



W.P.No.20433 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20433 of 2023
and W.M.P.No.19814 of 2023

Jasmine Court Owner's Association,
Rep. by its Secretary Mr.Noormydeen
No.2/297, Mount Poonamallee High Road,
Kattupakkam, Chennai – 600 056.

... Petitioner

Vs.

- 1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Mylapore, Chennai – 600 014.
- 2.The District Registrar [Administration],
Assistant Inspector General of Registration
Cadre cum Registrar of Societies South Chennai,
Integrated Building for Offices of
Commercial Taxes and Registration,
Fanepet, Nandhanam,
Chennai – 600 035.

- 3.R.Sridharan
- 4.Kasi Viswanathan
- 5.Ravindran

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the second respondent passed in his proceeding order No.16365/E2/2021 dated 12.05.2023 and quash the same.

For Petitioner	: Mr.K.Bhasker
For R1 & R2	: Mr.D.Ravichander Special Government Pleader
For R3	: Mr.R.Ramesh
For R4 & R5	: No appearance

ORDER

The order impugned dated 12.05.2023 issued by the District Registrar, South Chennai cancelling the election and ordering for fresh election of the petitioner Flat Owners' Association is under challenge in the present writ petition.

2.The petitioner is Jasmine Court Owner's Association which is a Flat Owners' Welfare Association registered vide No.635/2010 and duly registered under the Tamil Nadu Societies Registration Act, 1975 [hereinafter referred to as "the Act"]. There are 219 residential flats, the



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owners and the residents are the members availing the common

infrastructural and other facilities including maintenance to be provided by

the petitioner Association. The bye-laws of the Association are registered.

The second respondent District Registrar had received innumerable

complaints from the residents and owners regarding the illegalities and

irregularities in the functioning of the Association and in dealing with the

financial matters. Since large units of flats are in the complex, the annual

maintenance amount collected itself is running to Rs.1.5 Crores

approximately. The third respondent also raised an allegation that the funds

are mis-utilized and misappropriated. No doubt the allegations of financial

irregularities are serious since the maintenance amount have been collected

from the residents and owners of the flat for the purpose of maintaining the

property and to provide common amenities and facilities to the residents

residing in that apartment. Such allegations being raised are to be viewed

seriously and if evidences are available, any such member of the Association

or residents of the flat are at liberty to initiate even criminal action against

the members or the persons who have involved in such misappropriation of

the funds of the Association.



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3. Living in an apartment is a community living wherein there must be co-operation between the owners and residents of the apartments. In the present case, the second respondent District Registrar had received several complaints and initiated enquiry proceedings under Section 36 of the Act.

4. Learned counsel for the petitioner made a submission that the complainant has no locus to file a complaint in the present case. However, Sub-section (1) to Section 36 of the Act enumerates that "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".

5. Since suo motu power has been conferred on the Registrar to initiate enquiry proceedings, the complaint even if given by a third person can be



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construed as an information for the purpose of commencement of enquiry.

Mere information to the Registrar would be sufficient for invoking the powers under Section 36 (1) of the Act. When such information is sufficient for exercise of suo motu powers, complaint given by any person can be taken into consideration for the purpose of conducting an enquiry under Section 36 of the Act. Thus the said ground raised by the petitioner in untenable.

6.The petitioner has mainly raised a ground that the District Registrar has no power to cancel the election and to order for a fresh election. In the context of the said ground, this Court has to consider whether the power to conduct enquiry contemplated under Section 36 of the Act can be stretched to an extent of cancelling the election and to order for a fresh election of an Association registered under the Act.

7.In the present case, no doubt the complaint given by any person is entertainable under Section 36 of the Act. Thus, the Registrar has not committed any perversity in respect of conducting an enquiry. The Registrar



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is empowered to conduct an enquiry into the constitution, working and financial condition of the registered society. Therefore, the enquiry relating to the constitution, working and financial condition may be undertaken by examining the documents and records available. Under the Act, summary proceedings are contemplated. After holding a summary proceedings under Section 36 of the Act, the Registrar is empowered to invoke Section 37 of the Act for cancelling of registration. Section 37 of the Act contemplates that “when an enquiry is held under Section 36, the Registrar may, if he is satisfied, then cancel the registration by following the procedures as contemplated under Section 37 of the Act. Therefore, the Registrar is empowered to conduct an enquiry if there is any irregularity or illegality in the matter of filing of Form VII relatable to the election of office bearers. However, the District Registrar cannot cancel the election since such cancellation would result in civil consequences. Elections cannot be cancelled by conducting summary proceedings. Election in a democratic process wherein the right of the members have been involved. Therefore, such democratic process of election cannot be nullified by conducting a summary proceedings by the District Registrar under Section 36 of the Act.



