



WEB COPY



W.P. No.27367 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.27367 of 2018
and
W.M.P. No.31872 of 2018

N.S. Narasimhan

... Petitioner

Vs

1. The Secretary to the Government
of Tamil Nadu,
Commercial Taxes and Registration Department,
Chennai – 600 009.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

3. The Registrar of Societies and District Registrar,
Office of the District Registrar,
Coonoor Road,
Uthagamandalam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for records on the file of the first respondent in proceeding number 2050-M1/2015-4, dated 20/01/2016 and quash the same as illegal, incompetent and out of jurisdiction further revive the society to enable it to transfer its assets to Sri Ramakrishna Math and for consequential orders.



W.P. No.27367 of 2018

For Petitioner : Mr.V. Raghavachari, SC
for Ms.V. Srimathi
For Respondents : Mr.U.Baranidharan, AGP

WEB COPY

ORDER

This writ petition has been filed to call for the records on the file of the first respondent in proceeding number 2050-M1/2015-4, dated 20/01/2016 and quash the same as illegal, incompetent and out of jurisdiction further revive the society to enable it to transfer its assets to Sri Ramakrishna Math and for consequential orders.

2. The short facts leading to the filing of the present writ petition are as under :

Mahathma Sree Thayumana Swami Sabhai is a Society doing religious and charitable activities, since its registration i.e., from 1943 onwards. The Society was very active till 1986 after which, due to non-submission of returns to the competent authority leading to declaration it had become defunct and the same has been published in the official Gazettee on 24.12.2008. As the Society has been notified as defunct, the petitioner has filed this writ petition in the individual capacity.

3. It is the case of the petitioner that to transfer the assets of the



W.P. No.27367 of 2018

defunct Society to another Society viz., Sri Ramakrishna Math, he approached the 2nd respondent by way of an application on 04.08.2014, seeking permission to revive the Society, but the same has been rejected on 15.09.2014, without even affording an opportunity on the ground of limitation prescribed under Rule 37(3) of The Tamil Nadu Societies Registration Act. Aggrieved over the same, an appeal has been preferred before the 1st respondent. Thereafter, the District Registrar has also inspected the said Society and ascertained the charitable activities of the Society, audited accounts as well as Resolution passed by the Trust on 04.04.2014 for the purpose of effecting transfer / gift of the property in favour of Sri Ramakrishna Math. When that being the position, the 1st respondent / appellate authority has passed the impugned order, dated 20.01.2016. Challenging the said order, this writ petition has been filed with the aforesaid prayer.

4. Mr.V. Raghavachari, learned Senior Counsel appearing for the petitioner submitted that when the Society viz., Mahathma Sree Thayumana Swami Sabhai had resolved to wind up its affairs and transfer its assets to Sri Ramakrishna Math, the Members of the Petitioner Society became aware of the Proceedings dated 24.12.2008, stating that the Society has



W.P. No.27367 of 2018

become defunct. Later, they submitted an application for reviving the Society on 04.08.2014, whereas the 1st respondent has passed the rejection order on the ground of limitation. Subsequently, the petitioner filed an appeal before the 1st respondent challenging the said rejection. He submitted that the Society is still functioning, carrying on charitable activities. In support of his submission, he drew the attention of this Court to the Inspection conducted by the District Registrar on 16.04.2015, who found that the Society is active and the said request for revival in the Government Records is only to ensure that the property measuring 0.03-8/16 Acres comprised in RS. No.2011/2, 2012 and 2045 of Ootacamund corresponding to TS No.E/11/1884 together with building are to be transferred to Sri Ramakrishna Math and further submitted that resolution to that effect was also passed by the Trust on 04.04.2014. However, the 1st respondent failed to consider the aforesaid points and merely rejected the request of the petitioner for revival of the Society, which is impugned herein.

5. Drawing the attention of this Court to a decision of the Hon'ble Supreme Court in the case of *I. Nelson and another vs. Kallayam Pastorate and others*, reported in 200 11 SCC 624 more particularly to



W.P. No.27367 of 2018

paragraph Nos.15 to 17, it is submitted that there would be no legal hurdles in reviving the entities, which in fact merely is for the purpose of transfer of the property and therefore, the impugned order passed by the 1st respondent is illegal and unsustainable in the eye of law. On the aforesaid score, he prays before this Court for allowing of this writ petition.

