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W.P.(MD)NO.9638 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9638 of 2015 AND

M.P.(MD)Nos.1 & 2 of 2015

Beulah,
W/o.Rajendran,
Secretary,
Door No.7A, Hosanna Children Home,
(Regn. No.3/1981),
Lower Camp, Periyar Project Post,
Theni District.

... Petitioner

Vs.

1. The District Collector,
Theni District,
Theni.
2. The District Social Welfare Officer,
Theni District,
Theni.
3. The District Child Protection Officer,
Theni District,
Theni.
4. The Chairman,
The Child Welfare Committee,
(Constituted under Juvenile Justice Act),
District Level Officers Block-3,
Collectorate, Theni – 625 531.

5. Judy

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned order Na.Na.No. 1413/A3/2011 dated 29.05.2015 passed by the 2nd respondent and quash the same and direct the respondents 1 to 4 to remove the seal and handover the key of the premises of (Beulah Rajendran) Hosanna Children Home in Door No. 7A, Water Tank Street, Periyar Lower Camp, Theni District to the petitioner on the undertaking that the Hosanna Children's home will be run in the said Door NO. 7A, after obtaining proper permission from the respondents No. 1 to 4 or any other authorities concerned.

For Petitioner : Mr.C.Dhanaseelan

For R-1 to R-4 : Mr.S.Ra.Ramachandran,
Additional Government Pleader.

For R-5 : Mr.K.Appadurai

* * *

ORDER

Heard both sides.

2. The only question that calls for consideration is to whom the petition-mentioned building in which the children home was being run should be handed over.



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3. The petition-mentioned property stood in the names of Beulah Rajendran and Immanuel. Subsequently, the property was gifted in favour of Hosanna Children Home, a registered society. Beulah and Immanuel are sister and brother. Some controversy had arisen among the members of the society leading to removal of Immanuel from the primary membership. I need not go into the question as to whether Immanuel was lawfully removed. Immanuel is no more. However, the controversy continues to simmer between Beulah and her husband Rajendran on the one hand and the fifth respondent Judy on the other. Judy asserts that she is Immanuel's wife. Since the children home was being run without the amenities as set out in the Juvenile Justice (Care and Protection of Children) Act 2000, the authorities sealed the building. Challenging the same, Rajendran, the husband of the petitioner filed W.P.(MD)Nos.4288 of 2009 and 16523 and 14481 2013 before this Court. The writ petitions were dismissed on 17.09.2014. Adverse findings were rendered against Rajendran in the said order. Based on the same, the impugned proceedings dated 29.05.2015 was passed by the



District Social Welfare Officer, Theni. The authorities made it clear that since it had been held by this Court that only Judy Immanuel is entitled to run the children home, the building cannot be given to the petitioner. Challenging the same, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. The learned Additional Government Pleader appearing for the official respondents as well as the learned counsel appearing for the fifth respondent submitted that the impugned order does not warrant interference. They pressed for dismissal of the writ petition.

5. The learned counsel on either side brought to my notice certain subsequent developments.

6. I carefully considered the rival contentions and went through the materials on record.



7. Admittedly the order dated 17.09.2014 passed by the learned single Judge in W.P.(MD)No.16523 of 2013 was put to challenge in W.A.(MD)Nos.1424 to 1426 of 2016. The Hon'ble Division Bench disposed of the writ appeals on 06.09.2017 in the following terms:-

“6. The findings rendered by the learned single Judge ought to have been seen contextually for the purpose of deciding the writ petitions alone. It will neither give a declaration either in favour of the appellant or in favour of the private respondents. Further, the new private respondent has taken charge as President and continues. Therefore, to that extent the order passed by the learned Single Judge is clarified. The only other issue is with respect to handing over the building sans inmates. Admittedly, the building belong to the Society. Therefore, this Court cannot accede to the request made by the learned counsel for the appellant that it should be returned to him, since his enjoyment itself is based upon alleged role as the President.



7. In such view of the matter, we direct the District Social Welfare Officer, Theni District, to take a call on the question of handing over the possession to the present office bearers namely, the President and Secretary, of Hosanna Children Home. For the aforesaid purpose, he has to issue notice to both the appellant as well as the private respondents and thereafter satisfy himself .

8. At this juncture, the learned Government Advocate, submitted that a suit has been filed by the appellant in O.S. No.21 of 2010 before the learned Sub Court, Uthamapalayam. The learned counsel for the appellant submitted that the appellant would withdraw the same. The statement is accordingly recorded. The appeals stand disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.”

8. Contrary to the undertaking given before the Hon'ble Division Bench, the plaintiffs in O.S.No.21 of 2010 on the file



of the Sub Court, Uthamapalayam wanted to proceed with the suit. The fifth respondent herein filed I.A.No.128 of 2017 for rejection of plaint. The IA. was allowed on 18.06.2018. Questioning the same, the plaintiffs filed A.S.No.7 of 2019 before the Principal District Judge, Theni. It was dismissed on 19.06.2020.

