



W.P(MD)No.9453 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9453 of 2024

and

W.M.P.(MD)Nos.8574, 8575 & 8576 of 2024

Murugan @ Ramamurthy

... Petitioner

Vs.

- 1.The District Registrar (Societies),
Registration Department, Tiruchirappalli.
- 2.The Branch Manager, State Bank of India,
Pattavaithalai Branch, Tiruchirappalli.
- 3.The Branch Manager, Canara Bank,
Sri Ramakrishna Thabovanam Branch,
Tiruchirappalli.
- 4.The Inspector of Police,
All Women Police Station,
Jeeyapuram, Trichy.
- 5.Bramachari K.Veerachandran
Sri Ramakrishna Kudil,
Thirupparaithurai,
Trichy District-639 115.

6.K.Marudhu

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent made in Na.Ka.No. 15818/ Aa3/2023 dated 30.01.2024 and quash the same and consequently direct the 1st respondent to approve the Form VII dated 04.10.2023 submitted by the petitioner in respect of society bearing Registration No. 44 of 1967.

For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel for Mr.R.Murali
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader for R1
: Mr.Pethu Rajesh for R2
: Mr.P.Madhan Alexander for R3
: Mr.A.Albert James
Government Advocate (Crl.side) for R4
: Mr.T.Aravind for R5
: Mr.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates for R6

ORDER

Heard both sides.

2.The case on hand pertains to the affairs of a registered society known as “Sri Ramakrishna Kudil”. It was founded in the year 1967. The following 12 persons were the members of the society as on 04.07.2022.

“1.K.Chandramohan

2.S.Muthusamy

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3.M.Subramanian

4.Maharajan Chidambaram

5.Murugan Palanisamy @ Ramamoorthy

6.K.Marudhu

7.Brammachari Parthipan

8.Brammachari Dhanasekar

9.Brammachari Veerachandran

10.Brammachari Karuppaiah

11.R.Sambasivam

12.S.Kannan”

3.It is stated by the learned Senior Counsel appearing for the 6th respondent that in the general body meeting convened on 21.08.2022, Chandramohan and Muthusamy were removed and that one Thirunavukkarasu and Gomathinayagam were inducted as members. This was seriously disputed in the last hearing. Today, the learned Senior counsel, on instructions, submitted that they would take it that Chandramohan and Muthusamy are no longer members of the society and that Thirunavukkarasu and Gomathi Nayagam had been inducted as new members. The resultant position is that the following 12 persons are the members of the society :

“1.V.Thirunavukkarasu



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2.R.Gomathinayagam

3.M.Subramanian

4.Maharajan Chidambaram

5.Murugan Palanisamy @ Ramamoorthy

6.K.Marudhu

7.Brammachari Parthipan

8.Brammachari Dhanasekar

9.Brammachari Veerachandran

10.Brammachari Karuppaiah

11.R.Sambasivam

12.S.Kannan"

Form VII that has been taken on file by the first respondent reflects the above persons as the members of the society.

4.Sri Ramakrishna Kudil is running an orphanage and a high school. Crime No.7 of 2023 came to be registered by the Inspector of Police, AWPS, Jeeyapuram, Trichy District on 05.08.2023 for the offences under POCSO Act, 2012 against Brahmachari Karuppaiya, Brahmachari Dhanasekhar, Brahmachari Parthiban and others. Investigation was conducted and final report was filed before the learned Mahila Court, Trichy. Cognizance was taken in Special S.C No.95 of 2023 on the file



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of the Additional Mahila Court, Trichy for the offences under Sections Sections 5(i), 5(f), 5(m), 6(1), 9(f), 17, 10, 21(2) of POCSO Act, 2012 and 506(i) of IPC. Among the five accused in this case, three of them, namely, Parthiban, Dhanasekar and Karuppaiya are members of the society.

5.The question that calls for consideration is whether such persons can be permitted to be connected with the affairs of the society till they are exonerated/acquitted of the charges levelled against them. The offences for which they are prosecuted are not ordinary offences. They involve serious allegations under the POCSO Act, 2012. The society is running an orphanage and a High School.

6.Section 92 of CPC enables the competent civil court to even remove a trustee in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature. Sri Ramakrishna Kudil is of course a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. Tamil Nadu Act 27 of 1975 provides for the registration of literary, scientific, religious, charitable and other societies in the State of Tamil Nadu. The Kerala High Court in the decision reported in *AIR 2005 Ker 233 (Abhaya v. J.A.Raheem)* held that Section 92 cannot be invoked against a registered society.



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This decision was criticized in an article published in **(2014) 7 NUJS L Rev 205** by

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P.Ishwara Bhat in the following terms :

“.....In this case, a registered society ‘Abhaya’ was constituted with the objective of serving the mentally disabled. Initially, the District Court held that the organisation possessed the characteristics of a trust. However, the High Court noted that as the organisation was governed by a Memorandum of Understanding, it did not function in the manner of a trust. [*Id.*] The Court distinguished the case from an earlier one where the local community had contributed towards creation of ‘trust fund’ for building a school, and subsequently formed a registered society. [*Kesava Panicker v. Damodara Panicker*, AIR 1976 Ker 86.] The Court noted that the intention to create a trust existed in the latter but was absent in the former. Finally, the Court noted that remedy may be sort under the analogous §25 of the Societies Registration Act, 1860 (‘SRA’). Such a distinction proves problematic in a number of ways. *First*, the dimension of constructive public trust was not considered even after acknowledging that the society had an obligation to use public money for the purposes stated in the Memorandum of Association, which had a clear charitable purpose. *Second*, the social obligation of the organisation and the



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expectations of good governance of mental health institutions made it imperative that interpretation of procedural law was in line with the substantive rights of the public. Thus, from a human rights point of view, a liberal approach would have been more appropriate. *Third*, the Court's finding of similarity between §25 of the SRA and §92 of CPC was glaringly flawed. The former has far fewer remedies than the latter. Further, its availability is subject to more rigorous conditions such as, the petition ought to be supported by 10 per cent of members of the society. Finally, §92 is a special remedy and its scope must be expanded, however the Court in its approach has restricted its application rather than broadening it."

