



A.No.5008 of 2022

in C.S.No.141 of 2019

Reserved on	11.04.2023
Delivered on	07.06.2023

K.KUMARESH BABU, J.

The present application has been filed seeking for a direction to direct the respondents 2 to 6 to conduct the election to the first respondent Trust based upon the scheme decrees passed by this Court on 27.04.1914 & 16.02.1979 and the supplemental scheme decree framed by the first respondent dated 25.08.2013.

2.Heard Mr.S.Kasirajan, learned counsel for the applicants and Mr.S.N.Kirubanandan, learned counsel for the respondents.

3.Mr.S.Kasirajan, learned counsel for the applicants would submit that he had instituted a suit under Section 92 C.P.C. seeking for various reliefs. He would submit that he is an ex-trustee of the first respondent Trust till 2012 and presently he is a beneficiary member of the Trust. The applicants 2 and 3 are also beneficiaries of the Trust. He would submit that the Trust was conceived by a group of Arya Vysya Residences of Triplicane. The Trust had purchased about 96



grounds at Venkatarangam Pillai Street. A portion of the acquired land was used for performance of spiritual rights by the public irrespective of caste and the remaining portion of area was set apart for maintenance of a flower garden for the purpose of offering flowers to Sri Parthasarathy Temple deity. Thereafter, further property was acquired at Sunkuvar Street and choultry was constructed for the use of the pilgrims. In the year 1914, a scheme decree for the management of the Trust was framed by this Court in C.S.No.330 of 1910, the said scheme decree came to be modified by a decree dated 16.02.1979. From the scheme decree made election to the post of trustees were to be conducted and the period of office of the trustees was for a period of five years. By a supplemental scheme framed by the Trust on 25.08.2013, the vacancies arising out in the Trust Board either by resignation or death or for any reason, should be filled up within 90 days by due process of election.

4.He would submit that the respondents 2 and 3 continue to hold the post even after the period of expiry of five years term of the trustees and that even though the fourth respondent had resigned from the trusteeship neither his resignation has been accepted by the Trust Board nor any election has been held. He would further submit that as per the supplemental scheme made by the Trust.



the trustees shall hold office for only one term. But, however, the second respondent who had been elected as early as in the year 2009 has been continuously holding the office of the Trust which according to them is contrary to the scheme of the Trust. He would further make various allegations as against the functioning of the trustees. Since no elections have been conducted to the Trust, the applicants had moved this present application and sought a direction for conducting an election of the Trust.

5. Countering his arguments, Mr.S.N.Kirubanandan, learned counsel appearing for the respondents 1 to 6 relying upon a counter filed by the second respondent would contend that the application is a clear abuse of process actuated with malice and ill will. He would submit that the applicants are not the members or beneficiaries of the Trust and that they have no locus standi to file the application. He would submit that the first plaintiff had been expelled from the Trust by an unanimous Resolution passed on 17.12.2017 and that such expulsion has been suppressed by the applicants. He would also submit that various allegations as regards to the management of the Trust and its properties are all unsustainable. Such allegations are being made by the applicants without any basis only to see that the object of the Trust is being derailed. He would further submit



that the third and fourth respondents had resigned from the trusteeship on 27.02.2022 and that in the Annual General Body Meeting held on 11.12.2022, the fifth and the sixth respondents had also resigned from the trusteeship of the Trust. He would also further submit that the elections were scheduled to be conducted and one Mr.A.Srinivasan and Mr.Nageshwararao were elected as trustees in the place of third and fourth respondents herein.

6.He would submit that the Annual General Body Meeting held on 11.12.2022 had unanimously resolved to continue with the trusteeship of the second respondent till the temple is open but not later than 18 months from the said date. Hence, he would submit that when the General Body had decided to conduct election and such elections had been held and the General Body had also unanimously resolved to continue the trusteeship of the second respondent, the applicants cannot be heard to seek conducting an election of the respondent Trust. Therefore, he prays this Court to reject the application with costs.

7.I have heard learned counsels appearing on either side and perused the materials available on record.



8. Various allegations have been made against the Management of the Trust and its properties. Originally, the applicants have filed an application in O.A.No.168 of 2019 seeking for an interim injunction restraining the respondents 2 to 6 herein from functioning as trustees of the first respondent Trust. An interim injunction was issued by this Court by order dated 14.03.2019. But, however, the same had been vacated and the application dismissed by order of this Court dated 29.04.2019.

9. An Intra Court appeal seems to have been filed against the same and the same has also been dismissed by the Division Bench of this Court. But, however, the Division Bench had directed that any property belonging to the Trust cannot be dealt without permission of this Court. The Division Bench had also given liberty to the appellants to approach the learned Single Judge for conducting of elections in accordance with Scheme Decrees.

10. It is an admitted fact that a scheme had been framed in respect of the first respondent Trust. The first scheme was framed by a Judgment and Decree of this Court dated 27.04.1914. The scheme has originally ordained that the affairs of the charity shall be under the management of three trustees to be elected by the



members of the community and that the vacancies created shall be filled up by the male members of the community, and that each of the trustees shall hold office for a period of five years from the date of decrees or election as the case may be. The said scheme came to be modified by a further Judgment and Decree dated 16.02.1979.

