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W.P.(MD)NO.14809 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.08.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14809 of 2022

and

W.M.P.(MD)No.10590 of 2022

Madurai Jewellers and Bullion
Merchants Association,
Rep. by its Honorary
General Secretary B.Loganathan
Having his office at
129/65, Mela Chetty Street,
South Avani Moola Street,
Madurai-1.

... Petitioner

Vs.

1. The District Registrar,
Registrar of Societies,
Madurai (South), Madurai.
2. The Inspector General of Registration,
No.120, Santhome High road, Chennai-600 028.
3. R. Thillairaj
4. B. Dhanagopal
(R-3 and R-4 suo motu impleaded vide order
dated 11.07.2022)

... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in Na.Ka.No.4384E1/2022 dated 07.06.2022 passed by the 1st respondent herein and quash the same as illegal, arbitrary, without jurisdiction and against the Societies Registration Act and the rules and further direct the 1st respondent to accept the Form VII filed by the petitioner association.

For Petitioner : Mr.M. Rajaraman
For R-1 & R-2 : Mr.K.S. Selva Ganesan,
Additional Government Pleader.
For R-3 & R-4 : Mr.G. Prabhu Rajadurai

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a society registered under the provisions of the Tamil Nadu Societies Registration Act 1975.



3.The tenure of the executive committee is to expire on 11.09.2022. As per their bylaws, the election process has commenced well in advance. While so, two of the members, namely, respondents 3 and 4 were removed from the membership of the society. Form-VII containing removal of respondents 3 and 4 was submitted to the District Registrar, Madurai (South) for being filed. By the impugned proceedings dated 07.06.2022, the District Registrar informed the petitioner that the removal of the members on the basis of the resolution passed by the head committee is contrary to the bylaws. He also drew the attention of the writ petitioner association to the relevant bye-laws which states that the administration of the society will be conducted in line with the resolution passed by the general body. In this regard, the petitioner was called upon to pass a resolution of the general body and thereafter re-present the Form-VII. The petitioner was also advised to amend their bye-laws so as to bring the same in consonance with the provisions of the Tamil Nadu Societies Registration Act, 1975. Questioning the same, this writ petition has been filed.



4.The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He placed reliance on the order dated **20.06.2022** passed by me in ***Thoothukudi Vadadhisai Hindu Nadar Mahamai Dharma Karapettai Paripalana Sangam V. The Inspector General of Registration*** in which taking note of Circular No.3 of 2022 dated 27.05.2022 issued by the Inspector General of Registration, I had held that the present policy is that unless there is any restraint order passed by the jurisdictional civil Court, the Form-VII filed by the society will have to be taken on file. The learned counsel appearing for the writ petitioner also submitted that the function discharged by the District Registrar under Section 34 of the Tamil Nadu Societies Registration Act is purely ministerial in nature. In any event, the District Registrar is lacking in jurisdiction to render an advice to the petitioner to amend their bye-laws. He called upon this Court to quash the impugned proceedings and direct the first respondent to file the Form-VII containing the removal of respondents 3 and 4.



5.Per contra, the learned Additional Government Pleader appearing for respondents 1 and 2 and the learned counsel appearing for the private respondents submitted that the impugned proceedings does not call for any interference.

6.I carefully considered the rival contentions and went through the materials on record.

7.The writ petitioner society was formed way back in the year 1944. The Tamil Nadu Societies Registration Act came into force in the year, 1975. Section 53 of the Act clearly states that the society registered under the earlier statute shall be deemed to be registered under the new Act and that the bye-laws of such societies shall insofar as they are consistent with the provisions of the new Act continue to remain in force until altered or rescinded. Those provisions that are inconsistent with the provisions of the new Act shall be void. As rightly pointed out by the learned counsel appearing for the private respondents, the management of any registered society shall have a committee of not less than three members elected under under Section 15 of the Act. In



this case, the petitioner does have an executive committee containing 50 members. As per the bye-laws, there shall be a head committee comprising members who are chosen by the members of the executive committee. In this case, the respondents 3 and 4 were removed by the head committee chosen by the executive committee elected under Section 15 of the Act.

8.It appears that the action of removal is inconsistent with the provisions of the Act. More than anything else, the District Registrar has rightly pointed out that removal of any member will have to be authorised by a resolution passed by the general body. Even de-hors the impugned proceedings, I am of the view that if the power is exclusively with the members of the executive committee to remove any member, then the elected executive committee by removing those who are opposed to them perpetuate their control. That would clearly affect the fundamental principles of democracy. Therefore, the proceedings of the District Registrar directing the writ petitioner to re-submit the Form-VII along with a copy of the resolution passed by the general body appears to be well-founded.



9.Of course, the function of the Registrar under Section 34 of the Tamil Nadu Societies Registration Act is by and large ministerial. However, the Hon'ble Full Bench of Madras High Court in the decision reported in ***C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee Karisal through its Secretary Sri.S.David Stephen, Ambasamudram Taluk, Tirunelveli District Vs. District Registrar, Cheranmahadevi, Tirunelveli District and others*** reported in ***2005(2) MLJ 335*** had held that the Registrar can look into the provisions of the Act and Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form-VII in order to effect change in the register. Of course, the Registrar cannot assume an adjudicatory role. However, power is vested in him for the purpose of maintaining correct records. As observed by the Hon'ble Full Bench, exercise of such power must not be arbitrary as the order is amenable to challenge in writ jurisdiction. In this case, the Registrar's action is justifiable having regard to the scheme set out in the bye-laws. I do not find any ground to interfere.



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10.This writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

08.08.2022

Index : Yes / No

Internet : Yes/ No

PMU/SKM

To:

1. The District Registrar,
Registrar of Societies,
Madurai (South), Madurai.
2. The Inspector General of Registration,
No.120, Santhome High road,
Chennai-600 028.



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G.R.SWAMINATHAN,J.

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