



W.A.No.3267 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:09.08.2023

Delivered on: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

C.M.P.No.20702 of 2019

B. Ponnulingam

.. Appellant

Vs.

1. Pazhiya Marakkanam Nadar Mahimai Paribalana
Sanga Sothu Meetpu Sangam,
MVDC Salt Depot Complex,
Tindivanam Road, Marakkanam,
Tindivanam Taluk.
Represented by its President C. Kumaresan

2. The Inspector General of Registration,
No.100, Santhome Road,
Chennai-28.

3. The Registrar of Societies,
(District Registrar of Assurances),
Rottikkara Street, Tindivanam.

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.3729 of 2012 dated 09.11.2018.



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For Appellant : Mr.A. Jinasenam

For Respondents : Mr. P. Dinesh Kumar [for R1)

Mr. U.M.Ravichandran [for R2 and R3]
Special Government Pleader.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

A third party to the writ proceedings, aggrieved by the order of the Writ Court, with the leave of this Court obtained earlier, has filed the present Writ Appeal.

2. The writ petition was filed by the petitioner Sangam, who is the 1st respondent in the Writ Appeal. The prayer sought for before the writ court was for issuance of a Writ of Mandamus to direct the statutory respondents to appoint a liquidator, with respect to “Marakanam Nadar Mahimai Paribalana Sangam, Marakkanam” (Reg.No.4/1960)”, as mandated under ***Section 40 of the Tamil Nadu Societies Registration Act, 1975*** and pass such further or other orders.

3. It was the case of 1st respondent before the writ court that the above-mentioned Sangam was functioning in violation of the Society’s by-



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laws as well as the statutory enactments and that the members of the Sangam colluded amongst themselves to grab the properties of the Society.

It is the further case of the 1st respondent that, the Registrar of Societies issued a show cause notice as to why the registration should not be cancelled since the Sangam had become defunct for non-filing of accounts for 3 consecutive financial years as mandated under **Section 16(3) of the Tamil Nadu Societies Registration Act, 1975**. The grievance of the 1st respondent was that despite the said notice, no measures were taken by the then members of the Sangam. A collusive suit was also filed in O.S.No.64 of 2008, without impleading the Society or its members as parties, in order to grab the valuable properties of the Sangam. In order to canvass all these issues, the 1st respondent was formed to recover the properties of the said Sangam. The 1st respondent sent a notice dated 26.12.2011, calling upon the statutory respondents to appoint a liquidator for the defunct Sangam and since the said notice was not even responded to, the 1st respondent filed the writ petition, seeking appointment of the liquidator under **Section 40 of the Tamil Nadu Societies Registration Act, 1975**.



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4. The Registrar of Societies filed a counter before the Writ Court, stating that the Sangam failed to file annual returns as prescribed under ***Section 16(3)(b) of the Act***, therefore invoking ***Section 44(4) of the Act***, the Sangam was declared as defunct. It is further stated that the 1st respondent / writ petitioner had already filed suit in O.S.No.117 of 2008 and it was pending before the Sub-Court, Tindivanam and in the said suit the prayer sought for was to recover the properties belonging to the said Sangam and therefore without pursuing the civil remedy already initiated, the writ petition was not maintainable. It is also specifically stated in the said counter is that the Society was declared as defunct and the registration had not been cancelled and therefore appointment of liquidator under ***Section 40 of the Act*** would not arise, it was hence prayed that the writ petition ought to be dismissed.

5. The Writ Court, after hearing the 1st respondent and the statutory respondents held that, after declaring the Society as defunct under ***Section 44(8) of the Act***, the period provided for appeal also having lapsed, it would only lead to a situation where the defunct society's registration



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stood cancelled automatically and therefore **Section 40 of the Act** could be invoked and a liquidator shall be appointed and for the aforesaid reasons, the writ petition was allowed.

6. The Writ Appeal is at the instance of the President of the “Marakanam Nadar Mahimai Paribalana Sangam, Marakkanam” (Reg.No.4/1960). The grievance of the appellant is that even the Society was not impleaded in the writ petition and when the Civil Suit is pending, there is no requirement for appointment of liquidator. Moreover, the 1st respondent Society has no locus to question the internal actions of the defunct Society. It is also contended that **Section 40 of the Act** could be invoked only after **Section 44 of the Act** worked itself out.

7. We have heard Mr.A.Jinasenan, Counsel for the Appellant, Mr.P.Dinesh Kumar counsel for the 1st respondent / writ petitioner, Mr.U.N.Ravichandran Special Government Pleader for respondents 2 and 3. We have also perused the records placed before us.



