



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.11311 of 2021

and

W.M.P(MD) Nos.8832 and 10803 of 2021

WEB COPY

P.Jeyasingh Malraj

... Petitioner

Vs.

1.The District Registrar (Administration),
Cheranmahadevi Registration District,
Cheranmahadevi, Tirunelveli District.

2.The District Educational Officer,
Tirunelveli District.

3.The District Educational Officer,
Valliyoor, Tirunelveli District.

4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

5.The District Educational Officer,
Tiruchendur, Thoothukudi District.

6.S.Thomas Walker

7.R.Paul George

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.3701/A2/2020 dated 21.06.2021 on the file of first respondent and quash the same and further directing the first respondent to conduct an election to the Tirunelveli CMS Evangelical Church Society by appointing a Special Officer.

For Petitioner : Mr.G.Prabhu Rajadurai

For RR 1 to 5 : Mr.P.Subbaraj
Counsel for State

For R - 6 : Mr.Isaac Mohanlal
Senior counsel
for M/s.Isaac Chamber



ORDER

The petitioner assails an order dated 21.06.2021 of the first respondent by which the Form VII submitted by the sixth and seventh respondents herein was taken on file. A consequential prayer is also made for the conduct of elections to the Tirunelveli CMS Evangelical Church Society by appointing a special officer for such purpose.

2.The Tirunelveli CMS Evangelical Church is a society registered under the provisions of the Societies Registration Act, 1860. All the members of the said society constitute the general body. Such general body elects the Management Committee for a period of three (3) years, which is referred to as a triennium. From and out of the members of such Management Committee, office bearers such as President, Secretary, Treasurer and the like are appointed. Disputes arose between groups of members/office bearers and such disputes resulted in the filing of O.S.No.418 of 2012. The petitioner herein was a party, namely, the second defendant in O.S.No.418 of 2012. The judgment and decree in O.S.No.418 of 2012 was carried in appeal by filing A.S.No.110 of 2018 before the appellate Court. The said appeal suit was disposed of on 23.07.2019. The decision of the appellate Court was challenged in S.A.(MD).No.543 of 2019. S.A.(MD).No.543 of 2019 was disposed of on 21.01.2020. The said second appeal was disposed of on the ground that it had become infructuous inasmuch as it pertained to the elections for the triennium 2012 to 2014. Since the elections for the triennium 2020 to 2022 had been conducted in the mean time and the validity thereof was under question, the Court left it open to the parties to challenge the validity of the election held on 16.11.2019 by way of separate appropriate proceedings.

3.Thereafter, the sixth and seventh respondents endeavoured to file Form VII in relation to the election held in 2019. By proceedings dated 29.06.2020, the first respondent declined to receive and take on file such Form VII. This formed the subject matter of two separate writ petitions filed by the sixth and seventh respondents herein. The said writ petitions were W.P.(MD).No.10532 of 2020, which was filed by the sixth respondent herein, and W.P.(MD).No.11099 of 2020, which was filed by the seventh respondent. By a common order dated 28.09.2020, the said writ petitions were disposed of by setting aside the order dated 29.06.2020 and remanding the matter to the District Registrar (Administration), Cheranmahadevi Tirunelveli District (the District Registrar) with a direction to hold a fresh inquiry and pass orders in accordance with law after hearing both parties. By such order, it was also indicated that it is open to the District Registrar (Administration) to issue notice to other interested parties also in view of the suits filed by such parties. The impugned order dated 21.06.2021 was issued pursuant to the directions issued in the above mentioned Writ Petitions.

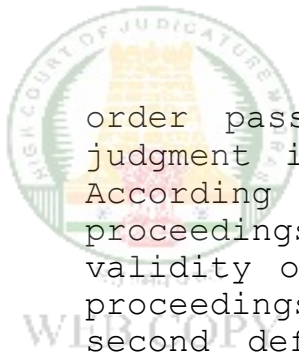


4.The petitioner assails the impugned order on multiple grounds. The principal ground on which he assails the order is that he was not heard before such order was passed. Indeed, the petitioner contends that the impugned order contravenes the order passed by this Court on 28.09.2020 in the two Writ Petitions adverted to above. The second contention of the petitioner is that only persons in the Management Committee can be elected as office bearers. For such purpose, Clause 14 of the bylaws of the society is relied upon. The third contention is that both Paul George and the petitioner were removed at the same meeting and that, therefore, the acceptance of Form VII by which the said Paul George has been elected as an office bearer is unlawful. The petitioner also contends that only an Election Officer can conduct the election of office bearers, and that the election is vitiated on this account.

5.The petitioner seeks to controvert the contention that the Writ Petition is not maintainable because the society has not been impleaded on the basis that there is a vacuum in the society and, therefore, it does not make any difference whether the society is impleaded as a party or not. With regard to the scope of inquiry by the Registrar under the Tamil Nadu Societies Registration Act 1975, the petitioner contends that the decision of the Registrar is to be made on the basis of a summary inquiry. Such summary inquiry should take note of the bylaws of the society concerned as also the resolutions passed at the relevant general body and Management Committee meetings. In the case at hand, the petitioner contends that the District Registrar failed to fulfil the statutory mandate of conducting at least a summary inquiry so as to arrive at a *prima facie* view on the validity of the forms filed by the sixth and seventh respondents.

