
(2007) 06 MAD CK 0166
In the Madras High Court
Case No : Writ Petition No. 41443 of 2005

Mr. A. Samiappan

APPELLANT

Vs

The District Registrar

RESPONDENT

Date of Decision : 07-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Societies Registration Act, 1975 — Section 36, 37

Citation : (2007) 06 MAD CK 0166

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Hema Sampath for S. Venkateswaran, for the Appellant; Bhavani Subbarayan, Government Advocate for R1, R. Meenal, for R4 and R. Nadanasabapathy, for R3 and R5, for the Respondent

Judgement

S. Rajeswaran, J.—This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 1st Respondent to conduct an enquiry and pass suitable orders u/s 36 of the Tamil Nadu Societies Registration Act 1975, into the affairs of the Perilovanpati Hindu Nadars (Madras) Uravinmurai (Reg. No. 88/67) based on the lawyer notice dated 10.11.2005 issued on behalf of the Petitioner.

2. The Petitioner is a committee member of the 5th Respondent society which is registered under the Tamil Nadu Societies Registration Act 1975 (Act 27 of 1975), hereinafter called "the Act". It is the case of the writ Petitioner that the 3rd Respondent who was elected as a Secretary in 1977 is indulging in a number of procedural irregularities and financial mismanagement. Therefore the Petitioner sent a notice dated 10.11.2005 to the District Registrar to enquire into the affairs of the society with the powers vested in him u/s 36 of the Act, 1975.

3. Heard Mrs. Hema Sampath, the learned Senior Counsel for the Petitioner, the learned Government Advocate for 1st Respondent and the learned Counsel for Respondents 3 and 5.1 have also perused the documents filed in support of their

submissions.

4. The only question that arises for consideration is whether the writ Petitioner has made out a case to be enquired into by the 1st Respondent Registrar u/s 36 of the Act 27 of 1975. Section 36 of the Act 27 of 1975 is extracted below for better appreciation:

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.

(2) An application to the Registrar under Sub-section(2) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under Sub-section(1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.

(4) All expenses of, and incidental or preliminary to, the inquiry shall, where such inquiry is held-(a)on application, be defrayed by the applicants therefor or out of the assets of the registered society or by the members or officers of the registered society, in such proportions as the Registrar may, by order in writing, direct; and (b)on the District Collector's or Registrars motion, be defrayed out of the assets of the registered society, and shall be recoverable as an arrear of land revenue.

(5) An order made under Sub-section(4) shall, on application, be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such court.

(6) A person holding an inquiry under this section shall at all reasonable times have free access to all the books, accounts and documents of the registered society, and shall have power to call upon, the registered society and the officers of society to produce such books, accounts and documents and furnish such statements and other information in relation to its business as he may direct.

(7) It shall be the duty of all persons who are or have been officers of the registered society to furnish the inquiring officer with all the books, accounts and documents in their custody or power relating to the registered society.

(8) A person holding an inquiry under this section may summon any person who, he has reason to believe, has knowledge of any of the affairs of the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if

the person holding the inquiry has reason to believe that such books, accounts or documents contain any entries relating to transactions of the registered society.

(9) The result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action u/s 37, he may issue such direction to the registered society, or any member of the registered society, as the Registrar may deem fit.

5. The learned Senior Counsel contended that this power conferred on the 1st Respondent u/s 36 of the Act was not at all exercised by the 1st Respondent and hence a mandamus is to be is-sued directing 1st Respondent to conduct an enquiry and pass orders.

6. Per contra, the learned Counsel for Respondents 3 and 5, while reiterating the averments made in the counter affidavit submitted that Sec .36 of the Act is not applicable as only a member filed a petition before 1st Respondent. Further the learned Counsel urged that all the allegations levelled in the notice dated 10.11.2005 are against the 3rd Respondent in his capacity as Secretary but 3rd Respondent is not holding the post of Secretary at present and is only a committee member after the recent elections held on 22.10.2006.

7. I find force in the submissions of the learned Counsel for Respondents 3 and 5. u/s 36 of the Act 27 of 1975 the Registrar may hold an enquiry into the constitution, working and financial condition of a registered society if a majority of the members of the committee of a society or if not less than 1/3rd of the members of the society move an application to conduct such an enquiry. Admittedly the writ Petitioner alone has sent the notice dated 10.11.2005 calling upon the 1st Respondent to exercise the powers given u/s 36 of the Act and to see that the affairs of the society are put in order and^ to remove the persons who have been acting to the detriment of the society. Prior to the notice dated 10.11.2005, a representation dated 7.11.2005 was sent to 1st Respondent and this representation was also made by the writ Petitioner alone. In such circumstances, the 1st Respondent cannot conduct an enquiry u/s 36 of the Act 27 of 1975 as neither the majority members of the committee nor not less than 1/3rd of the members of the society sent an application to conduct an enquiry.

8. Hence I find no merits in the writ petition and the same is dismissed. No costs.

9. Before parting with the case, I would like to express my view that in such kind of matters 1st Respondent-registrar could very well inform the Petitioner that the enquiry u/s 36 of the Act could not be held as the minimum number of persons contemplated under the provision did not come forward to make an application.

10. In the result this writ petition is dismissed. No costs. W.P.M.P. No. 44506/2005 is also dismissed.