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W.P(MD) 14939 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition (MD) No.14939 of 2024

and

W.M.P.(MD) 13106 of 2024

Bahauddeen B.A.

... Petitioner

-Vs-

1.The District Registrar (Administration)
Assistant Director of Registration District
Registrar Office, Tiruchirapalli.

2.I.Mohammed Bilal

3.A.Mohamed Yunus

4.K.M.Kader Mohideen

5.Y.Zahir Hussain

6.K.Abdul Samadh

7.A.K.Khaja Nazeemuddeen

8.B.Kamal Abdul Nasar

9.A.Mohamed Saddique Kamal

10.A.Mohamed Siddique Kamal

11.M.Khaja Nasreeruddin

12.S.Khaleel Rehman



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13. Majliul Ulama

Represented by its General Secretary

V.S.A. Sheik Mohammed Suhail

Khajanagar, Tiruchirapalli.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to initiate appropriate action on the petitions dated 24.06.2024 and 28.06.2024 filed by the petitioner and other members of the Society under Section 36(1) of the Tamil Nadu Societies Registration Act and further direct the 1st respondent to conduct an enquiry in accordance with the orders of the competent civil court passed in I.A.No.339 of 2015 dated 07.09.2015 in O.S.No.314 of 2015 on the file of the II Additional District Munsif, Trichy, with respect to the impugned Form VI unlawfully submitted by the respondents 2 to 13.

For Petitioner : Ms.S.Mahalakshmi

For Respondents : Mr.B.Saravanan
Additional Government Pleader-for R1

Mr.T.V.Ramanujam, Senior Counsel
assisted by Mr.N.C.Ashok Kumar
for Mr.Arun J Jayatram
-for R6, R8 and R13

Mr.R.Athimoola Pandian – for R17



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ORDER

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The prayer in the writ petition is for initiating action under Section 36(1) of the Tamil Nadu Societies Registration Act, 1975. The case on hand pertains to the affairs of Majilisul Ulama Society.

2. Section 36(1) of the Act reads as follows:

36.Power of Registrar to inquire into the affairs of registered Society:

(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered Society or on the application of not less than one-third of the members of that registered Society, or, if so moved by the District Collector, hold, or direct some person authorised by the Registrar by order in writing in this behalf to hold, an inquiry, into the constitution, working and financial condition of that registered Society."

3.Mr.T.V.Ramanujam, learned Senior Counsel appearing for the contesting respondents points out that in the Form VI issued by the District Registrar, except one signatory, the names of other petitioners are not figuring as members of the society.



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4. Section 36(1) will kick in only if the application is moved by majority of the members of the Committee of the registered Society or on the application of not less than one-third of the members of that registered Society. It is not the case of the petitioner that this requirement is fulfilled in this case.

5. The Madras High Court in the decision reported in 2007 WLR 1031 (A.Samiyappan v. the District Registrar) had held that when majority of the members of the society had not lodged any complaint before the Registrar, it is not mandatory for the Registrar to take suo motu action as contemplated under Section 36(1) of the Act. This decision was followed in several subsequent cases. V.S.Navamani vs. The District Collector, Madurai (WP(MD)No.8259 of 2020) is one such order. While it is not obligatory for the District Registrar to act on a petition under Section 36(1) if the requisite numerical strength is not fulfilled, it is always open to him to act on his own motion. This expression "on his own motion" was interpreted by the Hon'ble Full Bench of the Karnataka High Court in ILR 2001 KAR 766 (Bangalore Grain Merchants Associations vs. District Registrar for Societies) as follows :

"9.There could be, no doubt, that the expression 'on his own motion' is synonymous to suo-motu, which according to the dictionary means, "on one's own initiative". 'Own motion' obviously implies application of mind and formation of one's own opinion. It does not matter how and from what source he gets information. But, it does not mean that



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the authority conferred with such power should eschew from consideration information or material furnished by external sources and should look to the information collected by his own self-effort. The exercise of powers suo-motu or on one's own motion, cannot and ought not to be construed in a narrow sense and in a sense which defeats the salutary purpose of the provision. No fetters can be placed on the specified authority from the stand point of source material on which it should exercise the power. An authority exercising the suo-moto power is not debarred from obtaining informations and materials from various sources. The only requirement is that on the basis of such informations and materials gathered either on its own initiative or received from other sources, the concerned authority has to come to the conclusion, on an active application of mind whether to take up the enquiry or not. Undoubtedly, the decision must be his own. He cannot mechanically act at the behest of some other person or authority without independent application of mind to arrive at a conclusion on the need and expediency of holding an enquiry. It is not argued before us nor can it be disputed that the suo-motu exercise of power does not cease to be such merely because a member of the public or someone in the know of things brings relevant facts to the notice of the prescribed authority, in this case, the Registrar. The Registrar, on a consideration of such facts has to decide whether it is a fit case warranting initiation of enquiry in the over-all interests of the society. The decision must be his and the decision must of course be based on relevant factors, but there is no limitation as to the sources by which he should be prompted to action.”



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From the foregoing discussion, one can conclude that the decision must be that of the Registrar based on his satisfaction. The applicant has no right to insist that the Registrar must take action. A writ of mandamus can lie only if the applicant can show the existence of a legal right. The writ court also will not be justified in issuing any mandamus in the matter falls in the exclusive and discretionary realm of the authority concerned. I, therefore, hold that the writ petitioner cannot insist on issuance of any positive direction commanding the authority to decide on the petitioner's representation.

6.It appears that the petitioner has already filed a civil suit and the Civil Court is seized of the matter. No final declaration has been issued so far. I am therefore not inclined to grant the direction as sought for. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2024

Index : Yes/No
Internet : Yes/No
SKM

To

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Assistant Director of Registration District
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2.Majliul Ulama
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G.R.SWAMINATHAN, J.

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