
(2015) 12 MAD CK 0122

In the Madras High Court

Case No : W.P.(MD) Nos. 9489, 12385 of 2014, 7250, 10047, 14284 of 2015, M.P.(MD) Nos. 1 to 3 of 2014 in W.P.(MD) Nos. 9489, 12385 of 2014, M.P.(MD) No. 1 of 2015 in W.P.(MD) No. 12385 of 2014, M.P.(MD) Nos. 1 to 3 of 2015 in W.P.(MD) No. 7250 of 2015, M.P.(MD) No.

M. Vijayakumar and Others

APPELLANT

Vs

The Inspector General of Registration and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Tamil Nadu Societies Registration Act, 1975 — Section 34, 36

Citation : (2015) 12 MAD CK 0122

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : Ajmalkhan, Senior Counsel for N. Dilip Kumar, for the Appellant; C. Selvaraj, Special Government Pleader, for the Respondent

Judgement

R. Subbiah, J.—W.P.(MD). Nos. 9489 & 12385 of 2014 have been filed by the petitioner M. Vijayakumar, who is one among the several members who have been removed from the membership of the Aruppukottai Nadragal Uravinmurai Pothu Abiviruthi Trust (hereinafter referred to as "Society"), in the Annual General Meeting held on 22.06.2014. W.P.(MD). No. 7250 of 2015 has been filed by one P.K. Pounrajan, who is also a member of the said Society. In the said three writ petitions, the first portion of the prayer is common viz., to direct the official respondents to enquiry into the affairs of the said Society.

2. While so, W.P.(MD). No. 14284 of 2015 has been filed by one Asaithambi, Secretary of the said Society, seeking to quash the order dated 28.07.2015 passed by the District Registrar (Societies), Virudhunagar District, whereby he has annulled the removal of 197 members and induction of 373 new members of the Society in the Annual General Meeting that was held on 22.06.2014.

3. That part, one more writ petition in W.P.(MD). No. 10047 of 2015 has been filed by one N. Rathinasekar Nadar @ Sekar, seeking to quash the impugned

paper publication dated 15.06.2015 in Thina Thanthi Daily, issued by the Election Officer, to conduct election on 26.07.2015.

4. Since the issues involved in all the above writ petitions are inter-related to each-other, all these writ petitions are disposed of by way of this common order.

5. The brief facts which are necessary to decide the issues involved in these writ petitions are as follows:--

"5-1. Aruppukottai Nadargal Uravinmurai Pothu Abiviruthi Trust is a Society registered under the Tamil Nadu Societies Registration Act. The said Society has established and is administering Schools, Colleges, Hospital and Temples. The Society is promoted mainly for the purpose of doing welfare activities like religious, charitable and educational works. The bye-laws of the Society provide for administration of the Society under three tier set up as follows:--1) General Body, 2)Administrative Committee & 3)Executive Committee. On the bottom level is the General Body, permeating the whole organization, consisting of all its members. From the General Body, President, Vice-President and a trustee for the Temple Devasthanam Board and 54 members to the Administrative Committee are to be elected. Along with them 18 more members are to be nominated by the President of the Society, which is provided under Clause 14(2) of the bye-laws of the Society. These 72 members form the 2nd tire - Administrative Committee. From among the Administrative Committee Members, Administrative Committee Secretary, Assistant Secretary, Treasurer and 5 members to the Executive Committee are elected. They along with the President and Vice-President of the Society form the top tier of Executive Committee. The bye-laws specifically provide for the duties and responsibilities for the respective office bearers, Administrative Committee, Executive Committee and the General Body.

