



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.952 of 2021 &

CMP(MD)No.4304 of 2021

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"Kremmer Sandegren Foundation" Pattukottai

Represented by its President,

A.Kamaleshwaran,

(Registration No.5/57)

No.70, Muduppaiah Colony,

4th Street, Veerakeralam,

Coimbatore - 641 007.

... Appellant/Petitioner

Vs.

1.The Inspector General of Registration,
O/o.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Chennai - 600 028.

2.The Deputy Inspector General of Registration,
Second Floor, Government Multipurpose Office Complex,
Kajamalai, Tiruchirappalli - 620 020.

3.The District Registrar (Societies),
District Registrar Office,
Court Campus, Cantonment,
Tiruchirappalli - 620 001.

4.Kremmer Sandegran Foundation Pattukottai,
No-16, St.John's Church Complex,
Rockins Road, Trichy - 620 001.
Represented by Abrahamdass,
S/o.Dharmaraj

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order in WP(MD)No.5504 of 2021 dated
12.03.2021 on the file of this Court.

PRAYER IN WP(MD). 5504/ 2021 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari or any other order or direction in the nature of writ
calling for the records relating to the Appeal in
Na.Ka.No.3278/vu/2020 pending before the first and second respondent
and to quash the entire proceedings as illegal and unlawful.



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For Appellant : Mr.A.Raja
For Respondents : Mr.R.Baskaran,
Standing Counsel for Government
for R1 to R3
Mr.Vijay Shankar for R4

JUDGMENT

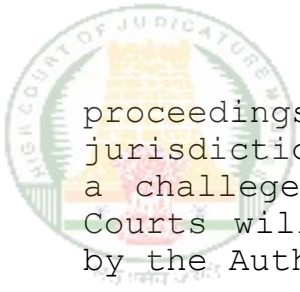
[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This Writ Appeal by the writ petitioner is directed against the order dated 12.03.2021 in WP(MD)No.5504 of 2021 filed by the appellant.

2. The appellant sought for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the second respondent dated 03.03.2021 in Na.Ka.No.3278/vu/2020. The learned Single Judge by impugned order dated 12.03.2021, held that the appellant cannot challenge the Show Cause Notice as they are under an obligation to respond to the Show Cause Notice and submit their explanation and only any adverse order is passed, they have got cause of action for complaining against the official respondents, until then, the appellant cannot said to be an aggrieved person on account of the action of the second respondent. Therefore, the learned Single Bench concluded that the proper course for the appellant is to submit their explanation before the Authority concerned and only thereafter, the Authority concerned can apply his mind as to the rival claim of the party and any adverse order is passed and thereafter, it is open to the appellant to challenge the same either under the Act or under the Constitution or can have recourse to the common law remedy. Thus, the Court held that at this stage of the matter, the appellant cannot seek for intervention of this Court under Article 226 of the Constitution of India. The correctness of the order is being challenged before us in the present appeal.

3. We elaborately heard Mr.A.Raja, learned counsel appearing for the appellant, Mr.R.Baskaran, learned Government Counsel appearing for the respondents 1 to 3 and Mr.Vijay Shankar, learned counsel appearing for the fourth respondent.

4. The observations made by the learned Single Bench that the Writ Court will not interfere in the Show Cause Notice is a well settled principle. However, the Courts have drawn exception to this Rule, when the aggrieved party is before the Court, challenging the Show Cause Notice on the ground of lack of jurisdiction. Therefore, if the appellant had filed the Writ Petition challenging the



proceedings of the second respondent on the ground of lack of jurisdiction, then the normal Rule which is applied by the Courts in a challenge to the Show Cause Notice will not be applied and the Courts will consider as to whether the proceedings has been issued by the Authority, who has got jurisdiction.

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5. In the instant case, the dispute between the appellant and the fourth respondent is regard to Form VII declaration to be filed under the provisions of the Tamil Nadu Societies Registration Act, 1975, listing out the names of the Office Bearers, who will represent the Society. The facts which have travelled this far are that, two Form VII declarations have been filed, one by the appellant and another by the fourth respondent. The District Registrar (Societies), the third respondent herein, had taken note of both the Form VII declarations and directed the parties to approach the Civil Court, because, there is a dispute. This appears to be in tune with the decision of the Honourable Division Bench, wherein, it has been held that the role of the District Registrar in the matter of accepting the Form VII declaration would be that of a Form Filer. The District Registrar (Societies) directed the parties to approach the Civil Court. Thus, it was well open to either the appellant or the fourth respondent to approach the Civil Court. However, the fourth respondent filed a petition before the first respondent, which was styled as an Appeal Petition. The first respondent took up the said petition and directed the second respondent, the Deputy Inspector General of Registration, Tiruchirappalli, to conduct an enquiry. The second respondent, in compliance with the direction issued by the first respondent, issued the notice dated 03.03.2021, by forwarding the Appeal Petition filed by the fourth respondent calling for the remarks of the appellant, on the grounds raised by the fourth respondent, who has questioned the order of the District Registrar (Societies), asking the parties to seek remedy before the Civil Court.

