



W.P(MD)No.25532 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25532 of 2019

and

W.M.P.(MD)Nos.22082 and 22084 of 2019

Christ Church Society (Reg. No.135/2016),
No.1, Rajendra Main Road,
Ilanthope, Karimedu,
Madurai – 625 016,
Rep. by its President,
Selvadurai.

... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai – 28.

2.The Registrar Societies,
Madurai South,
Palace Road,
Madurai – 1.

3.Ebenezer Rajkumar

4.W.Rajesh
(R4 is impleaded vide order dated 06.07.2021 in
W.M.P.(MD)No.3773 of 2020 in W.P.(MD)No.
25532 of 2019 by NAVJ)

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records connected with the impugned order passed by the 1st respondent in order No.13539/I2/2018 dated 22/08/19 dismissing the appeal by confirming the impugned order passed by the 2nd respondent in Na.Ka.No.946/E1/2017 dated 10.01.2018 and quash the same.

For Petitioner : Mr.M.Vallinayagam, Senior Counsel,
For Mr.D.Nallathambi.

For Respondents : Mr.N.Satheeskumar,
Addl. Government Pleader for R1 & R2.
Mr.R.Parthiban for R3 & R4.

ORDER

Heard the learned counsel on either side.

2.Christ Church Society (hereinafter referred to as society) was registered as a society under Tamil Nadu Act 27 of 1975 on 05.12.2016 (Serial No.135 of 2016). The third respondent herein styling himself as Secretary of Christ Church lodged complaints dated 13.02.2017 and 01.09.2017 before the second respondent alleging that the society had wrongly given the church premises as their address. According to the complainant, in the bye-laws, the church



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premises have wrongly shown as the society's address. The second respondent conducted enquiry and vide order dated 10.01.2018 cancelled the registration of the society. Aggrieved by the same, the petitioner filed appeal before the first respondent under Section 45(1) of the Tamil Nadu Societies Registration Act, 1975. The appellate authority vide order dated 22.08.2019 confirmed the order passed by the original authority and dismissed the appeal. Challenging the same, the present writ petition has been filed.

3.The learned senior counsel for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and allow the writ petition as prayed for.

4.The respondents have filed counter affidavits. The learned Additional Government Pleader as well as the learned counsel for the private respondents took me through their contents. According to the learned counsel for the respondents, the impugned orders do not call for any interference. They pressed for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. Section 38 of the Act reads as follows:-

“38.Cancellation of a registration of society carrying on unlawful activities:-

38. (1) If it appears to the Registrar that any registered Registration society is carrying on any unlawful activity or allows unlawful activity to be carried on within any premises under the control of the society, the Registrar may hold an enquiry into the activities of such society, and in respect of every such enquiry, the Registrar shall have the same powers as are specified in sub-sections (6), (7) and (8) of section 36. (2) If on an enquiry under sub-section (1), the Registrar is satisfied that any such society has been carrying on any unlawful activity or has allowed any unlawful activity to be carried on within any premises under the control of the society, he shall, after giving reasonable notice to the society to show cause why the registration of the society should not be cancelled and after considering the representations, if any, made on behalf of the society, by order cancel the registration of the society. The Registrar shall communicate the order of cancellation forthwith to the registered society.

Explanation.- For purposes of this section, an activity shall be deemed to be unlawful if such activity is an offence punishable under any provision of law for the time being in force. Cancellation of a registration of society carrying on unlawful activities.”

6.A careful reading of the aforesaid statutory provision indicates that the Registrar will have the power to cancel the registration of a society, if he is satisfied that in any premises under the control of the society, any unlawful



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activity has been carried on or allowed to be carried on. This satisfaction can be arrived at by the Registrar only after holding an enquiry. Thereafter, he has to issue fresh notice for cancellation of registration to the concerned society and only thereafter pass final order. Thus before passing an order under this section, enquiry will have to be conducted in two stages. The impugned order is vulnerable on this count. It is obvious from a reading of the impugned orders that only one enquiry as envisaged under the first part of Section 38(1) of the Act was held. Enquiry as contemplated under the latter part was not at all conducted.

7. That apart, Explanation to the provision reads that for an activity to be deemed to be unlawful, it must be an offence punishable under any provision of law for the time being in force. The reasons set out in the impugned orders do not indicate commission of any offence. The authority will have jurisdiction to pass cancellation order only if an unlawful activity was allowed to be carried on within the society premises. This is a jurisdictional fact. Unless this jurisdictional fact exists, the authority cannot assume the jurisdiction to pass any order. I am more than satisfied that the jurisdictional fact itself is absent. The impugned orders are without jurisdiction and they are set aside. The writ petition is allowed. It is open to the private respondents herein to work out



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their rights as against the writ petitioner/society in the manner known to law.

The outcome of this writ petition will not cast any cloud on the rights of the private parties. No costs. Consequently, connected miscellaneous petitions are closed.

07.12.2022

Index : Yes / No
Internet : Yes/ No
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To:

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G.R.SWAMINATHAN, J.

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