5-2. The Society had faced multifarious litigations before this Court in reference to the disputes raised by its past Member one M. Suthagar, who was the President of the Society from 2003-2006. In fact, for certain serious misconduct, the said M. Suthagar was debarred from contesting for any of the post, for 10 years, as per the deliberation followed by resolution passed in the General Body Meeting held on 07.01.2007. The said Suthagar had instituted three writ petitions before this Court in W.P.(MD). Nos. 3414, 3657 & 4269 of 2009 and by order dated 03.07.2009, it was held by this Court that the action of the General Body in debarring the said Suthagar from contesting elections for a period of 10 years is not valid and further, it was specifically held in the said order that any provision of the bye-laws which is inconsistent or contrary to the provisions of the Tamil Nadu Societies Registration Act, will not have any force. It was further held by this Court in the said writ petitions that the power of patrons as found in Clause 10 of the bye-laws are contrary to the provisions of the Tamil Nadu Societies Registration Act, since the said Clause 10 of the bye-laws provides for office of patrons to be inherited by succession and for the convening of General Body Meeting, including for holding election. The said judgment was tested before the Division Bench in W.A.(MD). No. 268 to 366 of 2009 and by order

dated 30.07.2009, the Division Bench of this Court allowed the writ appeals and dismissed the W.P.(MD). No. 3414 of 2009 filed by said Suthagar. Against the order of the Division Bench, appeal was filed before the Hon''ble Supreme Court and the Hon''ble Supreme Court restored the order of the Single Judge, by setting aside the order of the Division Bench and however, liberty was given to the Society to take necessary action against the said Suthagar for removing him from membership of the Society.

5-3. In the meanwhile, the District Registrar issued proceedings dated 26.10.2009 in Na.Ka. No. 9329/E1/2007 holding that Clauses 10, 11(3), 12(4), 14(7), 14(15) & 15(19) of the bye-laws of the Society, are contrary to the Tamil Nadu Societies Registration Act No. 27 of 1975. Under the statutory provisions, it is mandatory to the Society to conduct Annual General Body meeting and also submit documents mandated under the statute. Any failure on the part of the Society to comply with the mandatory requirements may lead to cancellation of registration.

5-4. In such situation, a notice was published in Dinamalar Daily dated 28.05.2014 in the name of the nominated Secretary Mr. Asaithambi stating that Annual General Body meeting was scheduled to be held on 22.06.2014 at A.N.U.T. Marriage Hall, Aruppukottai under the leadership of President and Patrons of the Society.

5-5. But, it is the case of the petitioner Vijayakumar that the present Secretary did not face any election and he has not been elected by the General Body. In fact, last election was held on 29.07.2012 to the posts of President, Vice-President and Trustee of the Devasthanam Board alone. All the others were appointed by the President without any election. The said Asaithambi, under whose name the notice was published in Dinamalar Daily as Secretary of the Society, was not elected to the Administrative Board and he is not an elected Secretary of the Society; therefore, he cannot function as Secretary of the Society. Hence, the petitioner Vijayakumar made a request on 30.05.2014 to the President and Secretary of the Society to furnish the resolution passed in the Administrative Committee, which is placed as a subject for the General Body Meeting. Similar request was also made by several members of the Society. Even after the receipt of such requisition letters, neither the President nor the Secretary had furnished the agenda or resolution passed in the Administrative committee as stated in the notice. It is further case of the petitioner-Vijayakumar that the President and Secretary are proposing to introduce new amendments to the existing bye-laws and they are also seeking to debar and remove members once again. Further they have planned the meeting only as an eye wash with no intention to conduct it actually. Hence, the petitioner Vijayakumar has filed the writ petition in W.P.(MD). No. 9489 of 2014 seeking to direct the official respondent to enquire into the affairs of the Society and to forbear the Society from convening the General Body meeting scheduled to be held on 22.06.2014.

5-6. When the writ petition in W.P.(MD). No. 9489 of 2014 came up before this

Court, on 20.06.2014, this Court passed an interim order appointing an Advocate Commissioner to supervise the meeting of the General Body, Executive Committee and Administrative Committee of the Society, scheduled to be held on 22.06.2014. Accordingly, the meeting was conducted on 22.06.2014. In the presence of the Advocate Commissioner, in General Body meeting was convened and resolutions were passed in majority, in which 197 members were removed and 373 new members were inducted as members of the Society. Thereafter, Form-VII was submitted before the District Registrar (Societies) on 24.06.2014 and Advocate Commissioner has also filed his report before this Court on 25.06.2014.