9. Rajendran had filed W.P.(MD)No.5559 of 2023 for directing the authorities to conduct enquiry as per the terms of the order made in W.A.(MD)Nos.1424 to 1426 of 2016. The said writ petition was also closed vide order dated 18.07.2023 in the following terms:-

“2.The third respondent / District Child Protection Officer has filed a counter affidavit as follows:-

“6.I humbly submit that the fourth respondent herein through her letter in Na.Ka.No.978/A3/2017 dated 23.04.2021 addressed to the third respondent has stated that she conducted enquiry in accordance with the order passed in Writ Appeal and concluded that the fifth respondent is the



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President and Secretary and handed over the keys of the “Hosanna Children Home” to us, in view of the G.O.Ms.No.74, Social Welfare and Nutritious Meal Programme Department dated 30.11.2015.

7.I humbly submit that now the Child Care Institutions are under the control of Child Protection Officer and Child Welfare Committee of the respective Districts. As on today, the Society namely “Hosanna Children Home” is defunct and we came to know that the Form-7 submitted by the rival parties were not accepted from the year 2019-2020. In those circumstances, the possession of the Home could not be handed over to the writ petitioner or the fifth respondent herein.

3.Recording the above statement of the third respondent, this writ petition is closed, with liberty to the petitioner to work out his remedy in the manner known to law. No costs.”

10. The learned counsel appearing for the petitioner states that the only reason for sealing the building was that



the amenities as set out in the statute were not provided. Now the petitioner is ready to give an undertaking that they will not run any children home in the building. According to the petitioner's counsel, once such an undertaking is given, the cause of action for sealing the building will automatically go. It is further contended that when the building was sealed, the petitioner was in possession and that therefore the possession should be restored to the petitioner.

11. The impugned order passed by the second respondent is based on the findings rendered in W.P.(MD) Nos.4288 of 2009 etc. The said order has since merged with the order passed by the Hon'ble Division Bench. Therefore, the impugned communication can no longer survive. In fact the Hon'ble Division Bench had made it clear that the fifth respondent herein Judy cannot take advantage of the said findings. Therefore, the impugned order is set aside.

12. Because of the order dated 18.07.2023 made in W.P. (MD)No.5559 of 2023, it is not possible for this Court to straightaway direct the official respondents to hand over the



possession to the petitioner herein. O.S.No.21 of 2010 on the file of the Sub Court, Uthamapalayam filed by the petitioner and her husband had also been rejected.

13. Now the question that arises for consideration is what should be done. There is only one way out. Section 88 of the Civil Procedure Code is as follows:-

“ Where interpleader suit may be instituted-

Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :



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Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.”

14. The authorities having sealed the premises cannot wash their hands off. The rival claimants are Beulah and Rajendran on the one hand and the fifth respondent on the other. Before the learned single Judge, it was stated by the authorities that the society had become defunct. But before me, gazatte notification declaring the society as defunct has not been produced. So long as the formal process set out in the Tamil Nadu Societies Registration Act 1975 has not been complied with, this Court would not readily assume that the society is defunct.

15. Therefore, the second respondent herein is directed to institute an interpleader suit under Section 88 CPC before the jurisdictional Court. This shall be done immediately and without any delay. The moment the plaint is filed, it shall be numbered and taken on file. In the said suit, the registered



society as well as Beulah, Rajendran and Judy shall be shown as defendants. The civil Court shall dispose of the same on merits and in accordance with law within a period of six months from the date of filing of such a suit. Based on the decision of the trial Court in the said interpleader suit, the second respondent will act. The trial Court will not permit the parties to drag on the proceedings. The main issue shall be decided as expeditiously as possible. This writ petition stands disposed of with the aforesaid direction.

16. In the civil suit, the District Registrar of Societies will also be made as a party. It is obvious that the property does not belong to any individual. It belongs to the society. Therefore, the core issue should be resolved by the trial Court. It will have to identify who can represent the society. The materials on record are not sufficient to come to any conclusion that the society has become defunct. Therefore, the membership of the society will have to be identified first. The election will have to be held under the supervision of the District Registrar. The civil Court will endeavour to frame the right question and ensure that the building is handed over to



the original body. No costs. Consequently, connected miscellaneous petitions are closed.

14.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The District Collector,
Theni District, Theni.
2. The District Social Welfare Officer,
Theni District, Theni.
3. The District Child Protection Officer,
Theni District, Theni.
4. The Chairman, The Child Welfare Committee,
(Constituted under Juvenile Justice Act),
District Level Officers Block-3,
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