6. Per contra, Mr.U. Baranidharan, learned Additional Government Pleader appearing for the respondents submitted that due to non filing of statutory returns prescribed under the Societies Registration Act, 1860, the name of the Society was struck off in the Register of Societies and as such the said Society is declared as defunct by adhering procedures laid down in Section 44 of the Act.

7. Reiterating the counter affidavit, learned counsel submitted that subsequently, application submitted for revival was rejected by the 2nd respondent as the period of limitation prescribed in sub-rule (3) of Rule 37 got lapsed and the petitioner was directed to go before the competent authority to get exemption under Section 54 of the Act.

8. Further, he submitted that religious and charitable activities which is alleged to have been conducted is wholly impermissible as the society failed to conduct election of members of the Executive Committee since



W.P. No.27367 of 2018

28.04.2002. More so, the said Society having failed to maintain the account books as laid down in Rule 18 of the Tamil Nadu Societies Registration Rules and claiming that only to transfer the property held in favour of the defunct Society to Sri Ramakrishna Mutt, they filed an application seeking for revival of the Society is impermissible and invalid. He placed his arguments by drawing the attention of this Court to various provisions and limitation prescribed as well as the activities of the Society. Accordingly, he vehemently opposed for quashing of the impugned order.

9. This Court heard the arguments advanced by the learned counsel on both sides and perused the materials placed on record.

10. Admittedly, Mahathma Sree Thayumana Swami Sabhai is a registered Society and the same has become defunct in the year 2008, owing to non-filing of statutory compliances. It is not in dispute that as the said Society became defunct, the office bearer has filed this writ petition in his individual capacity and as such taken steps to revive the said Society, thereby application was submitted before the 2nd respondent on 04.08.2014 and the same has been rejected on the ground of limitation prescribed under the Act. It is the contention of the petitioner that though the society was declared defunct, they continue to carry out religious and charitable



W.P. No.27367 of 2018

activities, which is the main objective of the said Society. Further, it is seen that pursuant to resolution passed by the Trust on 04.04.2014, they have taken steps to revive the said Society for effecting transfer of the property held in the name of the defunct Society to another Society. Also, it is to be noted that only to avoid technical objections, since defunct society is considered to be “civil dead”, the petitioner has approached various authorities for such revival and after several battles, he approached this Court by way of filing this writ petition. This Court has also taken note of the issue with regard to limitation, appeal filed and various provisions prescribed under the Act. Now, the test before this Court is whether the impugned order passed by the 1st respondent rejecting the revival of the Society is correct or not.

11. Even though it is submitted by the learned Senior Counsel for the petitioner that the religious and charitable activities are carried out by the Trust, they have to submit proper accounts as well as conduct election of its Members and resolution passed in the Meeting of the said Trust etc. for the purpose of proving their existence. However, it is seen that the main aim of the defunct Society for being revived to its original position is only for the purpose of transferring their property /assets to Sri Ramakrishna Mutt.



W.P. No.27367 of 2018

WEB COPY

12. From the above, it is evident that the need for reviving the society is only for the purpose of transferring the property, held by it, to some other society, viz., Ramakrishna Mutt, so as to pursue the charitable activities, which were being performed by the said society. Such being the case, the only reason for revival being to continue the charitable activities by the other trust and the properties of the petitioner society is sought to be transferred to Ramakrishna Mutt is for the purpose of continuing the charitable activities, this Court is of the view that no prejudice would be caused to the respondents, if the said Society is permitted to revive its original position for the aforesaid aim.

13. The view of this Court gets further strengthened by the decision of the Supreme Court in *I. Nelson and another vs. Kallayam Pastorate and others, reported in 200 11 SCC 624*, relied upon by the learned Senior Counsel for the petitioner, which applies in all force to the case of the petitioner. The relevant portion of the said judgment is extracted hereunder:

15. While passing the impugned orders, the High Court did not notice the relevant provisions of the 1975 Act. The councilors representing the parties, for one reason or the other, did not also bring to the notice of the High Court the effect of the provisions of the 1975 Act, vis-à-vis, the 1860 Act. The society, presumably keeping in view the nature of its



WEB COPY



W.P. No.27367 of 2018

activities, was required to be compulsorily registered. It is, however, not in dispute that it was so registered under the Central Act of 1860. Once it is held that the society was registered under the 1860 Act; in terms of Section 53 of the 1975 Act it shall be deemed to be registered thereunder. The effect of a legal fiction is well-known. Legal fiction created, it is trite, must be given full effect.