5-7. Under such circumstances, on 09.07.2014 a notice was issued to convene a General Body meeting scheduled to be held on 03.08.2014 to amend the bye-laws. Hence, the said petitioner Vijayakumar again filed W.P. (MD). No. 12385 of 2014 seeking to prevent the convening of General Body meeting scheduled to be held on 03.08.2014 as per the notice dated 09.07.2014 and also to direct the official respondents to conduct enquiry into the proceedings of the meeting held on 22.06.2014, by which proceedings 179 members were removed and 373 new members were inducted as members of the Society.

5-8. While so, yet another petitioner P.K. Pounrajan has filed W.P. (MD). No. 7250 of 2015 seeking to constitute an Election committee for the purpose of conducting election to the Administrative Board of the Society, in accordance with the list of members available on the file of the District Registrar (Societies), as per the approved Form VI and Form VII. The sum and substance of the contentions of the petitioner Pounrajan is that the election has to be conducted only with the list available with the District Registrar and not on the basis of Form-VII submitted to the District Registrar by the Society on 24.06.2014.

5-9. Now, the facts which necessitated the petitioner Asaithambi, Secretary of the Society, to file W.P.(MD). No. 14284 of 2015 before this Court, are as follows:-- The petitioner Vijayakumar made a representation to the Official Respondents on 02.03.2015 to enquire into the working, constitution and financial condition of the Society and to reject the Form VII submitted to the District Registrar (Societies), and accordingly, to uphold the continuance of the 197 members allegedly removed from the membership of the Society and to deny the induction of 373 new members. Since no action was taken on the said representation, a writ petition in W.P.(MD). No. 6265 of 2015 had been filed by one Balakrishnan (one of the members of the Society) before this Court seeking to direct the District Registrar (Societies) to complete the enquiry and pass necessary orders in relation to the proceedings instituted under Section 36 of the Act. In the said writ petition, on 22.04.2015, this Court has passed the following order:--

"6. In view of the above, without going into the merits of the claim made by the petitioner in this writ petition, the respondent is directed to pass appropriate orders on the representation of the petitioner, dated 02.03.2015, on merits and

in accordance with law, after giving an opportunity of hearing to all the parties, within a period of six weeks from the date of receipt of a copy of this order. "

Thereafter, the District Registrar (Societies) has passed the order dated 28.07.2015, nullifying the removal of 197 members and induction of 373 new members. Hence, challenging the said order, the Secretary Asaithambi has filed the writ petition in W.P.(MD). No. 14284 of 2015.

