of the Full Bench, in R. Muralitharan case (cited surpa), the Division Bench of this Court



while considering the scope of the powers of the Registrar under Section 34 of the Act, once again held that the Registrar's role was ministerial, but he has the power to verify the correctness of the information furnished under Form No. VII and to that effect he can call for any further information or explanation with respect to the documents filed before him. In Para Nos.32 and 33, it was held as under:-

"32. From a bare reading of sub-section (1) of Section 34, it is clear that the only obligation cast upon the Registrar, upon receipt of any document or Form filed under the Act, is to call for any further information or explanation in respect of any matter, to which, such document relates to. Sub-section (3) makes it still more clear by prescribing that the Registrar may annex such information or explanation to the original document filed with him. Therefore, if Form No.VII is filed with the Registrar, as required by Section 15 (1) of the Act read with Rule 17 (2) of the Rules, all that the Registrar can do is only to call for further information or explanation under Section 34 (1) and keep the information or explanation received by him as an annexure to the original document. This is nothing but a mere ministerial function and hence, it cannot be challenged by way of a Writ Petition under Article 226 of the Constitution of India.

33. In any event, the filing of Form No.VII is only a consequential action to an election purportedly conducted. The acceptance of such a Form by the Registrar would neither affix a seal of approval on the validity of the election nor would the rejection of Form No.VII by the Registrar, invalidate an election properly conducted. Therefore, a person who is aggrieved by an election, should only go before a Civil Court challenging the election. A person aggrieved by an election cannot challenge the acceptance or rejection of Form No.VII by the Registrar as a short cut to invalidate an election. This is why the Full Bench of this Court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee vs. District Registrar, Cheranmahadevi and four others (2005) 2 MLJ 235 : 2005-2-Law Weekly 550, held that the power under Section 34 is only incidental and that it was only for the purpose of maintaining correct records."



23. Therefore, it is vivid that the Full Bench as well as the Division Bench, while making it clear that the Registrar does not have any appellate powers with respect to an election conducted in a society, categorically held that it is very much within the powers of the Registrar to prima facie look into the details furnished before him under Form No. VII and verify the correctness or otherwise of the particulars furnished therein and to call for further information or explanation with respect to the documents filed before him and if such information is thereafter obtained, to annex it with the original document and maintain it as a matter of record. It is also well within the powers of the Registrar to accept or reject the Form No. VII submitted to him.

24. At this juncture, it is relevant to point out that under Form No. VII, the change in the members of a society can be due to any other factor other than election and the reason for such change in membership is also to be mentioned in Form No. VII. On receipt of such particulars by way of Form VII, it is open to the Registrar to call for particulars with respect to any of the details or information furnished before him in Form No. VII, under Section 34 of the Act.

25. In *A.Jeba Singh Prasad and others v. The General Manager, Southern Railway and others* [MANU/TN/8998/2007], this court, while taking note of the observations of the Full Bench and after considering all attendant circumstances, has held that "the Registrar is bound to consider the objections taken and the representations made before recording the details in Form No. VII".

26. Pertinently, the judgment rendered by the Division Bench in *C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee v. District Registrar* [decision dated 31.10.2008 in WA(MD)No.515 of 2008 along with Review Application (MD)Nos.47 and 48 of 2008, MANU/TN/2323/2008] holds the field, which analyses threadbare the spirit of the enactment along with a detailed examination of analogous/comparable provisions in the Indian Partnership Act, Companies Act, et cetera as well as which further explains the actual observations made by the Full Bench and as to how the same have been misconstrued in some of the cases. Paragraph 15 of the said judgement is particularly relevant and it reads as follows:

"15. The documents are expected to come from the authorised functionary of the society. When a document or notice comes apparently not from the functionary, whose name appears on the register maintained by the registrar, it would be a case



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where the new documents on our notices are coming from an unauthorised source. Supposing a total interloper or a stranger submits certain particulars in Form No. VII, can it be contemplated that the Registrar is to simply to note the content of such document in the register required to be maintained and file the same? In other words, the least, which is expected from the Registrar, is that he must try to find out that the documents, which have been received from the society, have emanated from the proper source or proper authority of the concerned society and not from a stranger. It is one thing to say that the register does not have any jurisdiction to decide about the validity or otherwise of an election of any election and another thing to say is that the Registrar is obliged to keep on record whatever documents are sent by whichever person merely because such documents purports to be in Form No. VII. It is doubtful if the characterisation of the role of the registrar as 'ministerial' could be appropriate, if his duties are seen in the context of the statutory rules, namely, Rules 49, 50 and 51 of the Tamil Nadu Societies Registration Rules, 1978."

27. The aforesaid judgment of the Division Bench is of critical importance as it looks into and analyses the circumstances in which the decision of the Full Bench was rendered and Paragraphs 31 to 33, 35 and 40 are of significant and are thus extracted hereunder:

"31. By characterising the power of the Register is merely a ministerial function, the statutory functions and supervisory role, which the Registrar is bound to perform, would be diluted. If we must assume that Registrar will not even undertake any form of appraisal, it will mean that blind with realities that Civil Court litigation does not all end too soon and attack will arise with the maximum period of tenure of office bearers for 3 years provided under the Act which itself expire before the conclusion of the proceedings before the civil court.