6.In support of these submissions, the petitioner relies upon the judgment of the Full Bench of this Court in ***C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee Vs. The District Registrar and Others, Cheranmahadevi***, which is reported in 2005 (2) MLJ 335 and, in particular, paragraph 18 thereof. In addition, the judgment in ***C.Dharmalingam Vs. District Registrar***, reported in 2011(4) MLJ 755 and, in particular, paragraph 27 thereof is relied upon to contend that the Court may supervise the conduct of fresh elections in such situation.

7. On the contrary, the sixth respondent submits that the writ petition is not maintainable without impleading the Society. In addition, the sixth respondent contends that the petitioner is not a member of the Society and was removed from membership as early as in 2011. Therefore, it is submitted that the petitioner does not have the *locus standi* to maintain the writ petition. The next contention of the sixth respondent is that the present dispute does not pertain to the elections for the triennium 2012-2014. As such, the litigation originating in O.S.No.418 of 2012 and culminating in the



order passed in the Special Leave Petition arising out of the judgment in S.A.(MD).No.543 of 2019 is not of direct relevance. According to the sixth respondent, the only relevance of such proceedings is the liberty granted to the parties to challenge the validity of the election held on 16.11.2019 by way of appropriate proceedings. By advertng to the fact that the petitioner was the second defendant in the said proceedings, the sixth respondent contends that the petitioner should have challenged the elections held on 16.11.2019 if he was aggrieved by such election. On account of having failed to challenge the election held on 16.11.2019, the sixth respondent contends that the present challenge to the ministerial act of taking the Form VII on file is not maintainable.

8. As regards the contention that the petitioner was not heard before the impugned order was passed, the sixth respondent draws the attention of the Court to the order passed in W.P.(MD).Nos.10532 and 11099 of 2020. On such basis, it is contended that the petitioner was not, admittedly, a party to either writ petition. The Court directed the Registrar to hold a fresh inquiry and pass orders after hearing both parties. According to the sixth respondent, the expression 'both parties' refers to the sixth and seventh respondents herein. With regard to the reference to 'other interested persons', the sixth respondent points out that two suits were filed by third parties by way of O.S.No.222 of 2019 and O.S.No.207 of 2019. By such suits, the election for the triennium 2019-2022 was challenged. Therefore, it is contended that the sentence in the relevant order which leaves it open to the District Registrar (Administration) to issue notice to other interested persons should be construed as referring to the plaintiffs in the above mentioned two suits challenging the elections for triennium 2019-2022.

9. The next contention on behalf of the sixth respondent is that the writ petition is liable to fail for non-joinder of necessary parties. For such purpose, the sixth respondent adverts to the Form VII filed in respect of the election on 16.11.2019 and points out that such Form VII contains a list of about forty five persons. Therefore, the petitioner should have joined these persons as parties because the quashing of the impugned order would affect the civil rights of such parties. With regard to the scope of Sections 34 and 36 of the Tamil Nadu Societies Registration Act 1975, the sixth respondent contends that the Registrar plays a very limited role, which can be described as ministerial. In support of such contention, the judgment of the Division Bench of this Court in **R.Muralidaran and Others Vs. District Registrar, South Madras** (R.Muralidaran), which is reported in 2008 (1) MLJ 1308, is relied upon. In particular, the sixth respondent places emphasis on paragraphs 25, 33, 36 and 39 of such judgment so as to contend that the scope of judicial review against the orders of the registrar by which Form VII is accepted is extremely limited. In this connection, it is contended that the primary or substantive event is

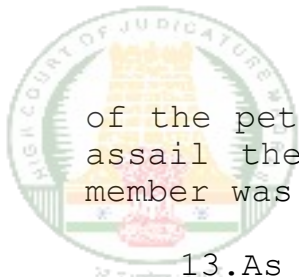


the relevant election and the party aggrieved by the election should challenge the election by approaching the jurisdictional civil court. Such party cannot, by way of judicial review, seek to indirectly assail the election in the guise of assailing the ministerial act of taking the Form VII on file. The sixth respondent also points out that a single petitioner has come before this Court assailing the acceptance of Form VII and that the society runs about 27 schools. As such, the functioning of the Society should not be jeopardised at the behest of one individual.

10.The State makes very brief submissions. The State relies upon Paragraph 7 of its counter-affidavit and submits that the District Registrar conducted an inquiry in accordance with the orders passed by this Court on 28.09.2020. The State also submits that it is not necessary to appoint a Special Officer in the facts and circumstances and that electoral disputes between the private parties should be carried to an appropriate civil court.

