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W.P.No.28908 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

W.P.No.28908 of 2017
and WMP.No.31128 of 2017

S.Palanisamy

... Petitioner

Vs

1.The Inspector General of Registration
Santhome
Chennai - 600 028.

2.The District Registrar (Administration)
Namakkal.

3.The Secretary
Rasipuram Taluk Konguvellalar Gounder Periyavu
and Kongu Elangar Ani Rasipuram
No.34, Pookadai Street
Rasipuram, Namakkal.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the second respondent's order made in Na.Ka.No.4088/E/2017 dated 20.10.2017 and to quash the same and consequently direct the first and second respondents to declare the third respondent Society has having



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defunct and non-existent on live rolls of the Societies Registration Act and to pass other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Ms.N.R.Jasmine Padma

For Respondents : Mr.E.Vijay Anand
Additional Government Pleader
[R1 & R2]
R3 - No appearance

ORDER

This writ petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent dated 20.10.2017 and to direct the respondents 1 and 2, to declare that the third respondent has become defunct and non-existent on live rolls of the Societies Registration Act.

2. The petitioner gave a complaint to the second respondent, the District Registrar (Administration), Namakkal, stating that the third respondent-Society became defunct in view of the violations of the provisions of Societies Registration Act and Rules, and hence required the second respondent to enquire into the affairs of the third respondent-society.



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It is the contention of the petitioner before the second respondent that the third respondent which stood registered on 17.11.1994, had not convened General Body Meetings regularly, though it is mandatory that atleast one General Body Meeting should be held in every financial year; and the last General Body Meeting that was held was on 29.9.2002. It is his further contention that inspite of the last date being fixed for filing the statutory requirements was 10.02.2003, the third respondent failed to file the accounts and other statutory forms including its renewal certificate for the past fourteen years. The representation/complaint of the petitioner was rejected by the second respondent vide its impugned order dated 20.10.2017, in and by which referring to Section 36(1) of the Tamil Nadu Societies Registration Act, 1975, on the ground that to enquire a complaint under Section 36(1) is maintainable only if it is preferred by majority of the members of the Committee or by one-third of the members of the Registered Society, and that the petitioner's representation is not in compliance of the requirements under Section 36(1) of the Act.

3. Since the request/representation of the petitioner was rejected vide impugned proceedings, the petitioner is before this Court to quash the same



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and to declare the third respondent Society as defunct and non-existent as per the live rolls of the Societies Registration Act.

4. Heard Ms.N.R.Jasmine Padma, learned counsel for the petitioner and Mr.E.Vijay Anand, learned Additional Government Pleader for the respondents 1 and 2.

5. It is well settled that a Writ of Mandamus lie only when a person has a legal right for performance of particular act or his request was refused by the public authority which has the corresponding duty to act. The aggrieved person/applicant may require a direction of this Court in the form of Writ.

6. The prayer in this writ petition are as follows:

(a) to quash the impugned proceedings of the second respondent;

(b) to declare that the third respondent is defunct as per live rolls of Tamil Nadu Societies Registration Act, 1975.

7. Section 36 (1) and Section 37 of the Tamil Nadu Societies Registration Act, 1975 read as follows :

36.Power of Registrar to inquire into the affairs of registered Society:-



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(1) *The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an inquiry, into the constitution, working and financial condition of that registered society.*

(2)

37.Cancellation of Registration :- *When an inquiry has been held under section 36, the Registrar may, if he is satisfied—*

(a) that the registered society has contravened any of the provisions of this Act or the rules made thereunder; or

(b) that the registered society is insolvent, or must necessarily become so ; or

(c) that the business of any such registered society is conducted fraudulently or not in accordance with the by-laws or the objects specified in the memorandum filed with the Registrar under section 6, after giving in such manner, as he thinks fit, previous notice in writing to the registered society, specifying briefly the grounds of the proposed cancellation and after giving an opportunity to the registered society to show cause why the cancellation should not be made, cancel the registration of the registered society, and communicate the order of cancellation forthwith to the registered society by registered post.



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8.1 So far as the first part of the prayer is concerned, as per Section 36 of the Tamil Nadu Societies Registration Act, 1975, the Registrar may of his own motion or on the application of a majority of the members of committee of a registered society or on the application of not less than one-third of the members of that registered society, hold an inquiry into the constitution, working and financial condition of that society. To be noted, the complaint in the present case, stated to have been filed by the petitioner does not fall within the purview of Section 36 of the Tamil Nadu Societies Registration Act, 1975, and the representation was not made by the majority of the members of committee of a registered society .

8.2 As regards the second part of the prayer, the request of the petitioner is to declare the third respondent-society as defunct for violation of rules. As per Sections 37 and 38 of the Act, the cancellation of registration is permissible only when the Registrar upon satisfying himself on holding an enquiry as per Section 36 of the Act, and found that the registered society has contravened any of the provisions of the Act or the rules made thereunder or the society has become insolvent or the business of society is conducted



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fraudulently. Therefore, non-filing of accounts and statutory forms and non-convening a General Body Meeting cannot be a ground to declare the Society as defunct.

9. The power given under Section 36 is to ensure that the Society is being administered by a Committee in terms of Section 15 of the Act. Therefore, the petitioner as an individual cannot approach the District Registrar to declare the third respondent-society as defunct. Mere non-filing of returns or non-convening a meeting by the Society cannot be a ground to declare the Society as defunct and cancellation of its registration, unless the Society has contravened any provisions of the Act or has become insolvent or has conducted business fraudulently, as contemplated under Section 37 of the Act.

10. In the considered view of the case on hand, this Court is of the opinion that since the essential requirements of Sections 36 of the Tamil Nadu Societies Registration Act, 1975 has not been complied with, the petitioner cannot even maintain the application before the second respondent to take action against the third respondent-society. Therefore, the proceedings of the second respondent dated 20.10.2017 cannot be quashed.



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On the other hand, the third respondent-society cannot be declared as defunct in view of the provisions under Section 37 of the Act.

11. In that view of the matter, this writ petition is dismissed for want of merits. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2022

Index : Yes / No

Speaking order / Non-speaking order

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To:

1.The Inspector General of Registration
Santhome
Chennai - 600 028.

2.The District Registrar (Administration)
Namakkal.



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S.S.SUNDAR. J.,

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