

(2009) 07 MAD CK 0112

In the Madras High Court

Case No : Writ Petition (MD) No. 3414 of 2009 and M.P. (MD) No's. 1, 1, 1 and 2 of 2009

M. Sudakar

APPELLANT

Vs

The District Registrar (Societies) and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Tamil Nadu Societies Registration Act, 1975 — Section 14, 15, 36, 53

Citation : (2009) 8 MLJ 1523

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M.V. Arun, for the Appellant; G.R. Swaminathan, for Respondents 3 and 4 in W.P. (MD) No. 3414/09, in W.P.(MD) No. 3657/2009 for R5 and 6 in W.P. (MD) No. 4269/09 for R4, Pala Ramasamy, Special Govt. Pleader for Respondents 1 in W.P. (MD) No. 3414 of 2009 and T.V. Sivakumar, for Respondents 6 and 7 in W.P. (MD) No. 3657/09, for the Respondent

Judgement

R.S. Ramanathan, J.—The three writ petitions were filed by the same person seeking different reliefs against the District Registrar

(Societies), Virudhunagar District, to take action in respect of various acts and omissions committed by the Arupukkottai Nadargal Uravinmurai

Pothu Abiviruthi Trust, hereinafter called as Trust. As the facts involved in these writ petitions are one and the same, with the consent of both

parties, all the writ petitions were taken up together and common order is passed.

2. The petitioner in all the writ petitions was the President of the Trust elected for the period 2003-2006 and in the election held for the period

2006- 2009. The 2nd & 3rd respondents in W.P. (MD) No. 3414 of 2009, who are also the respondent Nos. 4 and 5 in W.P.(MD) No. 3657

of 2009 were elected as President and Secretary respectively. The respondents 5 and 6 in W.P. (MD) No. 3414 of 2009 are the patrons of the

Trust and they are arrayed as respondents 6 and 7 in (MD) No. 3657 of 2009.

3. It is admitted by all the parties that election to the Trust for the period 2006-2009 was held as per the direction of this Honourable Court made

in W.P. (MD) No. 4203 of 2006 dated 31.05.2006 and confirmed in W.A.(MD) No. 199 of 2006 dated 30.06.2006. In that election the

respondents 2 and 3 in the Writ Petition (MD) No. 3414 of 2009 were elected as President and Secretary and thereafter, the Trust seems to have

passed some resolutions in the General Body Meeting held on 07.01.2007, by which the petitioner in these writ petitions was debarred from

holding any post for a period of 10 years and that resolution was sent to the 1st respondent for registering the same and that was sought to be

prevented by the petitioner by filing W.P. (MD) No. 3414 of 2009. The other two writ petitions viz. W.P (MD) No. 3657 of 2009 is for

direction, directing the 3rd respondent to enquire into the affairs of the Trust as per the provisions of Tamil Nadu Societies Registration Act, 1975

pursuant to the representations dated 05.05.2008 and 28.09.2008 sent by the petitioner and W.P (MD) No. 4269 of 2009 is for direction,

directing the 3rd respondent to consider the representation of the petitioner dated 22.12.2008 and enquire into the affairs of the Trust under the

provisions of the Tamil Nadu Societies Act 1975. In the said representations dated 05.05.2008 and 28.09.2008, the petitioner questioned the

resolution alleged to be have been passed on 07.01.2007 and 23.09.2007 and also questioned the power of the patrons, who are respondents 6

and 7, in W.P. (MD) No. 3657 of 2009, in the light of the provisions of the Tamil Nadu Societies Registration Act 1975. In the representation

dated 22.12.2008, the Constitution of the Governing Body was questioned and the 3rd respondent is directed to enquire into the same in

accordance with the provisions of Tamil Nadu Societies Registration Act, 1975.

4. Therefore, the issue involved in all the three writ petitions is mainly revolved around the resolution dated 07.01.2007 followed by the resolution

dated 23.09.2007 challenging the act of the Trust in debarring the petitioner from holding any post for a period of 10 years as it is against the

provisions of the Act and therefore, the District Registrar should not register the

resolution dated 07.01.2007.