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8. The short question to be answered by us is as to whether a society, not taking any steps to challenge the order declaring it defunct within the time granted for the appeal under the statute, would automatically lead to cancellation of its registration.

9. To better appreciate the legal position, the following Sections of *The Tamil Nadu Societies Registration Act, 1975* would be of importance.

“Section 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 there- under; 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 bylaws 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



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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.

Section 39. Effect of Cancellation: *When the registration of a registered society is cancelled, the registered society shall forthwith cease to carry on its business, except so far as may be required for the beneficial winding-up thereof, for which purpose it shall pass a special resolution and dissolve itself in the manner provided in section 41.*

Section 40. Winding-up of registered society.- *Where the registration of a registered society is cancelled, the Registrar may appoint a Liquidator to wind-up the society if the society has not, within such society, period as may be prescribed from the date of the order of cancellation, taken any action under section 39.*

*(2) A Liquidator shall have power subject to the control of the Registrar—
(a) to institute or defend any action or other legal proceeding on behalf of the registered society by his name of office ;*

(b) to determine, from time to time, the contribution to be made or remaining to be made by the members of the registered society, respectively, to the assets of the registered society ;



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(c) to investigate all claims against the registered society and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and

(e) to give such directions in regard to the collection and distribution of the assets of the registered society as may appear to him to be necessary for winding-up the affairs of the registered society.

(3) Subject to any rules of procedure made under this Act a liquidator shall, in so far as such powers are necessary to carry out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents, as far as may be, by the same means and in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) An order made under this section shall, on application, be enforced by any civil court having local jurisdiction in the same manner as a decree of such Court.

Section 44. Removal of defunct registered societies

(1) Where the Registrar has reasonable cause to believe that a registered



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society is not carrying on business or in operation, he shall send to the registered society by registered post a letter enquiring whether the society is carrying on business or in operation.

(2) If the Registrar either receives an answer from the Registered society to the effect that it is not carrying on business or in operation, or does not within such period as may be prescribed after sending the letter receive any answer, he may publish in the Tamil Nadu Government Gazette, and send to the registered society by registered post, a notice that, at the expiration of such period as may be prescribed from the date of such publication, the name of the registered society mentioned therein will, unless cause is shown to the contrary, be struck off the register and the registered society will be dissolved.

(3) If, in any case where a registered society—

(a) is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the registered society have been completely wound up ; or

(b) has not, for three consecutive financial years filed with the Registrar all or any of the documents referred to in clause (b) of sub-section (3) of section 16. the Registrar may publish in the Tamil Nadu Government



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Gazette, and send to the registered society by registered post, a like notice as is provided in sub-section (2) of this section.

(4) At the expiration of the time mentioned in the notice referred to in sub-section (2), or sub-section (3), the Registrar may, unless cause to the contrary is previously shown by the registered society, strike its name from the register and shall publish notice thereof in the Tamil Nadu Government Gazette, and, on the publication of such notice, the registered society shall be deemed to be dissolved:

Provided that the liability, if any, of every officer and member of the registered society shall continue and may be enforced as if the registered society had not been dissolved.

(5) (a) If a registered society or any member or creditor thereof feels aggrieved by the name of the registered society having been struck off the register, such registered society, member or creditor may, within such period as may be prescribed from the date of the publication in the Tamil Nadu Government Gazette of the notice of striking off the name of the registered society, appeal— (i) where the name of the registered society is struck off by the Inspector - General of Registration, to the Government ; (ii) in any other case, to the Inspector-General of Registration.



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(b) The Government or the Inspector-General of Registration on being satisfied that the registered society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration.

(6) If a registered society or any member or creditor thereof feels aggrieved by the order of the Government or the Inspector-General of Registration under sub-section (5), the court may, on the application of such registered society, member or creditor, made within such period as may be prescribed from the date of the receipt by such registered society, member or creditor, of such order, and on being satisfied that it is just and equitable that the name of the registered society be restored to the register, order such restoration.

(7) The registered society whose name is restored to the register under sub-section (5) or sub-section (6) shall be deemed to have continued in existence as if its name had not been struck off ; and the Government or the Inspector- General of Registration or the court, as the case may be, may, by order, give such directions and make such provisions as seem just for placing the registered society and all other persons in the same



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position, as nearly as may be, as if the name of the registered society had not been struck off.