6. The question would arise as to whether, the first respondent can function as an Appellate Authority over and above the decision rendered by the District Registrar (Societies), refusing to entertain both Form VII declarations and seeking the parties to seek recourse before the Civil Court. Infact, the legal position appears to have been understood by the Authorities rightly, as in the order passed by the Inspector General of Registration dated 21.04.2021, wherein, it has been stated as follows:

"தமிழ்நாடு சங்கங்கள் பதிவுச் சட்டம் 1975ன் கீழ் படிவம் VII கோர்வை தொடர்பாக மாவட்டப்பதிவாளரால் பிறப்பிக்கப்படும் ஆணையினை எதிர்த்து மேல் முறையீடு அளிக்க வழிவகையில்லை"

7. The above said order dated 21.04.2021 is impugned in WP (MD) No. 9303 of 2021, filed by the appellant and the Writ Petition is

<https://hcservices.ecourts.gov.in/hcservices/>

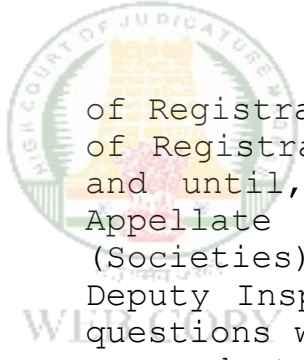
pending before the learned Single Bench.

8. Be that as it may, when the appellant has questioned the jurisdiction of the second respondent to issue such a notice and to conduct an enquiry, in our respectful view, it is necessary for the learned Writ Court to consider as to whether the Authority had jurisdiction to exercise the proposed action. In fact, the Inspector General of Registration has not proposed to conduct enquiry, but he has directed the second respondent, the Deputy Inspector General of Registration to conduct the enquiry. The moot question would be whether the first respondent can decide the correctness of the order passed by the District Registrar (Societies), refusing to accept both the Form VII declarations by exercising power as an Appellate Authority. This issue can be decided in the other Writ Petition, which is pending filed by the appellant namely, WP(MD)No.9303 of 2021, wherein, the jurisdiction of the first respondent has been questioned.

9. It is submitted by the learned counsel for the fourth respondent that the first respondent upon being satisfied that the proper procedure has not been followed by the District Registrar (Societies), which has been spelt out in the circular issued during the year 2011, as to how Form VI and Form VII declarations have to be scrutinized and all that Inspector General of Registration has done is to set aside the order passed by the District Registrar (Societies) and remand the matter to the District Registrar (Societies) for fresh hearing and take a decision after affording opportunity to both sides and thereafter, the District Registrar (Societies) has also passed an order on 28.04.2021, which according to the fourth respondent has not been put to challenge.

10. In response, the learned counsel for the appellant would submit that the first aspect is whether at all the Inspector General of Registration can act as an Appellate Authority. Secondly, whether the procedure adopted by him by directing the Deputy Inspector General of Registration to conduct the enquiry had any legal sanctity. Thirdly, even though the Inspector General of Registration remanded the matter to the District Registrar to hear both parties, the District Registrar would state that he need not hear both parties, because, already the Deputy Inspector General of Registration has conducted a detailed enquiry and findings of the enquiry has been perused and accepted by the Inspector General of Registration. Therefore, it is submitted that there is a gross lack of jurisdiction on the part of the Authorities in passing successive orders, which, in the opinion of the appellant are illegal.

11. Thus considering all these facts, we are of the clear view that the learned Single Bench, ought to have considered as to whether the Deputy Inspector General of Registration has jurisdiction to issue the notice dated 03.03.2021. Incidentally, the learned Single Bench have to decide as to whether the Inspector General



of Registration was empowered to direct the Deputy Inspector General of Registration to conduct an enquiry. This is so because, unless and until, the Inspector General of Registration can act as an Appellate Authority over the decision of the District Registrar (Societies), he would be incompetent to issue any direction to the Deputy Inspector General of Registration. The answer to all these questions will have a direct impact on the order passed by the first respondent dated 21.04.2021, which is impugned in WP(MD)No.9303 of 2021. Consequently, it will also impact the order passed by the third respondent dated 28.04.2021, which is a consequential order pursuant to the order of the first respondent dated 21.04.2021.

12. Thus, we are of the clear view that the Writ Petition should be heard on merits and the parties should be permitted to file their counter affidavit, especially, the respondents 1 and 2, explaining their jurisdiction and as to how the first respondent can exercise his power as an Appellate Authority.

13. For the above observations, this **Writ Appeal is allowed** and the order passed by the learned Single Bench is set aside. WP (MD)No.5504 of 2021 is restored to the file of the learned Single Bench. Registry is directed to tag WP(MD)No.5504 of 2021 along with WP(MD)No.9303 of 2021. Both the Writ Petitions shall be heard before the appropriate learned Single Bench and there is a specific direction to the Inspector General of Registration to file counter affidavit in both the Writ Petitions, in which, the Inspector General of Registration should explain as to how, he exercised his power as if he is an Appellate Authority over the order passed by the District Registrar (Societies).

14. In the light of the above directions, *status-quo*, which is remaining on the file of the third respondent shall be maintained. However, the fourth respondent shall not take any advantage, merely because, the District Registrar (Societies) has accepted their Form VII declaration and shall abide by the result of WP(MD)Nos.9303 and 5504 of 2021. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

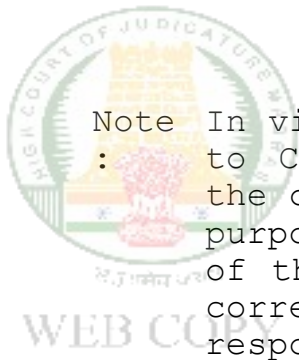
Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mbi/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.

To

- 1.The Inspector General of Registration,
O/o.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Chennai - 600 028.
- 2.The Deputy Inspector General of Registration,
Second Floor, Government Multipurpose Office Complex,
Kajamalai, Tiruchirappalli - 620 020.
- 3.The District Registrar (Societies),
District Registrar Office,
Court Campus, Cantonment,
Tiruchirappalli - 621 001.

Copy to:

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.VIJAY SHANKAR, Advocate (SR-19976[F] dated 23/06/2021)

W.A.[MD]No.952 of 2021
22.06.2021

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