11.The rival contentions were duly taken note of and the documents on record examined. The first question that arises for consideration is whether the impugned order is liable to be interfered with on account of not providing a hearing to the petitioner herein. In order to examine this issue, it is necessary to advert to the order passed by this Court on 28.09.2020. Without doubt, the petitioner is not a party to the said order. By such order, the Registrar was directed to hold a fresh inquiry and pass orders after hearing both parties. As correctly contended by learned Senior Counsel for the sixth respondent, the expression 'both parties' does not refer to the petitioner herein. Instead, it refers to the sixth and seventh respondents herein. As regards the sentence: " It is also open to the District Registrar (Administration) to issue notice to other interested parties also", the said sentence does not contain a mandatory direction. Instead, discretion was vested in the District Registrar (Administration) to issue notice to other interested parties. The consequential question that arises is as to who such interested parties are. The subsequent sentence of the order of this Court throws light on this question. The said sentence refers to suits filed by different persons. Given the fact that the subject matter of the writ petition was the election held on 22.11.2019 for the triennium 2019-2022, the expression 'interested persons' would apply to all those who challenged the elections for triennium 2019-2022.

12.While it is true that the Court adverted to the order by which S.A(MD).No.543 of 2019 was dismissed, it cannot be reasonably implied therefrom that the Court directed the District Registrar (Administration) to hear the petitioner, who was the second defendant in the said second appeal. Therefore, it cannot be said that the impugned order is vitiated because the petitioner was not heard. On this issue, it is also pertinent to bear in mind that the Society concerned has a large number of members. If the contention



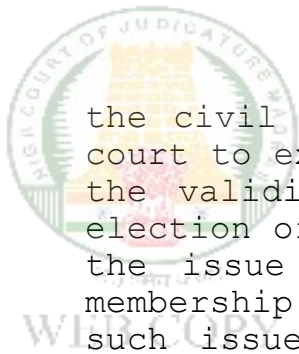
of the petitioner were to be accepted, each member would be able to assail the taking of Form VII on record on the ground that such member was not heard before a decision was taken in the matter.

13.As regards the rival contentions on the scope of inquiry under Sections 34 and 36 of the Tamil Nadu Societies Registration Act 1975, the issue is clearly no longer *res integra*. The Full Bench of this Court concluded that the inquiry is intended to be summary and for the purpose of arriving at a *prima facie* view with regard to the subject matter of inquiry. The petitioner contended that the District Registrar should have ascertained whether the office bearers were members of the relevant management committee. The petitioner further contended that if such scrutiny had been undertaken, the District Registrar would not have taken on file the relevant form. On this issue, the sixth respondent countered such contention by pointing out that there were two meetings each of the general body and the management committee on 16.11.2019 and 23.02.2021. Therefore, it was pointed out that all the office bearers were first elected as members of the management committee. An adjudication on such aspects is not necessary in course of a summary inquiry especially when the relevant Form VII was not contested before the District Registrar. If the impugned order is examined from the perspective of testing whether a summary inquiry was conducted, it cannot be said that the District Registrar failed to perform the duty of conducting a summary inquiry for purposes of arriving at a *prima facie* view.

14.Indeed, as correctly contended by the sixth respondent, the petitioner did not challenge the elections held in 2019 in spite of the fact that the order in the second appeal granted liberty in such regard. On this issue, the Division Bench, in paragraph 33 of R.Muralidaran, in relevant part, held as under:

"...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...."

Needless to say, the petitioner still has the option of challenging the elections of 2019 and/or 2021 by approaching the jurisdictional civil court in such regard or seek to implead himself in the pending suits. In such proceedings, given the wide ambit of



the civil court's jurisdiction, it would be possible for the civil court to examine the validity of the general body meeting as well as the validity of the constitution of the management committee and election of the office bearers. Although the sixth respondent raised the issue pertaining to the removal of the petitioner from the membership of the Society, it is not necessary to enter findings on such issue in view of the conclusion drawn above as regards the challenge to the impugned order. It is open to the sixth respondent to canvass such issue in future proceedings.

15. For the reasons set out above, W.P(MD).No.11311 of 2021 is dismissed without any order as to costs by leaving it open to the petitioner to approach a jurisdictional civil court in order to impugn the elections held in 2019 and/or any subsequent elections, including appointments of office bearers. In such event, the Form VII filed by the sixth and seventh respondents and taken on file by the District Registrar (Administration) would be subject to and abide by the outcome of such civil suit. The petitioner also has the option of seeking to implead himself in the two pending suits whereby the elections of 2019 are under challenge. Consequently, W.M.P(MD) Nos.8832 and 10803 of 2021 are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

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Sub Assistant Registrar(CS)

rm/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 District Registrar (Administration),
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Cheranmahadevi, Tirunelveli District.
- 2.The District Educational Officer,
Tirunelveli District.
- 3.The District Educational Officer,
Valliyoor, Tirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.



5.The District Educational Officer,
Tiruchendur, Thoothukudi District.

+5 CC to M/s.ISAAC CHAMBERS, Advocate (SR-29954[F] dated
22/09/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-29958[F] dated
22/09/2021)

+1 CC to M/s.SPL.GP (SR-29866[F] dated 22/09/2021)

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