(8) If the name of the registered society having been struck off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made or an appeal has been made but dismissed, under this Act, the registered society shall not function and the provisions of section 39 shall apply as if the registration of such society has been cancelled.”

The Tamil Nadu Societies Registration Rules, 1978 also becomes relevant and certain Rules are extracted hereunder for ready reference.

“Rule 34. Appointment of Liquidator *-(1) If any society, the registration of which has been cancelled by the Registrar, has not taken any action under section 39 within one month from the date of such order of cancellation, the Registrar may appoint a Liquidator to wind up the society.*

(2) A copy of the order of the appointment of the Liquidator shall be published in the Tamil Nadu Government Gazette.

Rule 37. Removal of defunct registered societies *– (1) If the Registrar does not receive any answer to his letter referred to in sub section (1) of*



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section 44 within one month of sending it, he may proceed to take action as specified in sub-section (2) of the said section.

(2) The time to be specified in the notice under sub-section (2) of section 44 shall be expiration of three months from the date of its publication in the Tami Nadu Government Gazette.

(3) The appeal under sub-section (5) of section 44 shall be preferred within one year from the date of publication of the notice referred to in sub-section (4) of the said section.

(4) The application specified in sub-section (6) of section 44 shall be made to the Court within two months from the date of the receipt by such society of the order of the Government or the Inspector- General of Registration, as the case may be”.

10. The argument of the Counsel for the appellant is that declaring a Society as defunct by itself would not result in cancellation of the registration of the Society. According to the counsel for the appellant, a separate order in that regard would have to be necessarily passed. The counsel took us through various provisions of the Act and Rules in this regard and relevant provisions of which have already been extracted hereinabove.



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11. Per contra, the counsel for the 1st respondent would support the findings of the Writ Court stating that the once a society is declared as defunct, no separate procedure is required to be adopted by the authorities and as a matter of course, the cancellation would follow. Therefore, he submits that the direction to appoint a liquidator under Section 40 was wholly in order and does not warrant any interference.

12. We have carefully analysed the various provisions of the Act and the related Rules as well. Resultantly, it is clear that declaring or ordering registered society as defunct is different from cancellation of the registration of the said society. Under Section 44, the Registrar has power to take action against the registered society which have not, for 3 consecutive financial years filed all or any of the documents referred to in clause (b) of subsection (3) of Section 16. The Registrar is required to send a notice to the registered society in a nature of a show cause seeking explanation for failure to file the documents concerned. Thereupon, after the expiry of time mentioned in the said notice, the Registrar has the power to strike off the name of the society from the register and cause the same to be published in Tamil Nadu Government Gazette. Section 44 (4) further



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makes it clear that on such publication, the registered society is shall be deemed to be dissolved.

13. Referring to Section 37, dealing with cancellation of registration, the Registrar after conducting an enquiry as provided under Section 36 of the Act, if satisfied, has to issue a notice in writing to the registered society, specifying briefly the grounds of proposed cancellation and after affording an opportunity to the registered society, pass an order cancelling the registration of the society. From the language employed in Section 37, as can be seen from the portion “**and communicate the order of cancellation forthwith to the registered society by registered post**”, thus, it can be seen that the Act certainly mandates a separate order to be passed by the Registrar cancelling the registration of the society. Only thereafter Section 40 can come into play. Even the opening phrase of Section 40(1) reads thus “**where the registration of the registered society has been cancelled...**”

14. Even reference to the Rules, namely Rule 34, further makes it abundantly clear that the appointment of a liquidator is a discretionary



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power vested with the Registrar when any society, registration of which has been cancelled by him, has not taken any consequent steps under Section 39 within one month from the “*date of such order of cancellation*”.

15. The procedure contemplated under Section 44 for removal of the defunct society is governed by Rule 37 which has already been by us. The said Rule only sets out the procedure to be followed, fixing time lines. However, just because the registered society has not taken any steps as contemplated under Section 44 (8), it would not necessarily imply that the registration of society had been cancelled.

16. For the purposes of further clarity, we deem it necessary to extract sub section (8) of Section 44.

“Section 44. Removal of defunct registered societies.

....

