



WEB COPY

W.A(MD)Nos.1070 and 1072 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.A(MD)Nos.1070 and 1072 of 2020

W.A(MD)Nos.1070 of 2020

Tirunelveli CMS-Evangelical Church,
Registered Society No.2 / 1925 - 1926
Cheranmahadevi District Registrar Office,
New No.4/1982, Idayankulam,
Nanguneri Taluk, Tirunelveli District,
represented by its Secretary S.Thomas Walker

... Appellant / Writ Petitioner

Vs.

The District Registrar (Administration),
Registration of Societies,
Cheranmahadevi,
Tirunelveli District.

... Respondent /Respondent

W.A(MD)Nos.1072 of 2020

S.Thomas Waker

... Appellant/3rd Respondent

Vs.

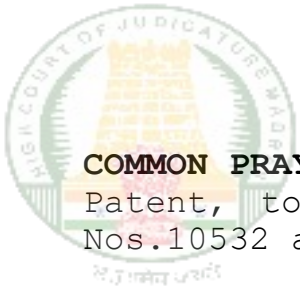
1. Tirunelveli CMS-Evangelical Church,
Idayankulam Head Office,
represented by its Secretary
R.Paul George
Keela Omanallur Post,
Palayamkottai Taluk, Tirunelveli District

2. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

3. The District Registrar (Administration),
Cheranmahadevi,
Tirunelveli District.

4.D.Simon

... Respondents/Writ Petitioner,
Respondents 1,2 & 4



COMMON PRAYER: The Writ Appeals are filed under Clause 15 of Letters Patent, to set aside the order dated 28.09.2020 made in W.P(MD) Nos.10532 and 11099 of 2020 and allow these writ appeals.

Prayer in WP(MD). 10532/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an appropriate Writ, Order or Direction in the nature of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the impugned proceedings issued by the respondent District Registrar(Administration) in Na.Ka.No.1275/Aa2/2020 dated 29.06.2020, QUASH THE SAME and further DIRECT the respondent District Registrar(Administration) to approve the Form VII submitted by the petitioner on 26.11.2019 for the triennium 2019-2022.

Prayer in WP(MD). 11099/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, calling for the records of the Second Respondent in Na.Ka.No. 1275/Aa2/2020 dated 29.06.2020 and quash the same as it is illegal, invalid.

For Appellant : Mr.S.Xavier Rajini

For Respondent : Mr.K.Sathya Singh,
Additional Government Pleader
Respondent in W.A(MD)No.1070 of
2020 and Respondents 2 and 3
in W.A(MD)No.1072 of 2020.
: Mr.S.Suresh Kumar
For R-1 in W.A(MD)No.1072 of 2020.

COMMON JUDGMENT

[Judgment of the Court was delivered by **B.PUGALENDHI., J.**]

These writ appeals are filed by one Thamas Waker as against the common order of this Court dated 28.09.2020 passed in W.P(MD) Nos.10532 and 11099 of 2020.

2.Heard the learned Counsel on either side and perused the materials placed on record.

3.This appellant is the petitioner in W.P(MD)No.10532 of 2020 and third respondent in W.P(MD)No.11099 of 2020. The writ petition in W.P(MD)No.10532 of 2020 was filed by this appellant as against the order of the District Registrar, Cheranmahadevi, Tirunelveli District, in Na.Ka.No.1275/Aa2/2020, dated 29.06.2020 and wherein, the appellant has claimed that he is the Secretary of CMS Evangelical Church, a registered society and the other writ petition in W.P(MD)No.11099 of 2020 was filed by one Paul George claiming that he is the Secretary of the said society.



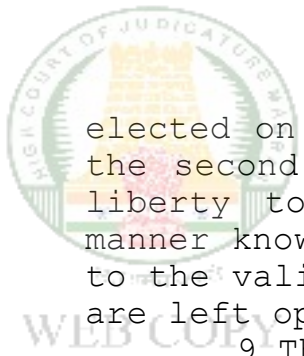
4.The District Registrar, Cheranmahadevi, Tirunelveli District in his impugned order dated 29.06.2020 rejected the proposal of this appellant dated 16.11.2019 to register the Form -VII that as the annual returns of the society in respect of the previous years have not been filed. In fact the appellant had earlier filed a writ petition in W.P(MD)No.2924 of 2020, wherein this Court by order dated 28.02.2020 directed the District Registrar concerned to consider the request made by the appellant and accordingly the appellant submitted his Form -VII and the same had been rejected that the previous years annual returns have not been submitted.