11.The said modified scheme ordained that the Trust shall be managed by five trustees and that the period of office of each of the trustees shall be five years and that any vacancy arising in the Trust Board for any reasons should be filled up within 45 days. The said scheme decree had also framed various rules as regards to the conduct of the election. It is also brought to the notice of this Court that a new scheme has been framed at the Annual General Body Meeting held on 25.08.2013 wherein certain modifications have been brought out to the scheme decree passed by this Court. At the outset, I am of the view such modifications of the scheme decree passed by this Court in the Annual General Body Meeting conducted by the first respondent Trust is wholly illegal, as it is without any authority and it amounts to modifying the Judgment and Decree of this Court dated 16.02.1979 made in C.S.No.439 of 1977. Hence, I am not going to rely upon the modified new



scheme made by the members of the General Body of the first respondent held on 25.08.2013, as the same is non-est.

WEB COPY

12.From the facts narrated above, it is an admitted case that the third and fourth respondents have resigned and that pursuant to the decisions in the Annual General Body Meeting one Mr.Srinivasan and Mr.Nageshwararao had been elected in their place. A specific averment had been made in the counter affidavit suggesting that the fifth and sixth respondents have also resigned. But, no details of any newly elected members in their place has been placed before this Court either by way of an affidavit or additional document. The Resolution passed by the Annual General Body Meeting on 11.12.2022 had been placed before this Court in the typed set filed by the learned counsel for the respondents. Even though the counter affidavit would aver that the fifth and the sixth respondents had resigned, the minutes recorded by the Annual General Body Meeting records that the fifth and sixth respondents have expressed their desire to continue as trustees till the temple project is completed.

13.The Annual General Body Meeting has also decided to permit the second defendant to continue till the temple project is completed or not later than 18



months from the date of the said Resolution. Even though a Resolution has been unanimously passed that the fifth and the sixth respondents will have to step down with immediate effect i.e. on 11.12.2022. No elections seem to have been conducted to fill up the vacancies that had been caused by the fifth and sixth respondents, this is also a violation of the scheme decree. Counter affidavit filed by the respondents also does not specify as to how the second respondent has been continuing in the office when he was originally elected in the year 2009, the details of subsequent elections have not been brought out in the counter affidavit filed by the second respondent.

14.A perusal of the scheme decree of this Court dated 16.02.1979 which is a scheme decree till date in force would mandate to the office of the trustee shall be for a period of five years and that the elections would have to be conducted within 45 days of either resignation, death or otherwise. That would mean that when the term of office of the trustee expires by efflux of time then an election has to be conducted. In this case, no details of elections to the post of trustees have been brought out by the respondents to substantiate that the elections have been properly conducted. That apart, the minutes of Resolution dated 11.12.2022 speaks otherwise.



15. Without conducting elections, the General Body approves a person to continue to be a trustee, this is against the spirit of the scheme decree framed by this Court. Even though in the counter it is pleaded that the respondents 5 and 6 had resigned, the minutes of the Annual General Body Meeting dated 11.12.2022 records an intention of the respondents 5 and 6 to continue the trusteeship for a reason. This intention even though had not been accepted by the General Body, even from the statement made by the learned counsel appearing for the respondents that elections seems to have been conducted only to the vacancy that had arisen due to the resignation of the respondents 3 and 4. No elections seems to have been conducted for the vacancies had had arisen out of the resignation of the respondents 5 and 6. This itself is suffice for me to prima facie come to the conclusion that the management of the Trust is not being carried out as per the scheme decree framed by this Court in its Judgment and Decree dated 16.02.1979.

16. Hence, in the interest of the Trust, I am of the view that the elections to the Trust will have to be conducted at the earliest for the better management of the Trust in compliance with the scheme decree dated 16.02.1979 framed by this Court in C.S.No.439 of 1977. Hence, I appoint Mr.S.Kathiravan, Advocate, No.3, 100 Feet Road, Bharathi Nagar, Tharamani, Chennai – 600 113, (Mobile No.94446



88303), is an Election Officer to conduct the election on the terms provided by this Court in the scheme decree made in C.S.No.439 of 1977 dated 16.02.1979. Such election shall be conducted by the Election Officer within a period of three months from the date of receipt of a copy of this order. This Court also appoints Mr.Sugendrakumar, Mr.Nagendran and Mr.V.Damodar to assist the Election Officer in finalizing the voters list and the conduct of the election. The Election Officer if required and deemed necessary in his opinion shall also avail the protection of the Police Authorities concern in conducting the elections. I have nominated the aforesaid three members as they are the persons who have voiced their concern during the Annual General Body Meeting of the first respondent Trust on 11.12.2022. The Election Officer shall conduct the election within a period of three months from the date of receipt of the order. The Election Officer is entitled to a remuneration of Rs.75,000/-. The first respondent shall bear all the expenses for conduct of the election. The Election Officer is entitled to the actual expenditure incurred for conduct of the election.

17.With the aforesaid directions, the application is disposed of.

07.06.2023

pam



WEB COPY



K.KUMARESH BABU, J.

pam

A.No.5008 of 2022

in C.S.No.141 of 2019

07.06.2023