8) If the name of the registered society having been struck off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made or an appeal has been made but dismissed, under this Act, the registered society shall not function and the provisions of section 39 shall apply as if the registration of such society has been



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cancelled.”
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17. It can be seen from above the subsection (8) of Section 44 that the provisions of Section 39 shall apply as if the registration of such society has been cancelled if the name of the registered society was struck off by the Registrar and not restored, or if the period contemplated for filing of an appeal and no appeal had lapsed and no appeal had been made, or in the event of appeal having been made, had been dismissed. Section 39 only deals with effect of cancellation of registration which bars the registered society from carrying on business, except for the purposes that may be required for the beneficial winding up the society, consequent upon a special resolution being passed in this regard. Therefore, we are unable to accept the arguments of the counsel for the 1st respondent / writ petitioner that the use of the words “*provisions of Section 39 shall apply as if the registration of such society had been cancelled*” employed in the latter portion sub-section (8) of Section 44 would imply that the registration of the society stood cancelled. As stated earlier, Section 39 only spells out the effect of the cancellation of the registered society. However, from the specific phraseology employed in Section 37 and



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Rule 34 and reading them together, it would make it evident that a separate or specific order of cancellation has to be necessarily passed by the Registrar and the same has to be communicated to the registered society by registered post.

18. Admittedly in the instant case, there is no such order of cancellation. An additional counter had been filed by the 3rd respondent in this writ appeal. When we found that the stand of the 3rd respondent was diametrically opposite to the stand taken by the very same respondent before the Writ Court, we called upon the 3rd respondent to explain the reason as to why such contrary stand had been taken before us, after taking a particular stand before the writ court. An explanation affidavit had been filed by the 3rd respondent stating that the stand taken in the additional counter is the correct stand and the counter filed by the same respondent before the Write Court taking a different stand is only because of the non-availability of records. Curiously, in the additional counter and the explanation affidavit filed by the 3rd respondent, it is stated that once a society is declared as defunct under Section 44(8) of the Act, it shall be



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treated as cancelled, if in the event of such society not being restored or no appeal being filed or the appeal having been dismissed and Section 40 would straightway come into operation and appointment of the liquidator became mandatory.

19. In view of the discussions hereinabove, we are unable to approve of the stand of the 3rd respondent, now taken in the writ appeal, contrary to the stand taken before the Writ Court. Infact before the Writ Court, the counter filed by the 3rd respondent rightly stated that declaration of the society as defunct would not amount to cancellation of its registration and that only when the provisions of Section 44(8) are invoked / complied, a registered society can be construed as cancelled.

20. One another contention of the learned counsel for the appellant that the merits consideration is the fact that totally a new society has been formed, the purpose of such formation itself was only to take over the assets/ recover the properties of the defunct Sangam and such an exercise behind the back of the registered defunct society is not contemplated even under the provision of the Act namely *The Tamil Nadu Societies*



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Registration Act, 1975, and Rules framed thereunder.

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21. One another relevant circumstances is that the civil suit had been filed in OS No.117 of 2008 before the Sub-Court, Tindivanam, seeking to recover the properties of the Sangam and even when the said suit was pending, the writ petitioner, 1st respondent herein has rushed to this Court seeking appointment of the liquidator. The purpose of appointment a liquidator is also to issue directions in regard to collection and distribution of assets of the registered society. It is an admitted fact that the writ petitioner was formed only for the purposes of recovery of the properties of the defunct Sangam. That being the case, having approached the Civil Court, by way of a comprehensive suit, the writ petitioner ought not to have been permitted to maintain the writ petition, seeking appointment of liquidator. Further, even the registered society had not been made a party to the writ petition. The entire scheme of Act clearly mandates that even a defunct society is entitled to notice before any proceedings are initiated in furtherance thereof. That being the position of law the writ petition filed only against the statutory respondents, without impleading the society is definitely not maintainable.

22. The Writ Court has held that after the lapse of period of appeal,



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the defunct society would automatically stand cancelled and thereafter the provisions of Section 40 would come into play and on the strength of such finding, proceeded to direct appointment of the liquidator. We have already discussed the various provisions of the enactment and also the relevant Rules in this regard and we are constrained to interfere with the said findings of the Writ Court. The appointment of the liquidator cannot and does not arise, unless and until an order of cancellation is passed by the Registrar of the Society and the same is also communicated to the registered society in question, to enable the said society to take such further legal steps consequent thereof.

23. For all the above reasons, the Writ appeal stands allowed and the order of the Learned Single Judge is set aside. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
29.08.2023

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To
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1. The Inspector General of Registration,
No.100, Santhome Road,
Chennai-28.
2. The Registrar of Societies,
(District Registrar of Assurances),
Rottikkara Street, Tindivanam



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(mjs)

Pre-delivery judgment in
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29.08.2023