



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1161 of 2021

and

CMP(MD) .Nos.4982 of 2021

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Hajee k.K.Ibrahim Ali
Higher Secondary School Society,
Rep. by its Secretary,
K.Najeemudeen

... Appellant/3rd Party

Vs.

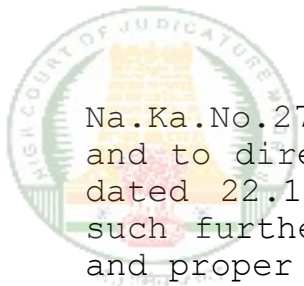
1. Hajee k.K.Ibrahim Ali
Higher Secondary School Society,
Rep. by its Secretary,
K.Mohammed Ibrahimsha Johny.
2. The Inspector General of Registration,
O/o. Inspector General of Registration Office,
No.100, Santhome High Road,
Chennai.
3. The District Registrar,
Registrar of Societies,
District Registrar Office,
Sivagangai,
Sivagangai District.
4. The District Educational Officer,
District Educational Office,
Sivagangai,
Sivagangai District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.103 of 2021, dated 08.02.2021.

Prayer in WP(MD). 103/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the 2nd respondent vide his proceedings in



Na.Ka.No.2722/A2/2020 dated 21.12.2020 and quash the same as illegal and to direct the 2nd respondent to take it an file of the Form VII dated 22.10.2020 submitted by the petitioner society and to pass such further or other orders as this Honourable court may deem fit and proper in the circumstances of the case and thus render justice.

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For Appellants : Mr.J.John

For Respondent : Mr.R.Baskaran,
Additional Government Pleader
for R2 to R4
T.Senthil for R1

J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.J.John, learned counsel appearing for the appellant and Mr.R.Baskaran, learned Government Counsel appearing for the respondents 2 to 4.

2. This writ appeal is directed against the order dated 08.02.2021 in W.P(MD).No.103 of 2021. The present appellant is the third party to the proceedings and he is objecting to the direction issued in the writ petition. In the connected appeal, namely, W.A (MD).No.788 of 2021, an order has been passed on 15.04.2021, covering the very same issue. The counsels on either side submitted that no separate order is required in the present appeal as already order and direction has been issued in the W.A(MD).No.788 of 2021. The operative portion of the judgment reads as follows:

"6. However, the learned Counsel appearing for the intervenor would submit that the intervenor has been validly elected in the General Body conducted on 17.10.2020 and Form-VII declaration has been filed by them on 24.12.2020 and since, there was two Form-VII declarations were filed, one at the instance of the first respondent herein and one at the instance of the intervenor herein, the District Registrar has called for explanation by both the parties. It appears that the intervenor has given explanation on 15.02.2021. At this stage, we deem it appropriate to remind the second appellant about his duty as a District Registrar while scrutinizing a FormVII declaration filed under the provisions of the Tamil Nadu Society Registration Act. His role has been clearly explained in the decision of the Hon'ble Division Bench in the case of R.Muralidharan v. The District Registrar & Others, reported in 2008 (2) LW 75. The operative portion of the judgment reads as follows:

"20. As the power of the Registrar to hold

enquiry is only to arrive at a prima facie



conclusion as to the correctness of the particulars given in Form VII, the provision of Sub-section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power under Section 37 to cancel the registration. Hence, the power under Sub-section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court. Accordingly, the issue is answered.



25. Applying the above test, it can be safely concluded that the acceptance of forms and returns filed by the registered societies, is nothing but ministerial in nature. This conclusion is inevitable on account of the fact that no element of discretion is conferred upon the Registrar under the Act, while accepting any of the forms/returns.

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 v. The District Registrar, Cheranmahadevi and four Ors. 2005-2- L.W. 550, held that the power under Section 34 is only incidental and that it was only for the purpose of maintaining correct records. Paragraph No. 18 of the Judgement of the Full Bench reads as follows:

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 it is only for the purpose of maintaining correct records. As the power to conduct 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."

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7. The ratio which can be culled out from the aforementioned decision is that the District Registrar cannot decide the right of parties like that of the civil Court and he has been termed as "Form Filer". The District Registrar is required to examine as to whether the procedure required to be followed prior to conduct of the General Body has been adhered to and whether the General Body has been conducted in a free and fair manner and all the members were allowed to exercise their option and beyond that the District Registrar cannot enter upon the disputes between the parties, which can only done before the civil Court. Thus, while indicating the legal position, we are inclined to issue appropriate direction to the second appellant, namely, District Registrar, Sivagangai District, to consider the objections filed by the first respondent as well as the intervenor, heard the parties in person or through authorized representative and pass a speaking order on merits and in accordance with law. The above said exercise shall be complied with within a period of four weeks from the date of receipt of a copy of this order. It is made clear that by then, the first respondent and the intervenor shall place all the papers and their representations before the second appellant. Accordingly, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed."

3. In the light of the above order, the parties shall abide by the direction issued in W.A(MD).No.788 of 2021 and no separate orders are required in this appeal. Accordingly, this Writ Appeals stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn



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

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To

1. The Inspector General of Registration,
O/o. Inspector General of Registration Office,
No.100, Santhome High Road,
Chennai.
2. The District Registrar,
Registrar of Societies,
District Registrar Office,
Sivagangai,
Sivagangai District.
3. The District Educational Officer,
District Educational Office,
Sivagangai,
Sivagangai District.

W.A. (MD)No.1161 of 2021

15.06.2021

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