5. To appreciate, the issues involved in these writ petitions, it is better to have an idea about the provisions of the bye-laws of the Trust and also

the admitted facts involved in these writ petitions.

6. As stated supra, the election for the period 2006-2009 was held as per the direction of this Honourable Court made in W.P. (MD) No. 4209

of 2006 and the respondents 2 and 3 in W.P. (MD) No. 3414 of 2009 were elected as President and Secretary respectively and there is no

dispute regarding the elected of those two persons. The controversy arose in respect of the resolution passed regarding the Item No. 7 in the

meeting held on 07.01.2007.

7. Mr. M.V. Arun, learned Counsel appearing for the petitioner brought to my notice, the various provisions of the bye-laws and submitted that

there is no power given either to Executive Committee or to the Governing Body or to the General Body to suspend any person for any specified

period and therefore, the resolution passed on 07.01.2007 debarring the petitioner from holding any post for a period of 10 years is illegal and it is

not only against the bye-laws, but also against the provisions of the Tamil Nadu Societies Registration Act 1975. Though, an attempt has been

made by making allegations in the writ petitions and also by arguing that the petitioner was not present in the meeting held on 07.01.2007 and he

was not given an opportunity before imposing penalty of debarring him from holding any post for a period of 10 years, it is seen from the

averments in the writ petitions and the allegations made in the representations by the petitioner to the 3rd respondent, it is made clear that the

petitioner participated in that meeting and in his presence resolution was passed.

8. Mr. M.V. Arun, learned Counsel appearing for the petitioner further contended that the Resolution No. 7 passed on 07.01.2007 is against law

and according to him, as per Clause 8 of the Trust, a member incurs disqualification from holding a member ship only when he indulges in any of

the activities as stated in Clause (7) of the bye law.

9. As per Clause 8(7) of the bye law, a member ceases to be a member, when he did various actions and omissions as stated therein.

10. Further as per Clause 14(12), when any member indulges in any activities against the object of the Trust, a show cause notice shall be sent to

him calling for explanation within a period of 30 days and if 2/3rd majority of the members of the Governing Body come to the conclusion that he

must be removed from the membership action can be taken for his removal but the removal must be ratified by the General Body.

11. Clause (13) of the bye law, deals with the powers of the General Body and under that clause no power has been given to the General Body to

debar any person from holding any office.

12. Clause 11 deals with the constitution of the General Body and as per Clause 11(4), all the decisions in the General Body shall be based on the

majority view unanimously and in case of opposition, it shall be decided by secret ballot.

13. Therefore, it was submitted by Mr. M.V. Arun, the learned Counsel appearing for the petitioner that the resolution passed on 07.01.2007

debarring the petitioner from holding any post for a period of 10 years is contrary to the provisions of the bye-laws and hence, the said resolution

is illegal and therefore, the District Registrar should not register the same.

14. The learned Counsel appearing for the petitioner relied upon the decision reported in R. Muralidaran and Others Vs. The District Registrar and

Sidharth Heights Apartments Owners Association, :

The Music Academy Vs. Inspector General of Registration, District Registrar of Audit and Enquiry Officer, Chennai Central and R. Parthasarathy,

,

Bar Council of Delhi and Others Vs. Surjeet Singh and Others,

2001(3) CTC 486 in the case of Mr. R. Karuppan, Advocate v. Mr. P.K. Rajagopal, Secretary, The Advocates' Association High Court

Buildings, Chennai and 4 Ors. in support of his contention made by him.

15. Mr. G.R. Swaminathan, the learned Counsel appearing for the President and Secretary strenuously contended that the petitioner being a

member of the Trust having accepted the bye-laws is bound by bye-laws and he cannot assail the constitutionalities under the provisions of the

Act, Rules and bye-laws and in support of that, he relied upon the judgment reported in State of U.P. and another etc. Vs. C.O.D. Chheoki

Employees' Co-op. Society Ltd. and others etc., , wherein in para 16, it is stated as follows:

Thus, it is settled law that no citizen has a fundamental right under Article 19(1) (C) to become a member of a Cooperative Society. His right to governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, Rules and the bye-laws and is subject to its operation. The stream cannot raise higher than the source.