The Madras High Court has taken a broader view. In *Chennai Vazhal Duraiyur Nadar Uravin Murai Magamai Sangam v. K.A.Gurusamy* (2004 (1) CTC 481), it was held that a sangam registered under the Registration of Societies Act could also be considered as a trust for the purpose of attracting the provisions of Section 92 CPC. It was approvingly cited in *Unknown v. Periyar Self Respect Propaganda* (Order dated 11.08.2011 in Application No.2019 of 2011 in C.S (D) No.12244 of 2011). It was also followed in 2012 3 L.W 532 (*Vallivalam Desikar Polytechnic Educational Society, Nagapattinam v. Registrar of Societies*). Section 92 was invoked even



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though one of the managing agencies was a society and the other a trust, since the objects for which both were established were public charitable in nature. Direction was issued to the Advocate General to institute a suit under Section 92 CPC for framing a scheme for the administration of the institutions in question.

7.If a civil court can remove a trustee in case of breach of trust, such a power can be exercised by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India in appropriate cases against persons in management of registered societies. Where interest of children is involved, the High Court may have to exercise its parens patriae jurisdiction. In the case on hand, the interests of orphans are involved. The general body of the society running the institution has only 12 members. It virtually means that everyone of them is in charge of the management of the institution. When three of them are accused in POCSO Act offences, their membership will have to be suspended and they have to be kept away from the management of the society. Such persons ought not to be even remotely connected with the affairs of the society. Considering the heinous nature of the allegations levelled against them, the Writ Court is compelled to exercise its extraordinary jurisdiction. This is necessary to prevent further victimisation. There could be tampering of witnesses. It is interesting to note that originally the same counsel represented Brahmachari K.Veerachandran, the President cum Treasurer as



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well as one of the prime accused. This shocked me and when I pointed this out, change of vakalat was filed for the President of the Society.

8. Under certain extraordinary situations, the Government has the power to supersede the committee of the registered society and take over the management under Section 34-A of the Tamil Nadu Societies Registration Act, 1975. The case on hand warrants a similar response. The Memorandum of the subject society clearly states that one of the objects is to carry out any or all other philanthropic, public and charitable activities which the association is capable of doing. The society is being run by taking donations from the general public. It is beyond dispute that the society is actually a public trust.

9. The line of judicial decisions is to the effect that Section 92 of CPC can be invoked against a society registered under the Tamil Nadu Societies Registration Act, 1975 if the object of the society is of public charitable nature. Section 92 of CPC confers the power to remove a trustee. This power will include the power to suspend. Invoking *parens patriae* jurisdiction conferred on the High Court, I direct that till they are honourably acquitted from the POCSO charges, Parthiban, Dhanasekar and Karuppaiah will keep away from the affairs of the society and that their status as members will stand suspended till then.



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10. The learned Senior Counsel appearing for the petitioner drew my attention to certain serious irregularities said to have been committed. I do not want to go into the merits of the matter. Under Section 36 of the Act, the first respondent will have the power to conduct enquiry. I direct the first respondent to conduct enquiry under Section 36 of the Act. Notice will be issued to all the persons concerned. An appropriate order on merits and in accordance with law will be passed within a period of four months from the date of receipt of a copy of this order. Since three of the twelve members have been suspended, it is necessary to convene the general body meeting. Such a general body meeting shall be convened on 21.09.2024 at 10.00 AM in the premises of the society. The 6th respondent is mandated to issue notice to the remaining 8 members. The entire meeting will be duly videographed. The first respondent is directed to depute an observer. The general body meeting that is to be convened on 21.09.2024 will take a call regarding further course of action.

(*)10(a). The learned counsel appearing for the writ petitioner states that some of the members are quite old and having health issues and that they may be permitted to participate in the general body meeting virtually. It is open to the members of the general body to decide on the mode of participation. We are in the digital age and the general body meetings can also be held on the virtual platform.



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11.The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

(*)Corrected/Added as per order of this Court dated 03/09/2024 made in WP(MD) No.9453 of 2024

Sd/-

Assistant Registrar (W)

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/09/2024

Sub Assistant Registrar(CS)

rmi/skm

To

(*)To be substituted the order which already despatched on 02/09/2024

1.The District Registrar (Societies),
Registration Department,
Tiruchirappalli.

2.The Inspector of Police,
All Women Police Station,
Jeeyapuram, Trichy.

3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-28948[F] dated 21/06/2024)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-28989[F] dated 21/06/2024)

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+1 CC to M/s.SPL.GP (SR-29423[F] dated 24/06/2024)

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MK/29.08.2024 12P 7C

MGJ (03/09/2024) 12P 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023