16. We have noticed hereinbefore some of the provisions of the 1975 Act. It, undoubtedly, is a complete code. It not only provides for the mode and manner in which registration of a society is to be cancelled but also for winding up of a society and removal of a defunct registered society from the registers maintained by the Inspector General of Registration. A society need not necessarily be held to have become defunct only because certain statutory provisions have not been complied with by it.

17. We fail to understand as to why the Inspector General of Registration, who was impleaded as a party in the suit, also did not bring the relevant provisions of the Tamil Nadu Act to the notice of the High Court. The statutory authority, while allowing the impugned order to be passed by the High Court, abdicated itself of its statutory functions. The society might not be, in fact, registered as such under the 1975 Act, but, as it was registered under the 1860 Act, we have no other option but to hold that it was deemed to be registered also under the 1975 Act. Having regard to the provisions contained in Section 53 thereof, once the society became a society registered under the 1975 Act, all the consequences arising thereunder shall ensue. It was,



WEB COPY



W.P. No.27367 of 2018

therefore, for the statutory authorities to take recourse to such actions as are provided for in the 1975 Act or the Rules framed thereunder. In the event, the society became defunct or other statutory requirements were not complied with by the members of the society, penal measures could have been taken but in no situation the election of the office bearers could have been set aside. Right to contest an election of an office-bearer of the society is a statutory right of the member thereof. Such a right also exists under the bye-laws of the society. It is not the case of the respondents that the bye-laws of the society are invalid in law. Once a valid election was held, the High Court, in our opinion, could not have directed setting aside of an election only on the purported ground that it became defunct. An almost similar question came up before this Court in Board of Control for Cricket in India V Netaji Cricket Club. wherein this Court, despite its jurisdiction under Article 142 of the Constitution of India, did not venture to consider the validity or otherwise of the election of the office-bearers of BCCI as they had not been impleaded as parties therein, stating (SCCp.763, para 84) :

“84. On 11-10-2004, we had, after hearing the counsel for the parties, observed that if a situation arises this Court would go into the validity of the election of the office-bearers of the Board held in the meeting dated 29- 9-2004, but, as indicated hereinbefore, we did so under a mistaken belief that the Board would be represented by the new office-bearers and, thus, all parties would be before us. However, it now



W.P. No.27367 of 2018

stands admitted that the office-bearers either in their personal capacity or official capacity are not before us. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, we would not be in a position to entertain the dispute as regards validity of the meeting of 29-9-2004 resulting in the election of the office-bearers. Giving an opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum."

14. A perusal of records reveal that without considering the functional activities of the defunct Society, the 1st respondent has mechanically passed the impugned order, by placing reliance on the aspect of limitation. This Court, in the above backdrop, is of the view that the impugned order as well as the order passed by the 2nd respondent on the ground of limitation are totally misconceived and suffers the vice of illegality and the same are liable to be set aside.

15. For the reasons aforesaid, the order passed by the 2nd respondent, dated 15.09.2014 and the consequential order of the 1st respondent, which



W.P. No.27367 of 2018

is impugned herein are hereby quashed. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed. Further, this Court issues a direction to the 3rd respondent to revive the Society by imposing stringent conditions to be complied with, which would be only for the purpose of transferring the property of the petitioner society and any failure on the part of the petitioner, the respondents are at liberty to take action against the petitioner in the manner known to law.

29.03.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2

To

1. The Secretary to the Government
of Tamil Nadu,
Commercial Taxes and Registration Department,
Chennai – 600 009.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.



WEB COPY



W.P. No.27367 of 2018

M.DHANDAPANI, J.

vsi2

3. The Registrar of Societies and District Registrar,
Office of the District Registrar,
Coonoor Road,
Uthagamandalam.

W.P. No.27367 of 2018

29.03.2023