6. The learned senior counsel appearing for the petitioner in W.P. (MD). Nos. 9489 & 12385 of 2014 & 7250 of 2015 submitted that the Society consists of three tier system- i) General Body, ii) Administrative Committee & iii) Executive Committee. General Body is the whole organization consisting of all its members. From the General Body, the President, Vice-President and a trustee for the Temple Devasthanam Board and 54 members to the Administrative Committee are to be elected; that apart, 18 more members are to be nominated by the President of the Society which is provided under the Clause 14(2) of the bye-laws. These 72 members form the 2nd tier viz., Administrative Committee. From among the Administrative Committee Members, Administrative Committee Secretary, Assistant Secretary, Treasurer and five members to the Executive Committee are elected. They along with President and Vice-President of the Society form the top tier of Executive Committee. The Clauses 10 & 11 of the bye-laws of the Society specifically provide for the duties and responsibilities for the respective office bearers, Administrative Committee, Executive Committee and the General Body. Clause 10 of the bye-laws provides for office of patrons to be inherited by succession and for the convening of General Body Meeting, including for holding election. While so, the District Registrar issued proceedings dated 26.10.2009 holding that the Clauses Nos. 10, 11(3), 12(4), 14(2), 14(7), 14(15) & 15(19) of the bye-laws are contrary to the Tamil Nadu Societies Registration Act No. 27 of 1975. The election has to be conducted once in three years. Since the Clauses 10, 11(3) of bye-laws were held as contrary to the provisions of the Tamil Nadu Societies Registration Act, the patrons of the Society have lost their power to convene the annual general meeting. In these situation, a suit in O.S. No. 81 of 2012 had been filed by two members of the Society before the Sub-Court, Aruppukottai with regard to conducting election for the period from 2012 to 2015. In the said suit, by order dated 20.07.2012 in I.A. No. 209 of 2007, the Sub-Court had appointed a retired District judge as Chief Election Officer to convene the General Body Meeting and to conduct election. Accordingly, General Body Meeting and elections were conducted by the Chief Election Officer appointed by the Sub-Court, Aruppukottai and election was conducted only for three posts viz., President, Vice-President and Trustee of Devasthanam Board. Except for these three posts, election was not conducted for the members of the trustee/Administrative Committee, as well as for the Executive Committee. In fact, the Secretary Asaithambi, who has filed the W.P. (MD).14284 of 2015 challenging the order passed by the District Registrar, did not face any election, but now, as if in the capacity of Secretary, he has issued the notice dated 28.05.2014 to convene the General Body Meeting scheduled to

be held on 22.06.2014 Hence, the writ petition in W.P.(MD). No. 9489 of 2014 has been filed to prevent him from convening the meeting and also to enquire into the matter. This Court did not grant any interim stay, but, appointed an Advocate Commissioner to supervise the meeting. Again the Secretary Asaithambi has issued notice dated 09.07.2015 to convene the General Body meeting scheduled to be held on 03.08.2014. Hence, again subsequent writ petition in W.P.(MD). No. 12385 of 2014 has been filed by the petitioner Vijayakumar. Even in the said writ petition no interim order was granted by this Court.

7. Thereafter, writ petition in W.P.(MD). No. 7350 of 2015 has been filed by one of the members viz., Pounrajan to direct the official respondents to conduct an enquiry into the affairs of the Society and to constitute an election committee for the purpose of conducting election to the Administrative Board of the Society in accordance with the list of members available with the District Registrar (Societies).

8. It is the assertive submission of the learned senior counsel appearing for the petitioners in W.P.(MD). No. 9489 & 12385 of 2014 and 7250 of 2015 that since the said Asaithambi has not been elected as Secretary, the very issuance of notice calling for convening the General Body meeting itself is not legally sustainable. But, since no interim order was granted by this Court, General body meeting was conducted.

9. It is the further submission of the learned senior counsel for the petitions that by considering the prayer made in W.P. No. 7250 of 2015, the election has to be conducted based on the list of members already available on the file of the District Registrar and for this purpose, if a retired Judge of this Court is appointed as Election Officer to conduct the election, it would suffice. In this regard, the learned senior counsel for the petitioners has also submitted that as on date, removal of 197 member in the General Body Meeting held on 22.06.2014 was nullified by the District Registrar by conducting enquiry under Section 36 of the Societies Registration Act, for which he is empowered under the said provisions to do so; under such circumstances, there cannot be any impediment for conducting the election based on the list already available with them.

10. Per contra, the learned counsel appearing for the Secretary (petitioner in W.P. (MD). No. 14284 of 2015 viz., Asaithambi) submitted that it is incorrect to state that the said Asaithambi was not elected as Secretary of the Society and as such he has no locus standi to convene the General Body meeting. In this regard, the learned counsel for the Secretary submitted that in the year 1999, when the Society was registered, a list was approved. Thereafter, in the years 2003 & 2009, elections were conducted and all these years elections were conducted only for the three posts, viz., President, Vice-President and Devasthanam Trustee. So far as the other posts are concerned, including 72 Executive members, they were elected without any contest from the seven sects viz., 1.