32. By branding the act of the Registrar, the way we do we cannot again shut the doors for a person who is genuinely aggrieved by the conduct of



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Registrar forsakes his statutory duty by saying that remedy under Article 226 will not be available we have already seen that even in the decision referred to above, the Calcutta bench in AIR 1966 Calcutta 573 has entertained the writ petition to quash the order of the registrar who admitted a wrong entry in the register maintained under the Indian Partnership Act, the Supreme Court has held in *State of Orissa v. Gukula Nanda Jena*, reported in AIR 2003 Supreme Court 4207 that administrative order is accessible to the writ jurisdiction of the High Court (although no appeal may lie from such an order under article 136), a writ in a matter like this should be maintainable, course within the known parameters of such jurisdiction. In fact precisely for the above reason, the Full Bench observed that if the Registrar acts arbitrarily, writ petition would be maintainable. Unfortunately, however, by "construing some stray expressions" the subsequent Division Bench has completely diluted the Full Bench decision.

33. The Registrar, though takes on his file the returns submitted to him under Form No. VII, shall do every act which is incidentally to making the entries in Form No. VII relevant for the purposes for which it is intended.

35. In view of the foregoing analysis of all the relevant provisions and the ratio of the Full Bench decision, our conclusions are as follows :-

(i) The ratio of the Full Bench decision is only to the effect that the Registrar does not have any power either under Section 34 or 36 of the Tamil Nadu Societies Registration Act, 1975, to cancel the election to the committee, and, or to direct holding of fresh election.

(ii) If the Registrar of the Societies is not satisfied about the correctness of the Form VII, he need not take such Form VII on file, but he can direct the parties to approach the Civil Court to establish the validity of the election.

(iii) When any notice in Form VII is received by the Registrar, he is required to find out whether such notice has emanated from the appropriate



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authority. Obviously, he is also required to find out whether the persons claiming to be the members are in fact the members of the society. Since the register maintained in the office of the Registrar is supposed to contain the names of such members, it is not difficult for the Registrar to find out as to who are the members of the society.

(iv) Section 36 of the Act contemplates that, if necessary, the Registrar can call upon the persons likely to have information, knowledge in the matter for enquiry and for recording of statements on oath.

(v) Such conclusion by the Registrar is only for the purpose of maintenance of correct records, but any such order regarding membership of the society or election to the committee for the purpose of maintenance of records is obviously subject to the decision of the Civil Court, whether final or interlocutory order. However, till any contrary order is passed by the Civil Court, either finally or even by interlocutory order, the authorities under the Tamil Nadu Societies Registration Act, 1975 or under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, are not expected to go beyond such taking of Form VII. There is no concept of accepting as many as Form VII are possible as adoption of such a course would obviously result in chaotic conditions.

(vi) It is immaterial as to whether the order of the Registrar is considered as "administrative" or "ministerial". If, while passing the order, the Registrar acts arbitrarily, it would be open to the Writ court to consider the matter within the accepted parameters of writ jurisdiction and pass any appropriate order. Under what circumstances the High Court can interfere would obviously depend upon the facts and circumstances of each case.

40. These orders were the subject matter of challenge before the learned single Judge in W.P.(MD) Nos.8717, 10187 and 11148 of 2006. All such writ petitions and the Appeals arising therefrom have been dismissed by misconstruing the decision of the Full Bench and by merely following the R.Muralidharan 's case without making any attempt to find out whether the Registrar had failed to discharge his duty. Merely because the Registrar on a subsequent occasion directed both the parties to go to the Civil Court, it should not have been construed as taking away the



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effect of "taking on file Form VII". In view of the ratio of the decision in M. Ayyasamy 's case (supra) the authorities under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the educational authorities were not expected to go beyond such document. In view of the observations made by the High Court on different occasions, the opposite party in the Review Applications and the contesting respondent were required to establish their claim before the competent Civil Court rather than being encouraged to revive similar dispute over and again through different strategies. Once Form VII had been accepted, even though it did not have the effect of finally deciding about the validity or otherwise of any election, for the purpose of the Act, it should be considered as final, so that other consequences such as recognition of the educational authorities would follow, subject, of course to any decision of a competent Civil Court. In the absence of any decision of the Civil Court, final or even interlocutory, the educational authorities were not expected to go behind such Form VII, which had been taken on record.

From the aforesaid judgment of the Division Bench, it is manifest that the power of the Registrar is not merely receiving the Form No.VII and recording the same in the register maintained by him, but he got the power to do every act, which is incidental for making the entries in Form No. VII relevant for the purposes for which it is intended.