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Aggrieved person has to approach the competent Civil Court of law for the purpose of declaring the election as null and void. In other words, such elections can be nullified only through trial natured proceedings and therefore, the powers conferred under Section 36 of the Act to conduct an enquiry cannot be expanded for the purpose of nullifying an election conducted by a registered society. The irregularities or illegalities in the conduct of election can be examined in a trial natured proceedings before the Civil Court of law and the Registrar through a summary proceedings is not empowered to cancel the elections. However, the correctness of Form VII filed by the Association can be verified and if there is any doubt or irregularity in Form VII, then the Registrar may return the Form VII for submission after correcting the same or rectifying the mistakes, if any. Contrarily, the Registrar cannot conduct a summary proceedings and cancel the entire election and direct the Association to conduct re-election.

8.The above principles are supported by the Full Bench of this Court in the case of ***C.M.S.Evangelical Suvi David and others vs. The District Registrar and others*** reported in ***CDJ 2005 MHC 736***, wherein it has held



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as follows:

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“18.The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No. VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable



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to challenge in the Writ Jurisdiction.

20.As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of Sub-Section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of



the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to to the power under Section 37 to cancel the registration. Hence, the power under Sub-Section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the civil Court for appropriate orders and thereafter shall act as per the orders of the civil Court. Accordingly, the issue is answered. Post the



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Writ Appeals for disposal accordingly.”

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9.In view of the principles laid down in the judgment supra, this Court is of the considered view that the Registrar has rightly entertained the complaint and conducted an enquiry. After conducting an enquiry, the Registrar is empowered to cancel the registration under Section 37 of the Act or relegate the parties to approach the Civil Court of law for the purpose of declaration of election as null and void. Contrarily, the District Registrar cannot cancel the election or direct the Association to conduct a re-election. Thus the District Registrar in the present case has exceeded her powers which is beyond the scope of the provisions of the Act. Regarding the merits of the allegations, this Court is of the opinion that no finding is required and it is for the parties to initiate all appropriate actions in the manner known to law.

10.In case of non-payment of maintenance by anyone of the occupant of the Flat, the basic amenities cannot be denied and in such circumstances, the Association is empowered to initiate action for recovery of the arrears of



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maintenance or dues in the manner known to law. Any coercive action by the Association by disconnecting electricity or water supply to any of the residence is a criminal offence and in such circumstances, the occupant who denied the basic amenities or basic necessities is empowered to prosecute the offenders. Therefore, in any circumstances the basic amenities to be provided to the occupants of the Flat cannot be denied and the Association is empowered to initiate all appropriate actions to recover the dues and arrears of maintenance charges in accordance with law. It is brought to the notice of this Court that the third respondent was denied electricity for fifteen days since he has made the complaint. Such instances should not happen in future.

11. In view of the facts and circumstances, the order impugned passed by the second respondent District Registrar in proceeding order No.16365/E2/2021 dated 12.05.2023 is quashed and the matter is remanded back to the second respondent for fresh consideration and pass appropriate orders within the powers conferred under the provisions of the Tamil Nadu Societies Registration Act, 1975. The parties are liberty to submit



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complaints, documents, evidences, etc., to the second respondent for conducting a re-enquiry into the allegations. On receipt of documents and evidences, if any, the second respondent shall conduct a fresh enquiry by affording an opportunity to all the parties and pass appropriate orders on merits and within the ambit of provisions of the Tamil Nadu Societies Registration Act within a period of twelve weeks from the date of receipt of a copy of this order.

12.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/Non-Speaking Order
Neutral Citation : Yes /No
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S.M.SUBRAMANIAM, J.

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To

- 1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Mylapore, Chennai – 600 014.
- 2.The District Registrar [Administration],
Assistant Inspector General of Registration
Cadre cum Registrar of Societies South Chennai,
Integrated Building for Offices of
Commercial Taxes and Registration,
Fanepet, Nandhanam,
Chennai – 600 035.

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