Palasaraku Sect, 2. Nell, Arisi Sect, 3. Javuli Sect, 4. Ennai Sect, 5. Kaikari sect, 6. Motor Sect & 7. Revenue Sect. Even in the year 2012-2015, election was conducted for three posts on 29.07.2012 by the Chief Election Officer. So far as the others are concerned, they were elected in the General Body Meeting held on 02.08.2012 and Asaithambi was elected as Secretary. Therefore, it is incorrect to state that he has no locus standi to issue the notification to convene the General Body meeting of the Society.

11. Though the petitioner Vijayakumar filed the writ petition in W.P. (MD). Nos. 9489 & 12385 of 2014 to prevent the Society from conducting General Body meetings scheduled to be held on 22.06.2014 & 03.08.2014 respectively, he was not able to get any interim order from this Court. Therefore, the General Body Meeting was conducted; hence, now, nothing survives in the writ petitions viz. W.P.(MD). Nos. 9489 & 12385 of 2014 filed by the petitioner Vijayakumar.

12. Further, the learned counsel for the Secretary (petitioner in W.P. (MD). No. 14284 of 2015 viz., Asaithambi) submitted that in the General Body meeting held on 22.06.2014, it was found that some of the members did not pay the subscription, some of the members died, whereabouts of some of the members were not known and some of the members left the place without intimating the address; thus, by identifying those members, 197 members were removed from the membership and 373 new members were inducted. Thereafter, Form-VII was filed by the Deputy Registrar (Societies). Under such circumstances, the petitioner Vijayakumar had given a representation to the Official Respondents to enquiry into the working, constitution and financial condition of the Society and to reject the Form-VII submitted by the Secretary Asaithambi and to uphold the continuance of the removed members and to deny the induction of 373 new members. Since the said representation was not considered, a writ petition in W.P.(MD). No. 6265 of 2015 was filed by one of the members viz., Balakrishnan to consider and pass orders on the said representation. In the said writ petition, this Court by order dated 22.04.2015 directed the District Registrar (Society) to consider and pass order on merits and in accordance with law only. But, the District Registrar by extending the scope of the said order, conducted enquiry and passed impugned order, nullifying the removal of the members and induction of the new members.

13. In this regard, the learned counsel appearing for the Secretary Asaithambi has also invited the attention of this Court to the order passed by this Court in W.P.(MD). No. 6265 of 2010 and submitted that in the said writ petition, the District Registrar alone was shown as respondent; therefore, this Court had no occasion to hear the petitioner in W.P.(MD). No. 14284 of 2015 before giving direction to the District Registrar to consider the representation. Further more, though several requests were made by the Secretary to the District Registrar, without properly hearing the Secretary, the impugned order has been passed by the District Registrar.

14. It is further submitted by the learned counsel for the Secretary (petitioner in

W.P.(MD). No. 14284 of 2015 viz., Asaithambi) submitted that District Registrar has no power to adjudicate the matter. Without properly understanding the scope of the enquiry, the District Registrar has nullified the removal of 197 members, beyond his jurisdiction. In this regard, the learned counsel has also submitted that under the provision of Tamil Nadu Societies Registration Act, whenever Form-VII is filed, the District Registrar can only call for further information/explanation and file the same along with Form VII; he has no power to adjudicate the matter and if rival claims are made, he has to direct the parties to approach the Civil Court. Further, under Section 36 of the Societies Registration Act, enquiry will be conducted only by the District Registrar on the information of the majority of the members or 1/3 members of the Society. But, in the instant case, representation was made by only a single member; therefore, conducting enquiry under Section 36 of the Act does not arise. In this regard, the learned counsel has also relied upon numbers of judgments to establish that the District Registrar has no power to adjudicate the matter on the representation of a member of the Society.

15. By way of reply, the learned senior counsel for the petitioners submitted that it is incorrect to state that the representation was made only by an individual member. Further, the said representation dated 02.03.2015 was signed by not less than 2/3 of the members of the Society.

