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Application Nos.1138 and 1139 of 2024 in
C.S.Nos.153 and 154 of 2022

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N.SATHISH KUMAR J.,

These applications have been filed by the 2nd defendant to permit him to participate in the election.

2. Mr.Thomas T.Jacob, learned counsel for the applicant submitted that on previous occasion, this Court, by order dated 29.04.2021 in O.A.No.686 of 2020 in C.S.No.364 of 2020 requested the Judge Commissioner to take a call as to whether to allow the suspended members to cast votes. Pursuant to the said order, the then Judge Commissioner appointed by this Court has passed an order by allowing the suspended members' participation in the election. Hence according to the learned counsel, this issue may also be relegated to the Judge Commissioner and the Judge Commissioner shall decide as to whether the applicant shall be allowed to participate in the election or not.

3. Mr.Vijay Narayan, learned Senior Counsel for Mr.Hari Radhakrishnan, learned counsel for 1st respondent is not disputing the contention made by the learned counsel for the applicant and submits



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that the similar order was passed earlier by this Court relegating the matters to the Judge Commissioner and he has also no objection to the Judge Commissioner to decide the issue.

4. In such view of the matter, the learned Judge Commissioner shall decide the issue as to whether to permit the applicant (who was suspended in the resolution) to participate in the election process, on own merits and the relevant portion of the order passed earlier, in O.A.No.686 of 2020 in C.S.No.64 of 2020 dated 29.04.2021 is hereby extracted as follows:-

“11. Learned counsel particularly Mr.Thomas Jacob expressed apprehension as to the scope of the Judge Commissioner to undertake this election process and complete the same in terms of the By-law of the Society. According to the learned counsel certain procedures need to be followed. This Court has clarified that it is open to the members of the Society to approach the Judge Commissioner to be appointed by this Court with any legitimate objection, issues that touch upon the election process in terms of the By-laws of the society and the same may be considered by the learned Judge Commissioner.

12. It is again clarified that dehors challenges before this Court pending applications / suits, all the members inducted as on date including the suspended members have



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a right to participate in the election and also have right to contest but their participation or contest in the election would be dealt with separately by the learned Judge Commissioner. The vote of the suspended members and the newly inducted family members would be separately kept in a sealed cover and so as the result of any contesting member whose membership validity is a lis before this Court. The results of such persons shall not be declared and shall be kept in a sealed cover to be produced before this Court.

13. In the light of the above understanding and agreed among the parties to the lis, the following directions are issued:

(a) The Hon'ble Mr.Justice K.Kannan (Retd) residing at New No.22, Gill Christ Avenue, Opp. Harrington Road, Chetpet, Chennai – 600 031 (Cell No.9780008145) is hereby appointed as a Judge Commissioner to conduct the election to the Governing Body of the 3rd defendant society in terms of the By-laws of the Society.

(b) The Hon'ble Judge Commissioner is requested to initiate expeditious steps to set the election process in motion and may complete the same by drawing up a convenient time line.

(c) The Hon'ble Judge Commissioner is requested to issue fresh notice to the members of the society calling for commencing the election process in terms of the By-laws of the society.



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(d) As stated above, any clarification or issues that are being sought during the processing of election, the Hon'ble Judge Commissioner may take a call and may pass appropriate orders and it is made clear that any decision taken on any objections or clarification sought by the members, the same shall be binding and final on the members and such decision shall not be put to challenge before this Court before the election process is completed.

(e) This Court makes it clear that any legitimate objections to the members who are aggrieved by any decision of the Hon'ble Judge Commissioner, such right to challenge the decision before this Court is reserved if any, only after the election process is completed in full and the results are declared....”

5. In the light of the above direction already granted, the learned Judge Commissioner shall decide the issue and any decision taken by the Judge Commissioner will be final and if at all any challenge is to be made, as indicated above, only after completion of election process and after results are declared, the challenge shall be made.

Accordingly, the applications are ordered.

05.03.2024

Index: Yes/No
Internet: Yes/No
ssd



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