5.The District Registrar further in the order impugned in the writ petitions, had pointed out that only after regularising the previous years' returns, the Form-VII submitted by the appellant would be considered. As against that order, this appellant Thomas Waker filed a writ petition in W.P(MD)No.10532 of 2020 and one Paul George filed a writ petition in W.P(MD)No.11099 of 2020. This Court allowed both writ petitions by setting aside the order passed by the District Registrar and remitted back the matter to the file of the District Registrar, Cheranmahadevi to hold a fresh enquiry and to pass orders afresh in accordance with law, after hearing both parties. This Court further directed the District Registrar to issue notice to other interested persons also, since several other suits have also been filed by different persons pertaining to the society.

6.Aggrieved over the same, the writ petitioner Thomas Waker alone filed these present appeals in individual capacity and in the capacity as the Secretary of the said society.

7.It appears that there are several other litigations also pending with regard to the previous election for the period 2012 to 2014. Suits were also filed and when the matter was pending before this Court in S.A.(MD)No.543 of 2019, this Court dismissed the second appeal by judgment dated 21.01.2020 that it the suit was pertaining to the period 2012 to 2014 and therefore, the matter has become infructuous as on 20.01.2020. As against that judgment passed by this Court in S.A(MD)No.543 of 2019, the said Paul George has filed a Special Leave Petition before the Hon'ble Supreme Court and the same is pending. This appellant Thomas Waker claims that in the election held on 16.11.2019, he was elected as the Secretary of the Society and similarly, Paul George claims that he was elected in the election held on 15.12.218 and the Form - VII was also submitted to the Registrar of Societies on 08.01.2019.

8.As against the election held on 15.12.2018, a suit was filed and pending before the jurisdictional Civil Court in O.S.No.222 of 2019. Similarly, as against the election said to have been held on 16.11.2019 a civil suit in O.S.No.207 of 2020 has been filed before the II Additional District Munisif Court, Tirunelveli. In fact the appellant has filed a petition in C.M.P(MD)No.203 of 2020 in S.A(MD)No.543 of 2019 taking a stand that he has been



elected on 16.11.2019 as the Secretary. This Court while dismissing the second appeal disposed of the said miscellaneous petition with liberty to the respective parties to challenge the same in the manner known to law, with an observation that the questions relating to the validity of the election said to have been held on 16.11.2019 are left open to be decided in the appropriate proceedings.

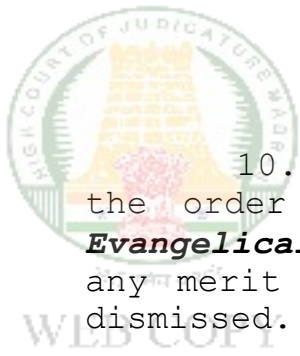
9. The role of the District Registrar in deciding Form - VII, has already been discussed by a Hon'ble Full Bench of this Court in **C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal through its Secretary vs The District Registrar And Others** reported in **2005 (2) CTC 161** 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.

19. In this context it could also be kept in mind the intention of the Legislature not to confer a power of supersession of the Committee on the Registrar as by insertion of Tamil Nadu Act 16 of 1994, such power is vested only in the Government and even when the Registrar is satisfied after enquiry under Section 36 that the society which has contravened any of the provisions of the Act or the Rules made thereunder or the society is insolvent or must necessarily become so or that the business of any such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum filed with the Registrar, he may only cancel the registration.



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. Post the Writ Appeals for disposal accordingly."



W.A(MD)Nos.1070 and 1072 of 2020

10. The writ petitions were disposed of by this Court based on the order of the Hon'ble Full Bench of this Court in **C.M.S. Evangelical' case** cited supra and therefore, this Court do not find any merit in these appeals and accordingly, the writ appeals are dismissed. No Costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To

1. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.
2. The District Registrar (Administration),
Cheranmahadevi,
Tirunelveli District.

W.A(MD)Nos.1070 and 1072 of 2020
20.07.2021

RC (27.07.2021) 6P-3C