16. Heard the submissions made on either side and perused the materials available on record.

17. The writ petitions in W.P.(MD). Nos. 9489 & 12385 of 2014 have been filed praying to direct the respondents to prevent the Society from the Secretary from convening the General Body Meeting scheduled to be held on 22.06.2014 & 03.08.2014. In both the writ petitions no interim order was obtained by the petitioner and subsequently, General Body meetings were also conducted. The first portion of the prayers in the writ petitions in W.P.(MD). Nos. W.P.(MD). Nos. 9489 & 12385 of 2014 & 7250 of 2015 are common i.e., to direct the District Registrar to enquire into the affairs of the Society. Now, by considering the representation dated 02.03.2015, the District Registrar has also conducted enquiry and passed an order. Therefore, by virtue of the same, the said prayer in the said writ petitions are infructuous; as on date, nothing survives in the writ petitions.

18. Now, in view of the submissions made by the learned counsel appearing for the respective parties in W.P.(MD). No. 14284 of 2015, the only question that has to be decided is whether the order passed by the District Registrar nullifying the removal of 197 members and induction of 373 new members is legally sustainable or not?

19. According to the learned counsel for the Secretary of the Society (petitioner in W.P.(MD). No. 14284 of 2015 viz., Asaithambi), whenever Form-VII is filed before the District Registrar, he can only call for further information/explanation and file the same along with Form VII; he has no power to adjudicate the matter.

Further, if rival claims are made, he has to direct the parties to approach the Civil Court. According to the learned counsel, without giving proper opportunity to the petitioner-Secretary, the impugned order dated 28.07.2015 has been passed by the District Registrar. In this regard, it would be appropriate to place a reference in the judgments reported in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal Vs. The District Registrar and Others, , wherein it has been held by the Full Bench of this Court as follows:--

"18. The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36 , the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No. VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the writ jurisdiction."

A reading of the above judgment would show that District Registrar is not empowered to adjudicate upon the rival claim. On the other hand, the purpose of the enquiry under Section 36 is only to maintain correct records. But, in the instant case, by travelling beyond the scope of Section 36 , by examining the petitioner -Vijayakumar, at the same time without giving proper opportunity to the Secretary of the Society, the District Registrar has passed the impugned order by nullifying the removal of 197 members and induction of 373 new members. The said order passed by the District Registrar is certainly beyond the scope of Section 36 of the Act. Therefore, in my considered opinion, the impugned order dated 28.07.2015 passed by the District Registrar is liable to be set aside.

20. If the petitioners in W.P.(MD). Nos. 9489 & 12385 of 2014 and the petitioner in W.P.(MD). No. 7250 of 2015 are having any grievance with regard to removal of 197 members and induction of 313 of new members, they have to work out their remedy only before the Civil Court. Observing so, I am of the opinion that the writ petitions in W.P.(MD). Nos. 9489 & 12385 of 2014 and W.P. (MD). No. 7250 of 2015 have become infructuous and accordingly, the same are liable to be dismissed as infructuous.

21. So far the writ petition in W.P.(MD). No. 10047 of 2015 is concerned, it has been filed by the petitioner N. Rathinasekar Nadar @ N. Sekar seeking to quash

the impugned paper publication dated 15.06.2014 published in Thina Thanthi Daily issued by the Election Officer to conduct election on 26.07.2015. Since the election was not conducted on that date, the said writ petition has also become infructuous and accordingly, the same is also liable to be dismissed as infructuous.

In fine, the writ petition in W.P.(MD). Nos. 9489 & 12385 of 2014 and W.P. (MD). Nos. 7250 & 10047 of 2015 are dismissed. Consequently, the writ petition in W.P. (MD). No. 14284 of 2015 is allowed and the impugned order dated 28.07.2015 passed by the District Registrar (Societies), Virudhunagar is quashed. Connected Miscellaneous Petitions are closed. No costs.