

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.31125 of 2017

Paranjothi Gnanaoli Peedam,
Represented by its Secretary,
No.15, Karikalan Street,
Karungalpalam,
Erode - 638 003.

...Petitioner

Versus

1.The Inspector General of Registration,
Office of the Inspector General,
Santhome High Road,
Chennai - 600 028.

2.The Registrar of Societies,
District Registrar's Office,
Combined Registrar Office Complex,
Rangampalayam,
Erode - 638 009.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent dated 07.06.2017 relating to Na.Ka.No.2286/E/2015 and quash the same and direct the 2nd respondent to register the Deed of Transfer of Management of Society dated 05.06.2017 with the Annexure thereto.

For Petitioner : Mr.M.K.Kabir
Senior Counsel
For M/s.T.Jayaraman

For Respondents : Mr.R.Vigneshwaran
Government Advocate

O R D E R

This Writ Petition has been filed by the petitioner, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent dated 07.06.2017 relating to Na.Ka.No.2286/E/2015 and quash the same and direct the 2nd

respondent to register the Deed of Transfer of Management of Society dated 05.06.2017 with the Annexure thereto.

2. The petitioner namely, Paranjothi Gnanaoli Peedam is a Society registered under the Tamil Nadu Societies Registration Act, 1975 (hereinafter called as 'the Society'). The Society, by its resolution dated 12.01.2016, have decided to dissolve it and transfer the management of the Society along with its property to and in favour of Paranjothi Gnanaoli Yagna Peedam, which is a Public Charitable Trust registered under the Indian Trusts Act (hereinafter called as 'the Trust'). According to the petitioner, the said Trust also passed a resolution at its meeting dated 04.01.2016 to take over the management of the society with its property.

3. Under these circumstances, the petitioner presented an application along with a deed of Transfer of Management of Society dated 05.06.2017 to the 2nd respondent for the purpose of registration. However, the 2nd respondent has passed the impugned order dated 07.06.2017, thereby rejecting the Deed of Transfer of Management of the Society on the ground that the properties of the dissolved Society cannot be transferred to a Trust except to a Society with the same objects.

4. According to the petitioner, in terms of the by-laws No.24, in the event of the dissolution of the Society, the properties can be transferred either to a Society or to any other entities, which are having similar objects of the Society. Therefore, Mr.M.K.Kabir, learned Senior counsel for the petitioner submits that in terms of the Section 41 of the Tamil Nadu Societies Registration Act (hereinafter called as 'the Act'), the petitioner is also permitted to transfer the properties as per the resolution passed by the Society in accordance with the by-laws. Therefore, he submitted that in terms of the Section 41 of the Act r/w By-laws No.24, they have not transferred the properties, but only they wanted to transfer the Management of the Society alone. However, the 2nd respondent misconstrued that by virtue of the Deed of Transfer of Management, the properties of the society will also get transferred, the petitioner intended only to transfer the management of the Society to a Trust by virtue of the Deed of Transfer of Management and thereby refused to register the Deed of Transfer of Management. In such circumstances, without having any other option, the petitioner has filed this writ petition.

5. On the other hand, Mr.R.Vigneshwaran, learned Government Advocate appearing for the respondents, while reiterating the same reasons as cited in the impugned order, would contend that the petitioner has intended to transfer the properties of the dissolved Society to and in favour of the Trust, which is not

permissible. The properties can be transferred only to other Society/Trust, which is having the similar objects. A detailed counter affidavit has also been filed on behalf of the 2nd respondent, wherein also mentioned the same reasons in support of the impugned order. Therefore, he submits that the present writ petition is liable to be dismissed.

6. I have given due consideration to the submissions made by the learned counsel appearing for the petitioner as well as the respondents and on perusal of the documents available on records, it is clear that the petitioner is a Society registered under the Act. The petitioner Society has passed a resolution dated 12.01.2016 to dissolve the Society and transfer the management of the Society along with its properties to and in favour of the Trust, called Paranjothi Gnanaoli Yagna Peedam. In this regard, it is relevant to refer Section 41(1) of the Tamil Nadu Societies Registration Act, which reads as under :-

"41. Dissolution of Registered Societies and adjustment of their affairs.