16. Mr. G.R. Swaminathan, further stated that registering a form VI & VII is only a ministerial act as held by the Division Bench of this Court in R.

Muralidaran and Others Vs. The District Registrar and Sidharth Heights Apartments Owners Association, and as per that judgment no writ would

lie against any person for having a ministerial act under the provisions of the Tamil Nadu Societies Registration Act, including the acceptances and

registration of Form VI. He would further submit that even before filing of the writ Petition(MD) No. 3414 of 2009 Form VI was sent to the

District Registrar on 19.06.2007 by registered post and hence, the writ petition (MD) No. 3414 of 2009 has become infructuous.

17. The learned Special Government Pleader appearing for the 1st respondent, the District Registrar, in W.P. (MD) No. 3414 of 2009 filed a

counter and in para 3 of the said counter it was specifically stated that the resolution was taken on file on 05.12.2008. Therefore, the learned

Counsel appearing for the 1st respondent contended that being the ministerial act, the petitioner cannot challenge the act of Registry, Specially

when the resolution has already been taken on record. The present writ petition (MD) No. 3414 of 2009 for the relief of forbearing the District

Registrar from taking on record Item No. 7 of the resolution dated 07.01.2007 has become infructuous.

18. It is true that having regard to the subsequent event that the Registry has registered the resolution, which is only a ministerial act, the prayer in

the writ petition No. 3414 of 2009 has become infructuous.

19. But as rightly contended by the learned Counsel appearing the petitioner, Mr. M.V. Arun, having regard to the violation of the clauses of the

bye- laws in debarring the person from holding any post in the Trust, though the act of registering the resolution is ministerial one, this Court has got

power to mould the relief, when the resolution No. 7 passed on 07.01.2007 is patently against the provisions of the Act and bye-laws of the trust.

20. As per the Section 53 of the Act, the bye-laws of the Society in so far as they are not inconsistent with any provisions of this act will continue

in force. If any provision of the bye-law is inconsistent with or contrary to provisions of this act, such bye-law will not have any force.

21. It is settled proposition of law that the member of the Societies are governed by the provisions of the bye-laws, and the bye-laws should not

be inconsistent with the provisions of the act.

22. As stated supra, there is no provision in the bye-law of the Trust enabling General Body or Governing Body to debar any person from holding

any post. Therefore, when the bye-laws are silent about the power of the Trust to debar any person from holding any post, the resolution passed

on 07.01.2007 debarring the petitioner from holding any post for a period of 10 years is patently illegal and therefore, even though the resolution

has been registered by the District Registrar, the resolution has no legal sanction and it is not legal.

23. Therefore, in my opinion, the prayer in W.P. (MD) No. 3414 of 2009 can be modified to that extent that though the Court has no power to

interfere with the ministerial act of the District Registrar in registering the resolution submitted in Form VI, having regard to the legal position, the

said resolution is against the provisions of the bye-law, the Trust cannot legally enforce that resolution against the petitioner and the petitioner

continues to be the member of the Trust.

24. It is further submitted by the learned Counsel appearing for the petitioner that certain powers have been given to the patrons, who are the

respondents 4 and 5 in W.P. (MD) No. 3414 of 2009 and as per the bye-laws, they are entitled to hold the office as patrons for life and it is

hereditary in nature and they are deemed to be the President and Secretary of the General Body and they are the persons, who are entitled to

conduct election.

25. According to the learned Counsel appearing for the petitioner, the said bye-law, clause No. 10 making the tenure period of the patrons for life

and hereditary is against the provisions of the statute and being a non elected member, they should not be allowed to preside over the meeting and

to conduct the election.