28. In the light of the aforesaid legal proposition, the issue involved in the present case has to be determined. In exercise of the power conferred under Section 36 of the Act, the second respondent conducted enquiry, based on the complaint dated 17.12.2018 lodged by the respondents 3 to 9. During the course of enquiry, he examined the Form VII submitted by the petitioner as well as the private respondents and also provided due opportunity of filing written submissions as well as personal hearing to all the parties. Thereafter, he passed the order dated 02.07.2019 rejecting all the reliefs sought by the private respondents, except the one, ordering removal of their membership as not valid and treating them as continuing members of the petitioner society.

29. While granting such a relief to the private respondents, the second respondent has noticed that the petitioner did not furnish any document to prove that the private respondents were expelled from the membership of the



society, after following due procedure as contemplated under law. No notice was issued to the private respondents nor any opportunity of being heard was given to them, before and after their expulsion. Further, there was no piece of evidence produced to show that in a meeting convened by the petitioner society, it was resolved to remove the respondents 3 to 9 from the membership of the society. Thus, having opined that there was a clear cut of violation of the principles of natural justice, the second respondent refused to accept the case of the petitioner society that the private respondents were already removed from the membership of the society, after following the procedures as contemplated under the bye-laws of the society and the provisions of the Act and accordingly, ordered that their removal from the society's membership is not valid and hence, they are to be treated as continuing members of the society.

30. The order so passed by the second respondent, in the opinion of this court, does not call for any interference. It is an admitted case that no meeting was convened by the petitioner society, after the death of the founder / president Dr.M.A.M.Ramaswamy, i.e., on 02.12.2015. The request made by the private respondent to convene Extraordinary General body meeting was also not acceded to by the petitioner society, stating that they were already removed from the membership. However, such statement was not supported by producing any valid document. According to the private respondents, they came to know about their removal from the membership, for the first time, only through the communication dated 06.12.2018 sent to the second respondent by the petitioner society and that, they raised various allegations against the petitioner society, requesting the second respondent to hold an enquiry under section 36 of the Act. Further, it is evident from the averments made in the counter affidavit filed by the respondent authorities that the annual returns and Form VII filed by the petitioner society from the year 2004-05 to the year 2019-20 have been kept pending and the Form VII filed by the respondents 3 to 9 on 27.02.2019 was also kept pending along with the connected pending files. In such circumstances, the second respondent cannot be expected to mechanically accept the contents of the Form VII in whatever form or manner it was submitted, and record whatever particulars furnished thereof. As pointed out earlier, the power of the Registrar is not merely receiving the document and make entry in the register maintained by him, but he has got the power to do every act, which is incidental to the document presented before him. The intention of the legislature is to prevent wrongful entries. For accepting Form VII, a basic enquiry or a summary inquiry is required to arrive at a prima facie conclusion as to the correctness of the particulars furnished thereof. Any decision taken qua entries made in Form VII is only incidental



and within the powers conferred under the Act and therefore, the same cannot be treated as an excessive exercise of power. It is pertinent to mention here that the second respondent has not dealt with or adjudicated upon the results of the election and his action is only with respect to the particulars furnished in the Form VII.

31. At this stage, it is useful to refer to the Judgment of the Supreme Court in *Sakiri Vasu v. State of U.P.* [2008 (2) SCC 409], wherein it was held as follows:

"18.It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

19.The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his *Statutory Construction* (3rd Edn., p. 267):

"... If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission."

20.In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21.An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in *ITO v. M.K. Mohammad Kunhi* [AIR 1969 SC 430] this Court held that the Income Tax Appellate Tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.



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22. Similar examples where this Court has affirmed the doctrine of implied powers are Union of India v. Paras Laminates (P) Ltd. [(1990) 4 SCC 453 : 1991 SCC (L&S) 208 : (1990) 14 ATC 798 : AIR 1991 SC 696], RBI v. Peerless General Finance and Investment Co. Ltd. [(1996) 1 SCC 642 : AIR 1996 SC 646] (AIR at p. 656), CEO & Vice-Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu [(1996) 11 SCC 23] , J.K. Synthetics Ltd. v. CCE [(1996) 6 SCC 92 : AIR 1996 SC 3527] , State of Karnataka v. Vishwabharathi House Building Coop. Society [(2003) 2 SCC 412] (SCC at p. 432), etc."

32. Applying the aforesaid observation herein, the second respondent while appreciating the correctness of the particulars submitted in Form VII, concluded that there was no proof to show that the private respondents were expelled from their primary membership after following the established procedures as contemplated under law. In view of the same, it is implied that the second respondent has refused to accept the Form VII submitted by the petitioner and therefore, the natural corollary would be to hold that the private respondents are to be treated as continuing members of the petitioner society.

33. Thus, for the discussions held above, this court does not find any reason much less valid reason to interfere with the order impugned herein. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh

To

1. Secretary to the Government
Commercial Tax and Registration Department
Government of Tamil Nadu
Secretariat Fort.St. George
Chennai-9



2. The District Registrar (Admin)
(AIG Cadre)
Office of the Registrar of Societies
Chennai-Central
Bharathi Salai
Royapettah
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+1CC to Mr.Anirudh Krishnan, Advocate, Sr.No.55714
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Pre-delivery Order in
WP No. 19742 of 2019

NRL (CO)
K.RK. (22.11.2021)