(1). A registered society may, by special resolution, determine that it shall be dissolved and thereupon it shall be dissolved forthwith or at the time specified in the resolution and all necessary steps shall be taken for the disposal and settlement of the property of the registered society and its claims and liabilities according to the by-laws, if any, of the registered society and if there are no by-laws, according as the committee, or where a special committee is appointed under sub-section (2), the special committee, may find it expedient."

The above provision would make clear that a Society registered under the Act can be dissolved by virtue of a resolution and thereafter transferring the properties of the dissolved Society in terms of the by-laws or as where the Special Committee is appointed under sub-section (2).

7. In the present case, the petitioner referred to the by-laws No.24 and contended that the property can be transferred in terms of the by-laws to and in favour of the Trust. The issue to be decided here is whether the properties and the management of the Society can be transferred by virtue of the by-laws No.24 r/w Section 41 (1) of the Act. A perusal of the Section 41 of the Act, it is clear that in terms of the by-laws, the petitioner Society can transfer the property to any other Society having similar objects or to other entities. At this juncture, it would be appropriate to refer the by-laws No.24, which states as follows :-

"24. சங்கம் கலைத்தல் :

சங்கத்தின் சொத்து எந்த ஒரு தனி உறுப்பினருக்கும்

உரிமையானது அல்ல. சங்கம் கலைக்கும்போது பொதுக்குழு
ஆலோசனையின் பேரில் இதே நோக்கமுடைய பதிவு செய்யப்பட்ட
வேறொரு சங்கத்திற்கோ மற்ற தாம் ஸ்தாபனங்களுக்கோ சங்கத்தின்
சொத்துக்களை மாற்ற உரிமை உண்டு.”

A perusal of the above by-laws No.24, it is clear that the properties of the dissolved Society can be transferred either to any other Society or any other entities, which are having similar objects. Section 41 of the Act clearly empowers the Society to have such by-laws. Therefore, in terms of the by-laws, the petitioner has passed the said resolution on 12.01.2016 to transfer the management of the Society along with the assets to and in favour of the Trust. The Trust also passed a resolution on 04.01.2016, whereby they have decided to accept the resolution of the Society passed on 12.01.2016 and accordingly, it has agreed to take over the management of the Society as decided by the Society along with its properties.

8. Therefore, the issue with regard to the transfer of properties and take over of the management of the dissolved Society to and in favour of the Trust is permissible in terms of by-laws and also in terms of the Section 41 of the Act.

9. The next issue to be decided in the present case is as to whether the rejection by the 2nd respondent to register the Deed of Transfer of Management of Society on the ground that the properties of the dissolved Society can be transferred only to the Society having similar objects is just and fair.

10. As discussed above, in terms of the by-laws No.24 r/w Section 41 of the Act, the properties of the dissolved Society can either be transferred to any other running Society or any other entities which are having similar objects. In such view of the matter, this Court finds that there is a serious flaw in the decision making on the part of 2nd respondent in passing the impugned order. The 2nd respondent failed to take into consideration of Section 41(1) of the Act r/w by-laws No.24 of the Society. Furthermore, in the present case, after all the petitioner has only presented a Deed of Transfer of management of the dissolved Society to and in favour of the Trust, wherein, the petitioner has not sought for any transfer of properties of the dissolved Society, in which case, this Court does not find any impediment for the 2nd respondent to register the Deed of Transfer of Management of Society dated 05.06.2017.

11. Therefore, the reasons assigned by the 2nd respondent vide impugned order, for rejection to register the Deed of Transfer of Management of Society, cannot be sustained and the impugned order is liable to be set aside.

12. Accordingly, the impugned order, dated 07.06.2017 in Na.Ka.No.2286/E/2015 passed by the 2nd respondent is set aside and this Court directs the respondents to register the Deed of Transfer of Management of the Society dated 05.06.2017 within a period of 30 days from the date of receipt of a copy of this order.

13. With the above direction, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector General of Registration,
Office of the Inspector General,
Santhome High Road,
Chennai - 600 028.

2.The Registrar of Societies,
District Registrar's Office,
Combined Registrar Office Complex,
Rangampalayam,
Erode - 638 009.

+1cc to Mr.T.Jayaraman, Advocate Sr.No.3433

+1cc to the Government Pleader Sr.No.3971

W.P.No.31125 of 2017

KG(CO)
RVM(09/02/2022)