26. Mr. G.R. Swamynathan, learned Counsel appearing for the respondents 2 and 3 in the W.P. (MD) No. 3414 of 2009 contended that the

petitioner is estopped from questioning the right by the patrons from conducting the election as it has been approved by this Honourable Court in

W.P.(MD) No. 4203 of 2006 and confirmed in W.A.(MD) No. 199 of 2006. No doubt in W.P.(MD) No. 4203 of 2006 it was held that the

right of the patrons to hold a fresh election as per the bye-laws of the Society cannot be disputed, they were permitted to hold election only for

clearing the controversy of membership lies in Item No. 7 and in that writ petition, the patrons were permitted to conduct the election on the basis

of agreement arrived at between the parties and it is made clear in para 10 of the order passed by this Court in W.P.(MD) No. 4203 of 2006

which is as follows:

10. The parties also agreed that the holding of the election by respondents 6 and 7 can be held in the presence of the representative of the first

respondent, who shall therefore nominate one of his subordinate officers to supervise the election process in the order to ensure that the election is

held in a free and fair manner.

27. In the writ petition also it was held that as the parties have agreed to have the election to be conducted by the patrons, the administration was

vested in the hands of the patrons for the purpose of conducting election.

28. Therefore, from the observations made by this in the writ petition and the Writ appeal, it cannot be stated that the patrons have got every right

to hold the election. No doubt, it was observed in W.P.(MD) No. 4203 of 2006, the right of the patrons to hold that the election as per the bye-

laws of the Society cannot be disputed. In my respectful opinion, the power of the patrons as found in Clause 10 of the bye laws are contrary to

the provisions of the Act. In the reported judgment 2005(4) MLJ 608, it has been held that as per the provisions of the act, the governing

body/committee can comprise of only elected members. Therefore, the question of having any nominated trustee in the governing body is against the provisions of the Act.

29. In the said reported judgment, 2005(4)MLJ 608 the trustees were nominated and they are entitled to hold the post for 6 years. While dealing with the power of appointment of trustees by nomination, it was held in para 27 of the above judgment, which is as follows:

A reading of Sections. 14 and 15 of the Act would leave no room for doubt that the management of the society has to be vested in a committee to be elected by all the members of the society. therefore, there is no scope for having any nominated trustee far less there is any scope for providing that such nominated trustees would become members of the Managing Committee." Therefore, there is no scope for holding that any person could be nominated as trustee nor it can be held that the nominated trustee can hold office for six years, because the Act is very categorical that the members of the Managing Committee should hold office for three years.

Therefore, the bye law Clause 10, which permits the holding of the post for life and hereditary is against the provisions of the act and the power given to the patrons to preside over the general body meeting is also against the provisions of the Act. However, the patrons were permitted to conduct the election as per Clause 10, and in my opinion, as elections are to be held by some independent persons and the petitioner had no objection for the election conducted by the patrons for the earlier period, the patrons can be permitted to conduct election to be held on 05.07.2009.

30. Therefore, in so far W.P. (MD) No. 3414 of 2009 is concerned having regard to the fact the resolution was registered even on 5.12.2008, the relief prayed for has become infructuous. Nevertheless having regard to the fact that resolution No. 7 dated 07.01.2007 debarring the petitioner for a period of 10 years is patently illegal, the fact that the resolution has been filed on 05.12.2008 will not have any legal sanction and the petitioner continues to be the member of the Trust. With the above observations, the relief prayed in W.P.(MD) No. 3414 of 2009 is modified to the extent stated above.

31. W.P. (MD) No. 3657 of 2009 and W.P. (MD) No. 4269 of 2009 were filed for

direction, directing the District Registrar to consider the representation of the petitioner dated 05.05.2008 and 22.12.2008. u/s 36 of the Societies Act, the District Registrar has got power to enquire into the affairs of the Society and as serious allegations were made by the petitioner about the conduct of the society, in my opinion, no prejudice will be caused to either party by directing the District Registrar to conduct any enquiry into the various allegations made in the representation of the petitioner.

32. Accordingly the both writ petitions viz. W.P. (MD) No. 3657 and 4269 are ordered directing the District Registrar of Societies, Virudhunagar

District to enquire into the allegations made by the petitioner in the representation dated 05.05.2008 and 22.12.2008 within a period of 12 weeks

from the date of the receipt of a copy of this order and the District Registrar, Virudhu Nagar is further directed to give opportunity to both the

petitioner and the Office bearers of the Trust and consider their representation before passing any order.

33. In fine, all the writ petitions are disposed of as indicated above. Consequently, connected Miscellaneous Petitions are closed. No costs.