

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.14787 of 2022 (GM - KSR)

BETWEEN:

- 1 . SRI SA RA GOVINDU
S/O RAME GOWDA
AGED ABOUT 68 YEARS
R/A NO.67, 7TH CROSS
MARUTHI LAYOUT
BENGALURU - 560 079.
- 2 . SRI B.K.JAYASIMHA MUSARI
S/O MUSARI KRISHNAMURTHY
AGED ABOUT 56 YEARS
R/A NO.891, 1ST C MAIN ROAD
9TH BLOCK, 2ND STAGE
BDA LAYOUT, NAGHARBHAVI
BENGALURU - 560 072.
- 3 . SRI K.M.VEERESH
S/O K.S.MALLAPPA
AGED ABOUT 56 YEARS
NO.152, 5TH MAIN
6TH CROSS, KEB LAYOUT
SANJAYANAGAR
BENGALURU - 560 094.

... PETITIONERS

(BY SRI G.V.CHANDRASHEKAR, SR. ADVOCATE A/W

SMT.APEKSHA AND SRI RAVI SHANKAR S.S.,
ADVOCATES)

AND:

- 1 . THE GOVERNMENT OF KARNATAKA
REP. BY PRINCIPAL SECRETARY
CO-OPERATIVE DEPARTMENT
M.S.BUILDING
DR.AMBEDAKR VEEDI
BENGALURU – 560 001.
- 2 . DEPUTY REGISTRAR
CO-OPERATIVE SOCIETIS
AND DISTRICT REGISTRAR
OF SOCIETIES
SOUHARDA SOUDHA
MARGOSA ROAD, 8TH CROSS
MALLESHWARAM
BENGALURU – 560 003.
- 3 . SRI THOMAS D'SOUZA
RETURNING OFFICER
(KFCC ELECTIONS 2022-23)
KARNATAKA FILM CHAMBER OF COMMERCE
NO.28, 1ST MAIN ROAD
CRESCENT ROAD
HIGH GROUNDS
BENGALURU – 560 001.
- 4 . KARNATAKA FILM CHAMBER OF COMMERCE
REPRESENTED BY ITS MANAGER
NO.28, 1ST MAIN ROAD
CRESCENT ROAD
HIGH GROUNDS
BENGALURU – 560 001.

- 5 . SRI BA MA HARISH
PRESIDENT
KARNATAK FILM CHAMBER OF COMMERCE
- 6 . SRI JAI JAGADISH
VICE PRESIDENT
KARNATAKA FILM CHAMBER OF COMMERCE
- 7 . SRI SRINIVAS H.C.,
VICE PRESIDENT (DISTRIBUTORS SECTOR)
KARNATAKA FILM CHAMBER OF COMMERCE
- 8 . SRI KUMAR G.P.,
VICE-PRESIDENT (EXHIBITORS SECTOR)
KARNATAKA FILM CHAMBER OF COMMERCE
- 9 . SUNDARRAJN M.K.,
HON-SECRETARY (PRODUCERS SECTOR)
KARNATAKA FILM CHAMBER OF COMMERCE
- 10 . SRI KUMAR M.N.,
HON-SECRETARY (DISTRIBUTORS SECTOR)
KARNATAKA FILM CHAMBER OF COMMERCE
- 11 . SRI KUSHAL L.C.,
HON-SECRETARY (EXHIBITORS SECTOR)
KARNATAKA FILM CHAMBER OF COMMERCE
- 12 . SRI SIDDARAJU T.P.,
HON -TREASURER
KARNATAKA FILM CHAMBER OF COMMERCE

ABOVE RESPONDENTS NO.3 TO NO.12 ARE
FUNCTIONING FROM
KARNATAKA FILM CHAMBER OF COMMERCE
NO.28, 1ST MAIN ROAD
CRESCENT ROAD

HIGH GROUNDS
BENGALURU - 560 001.

... RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1 AND R2;
SRI PAWAN SHYAM, ADVOCATE FOR R3;
SRI K.V.DHANANJAY A/W
SRI SUDARSHAN SURESH, ADVOCATES FOR R4;
SRI SUDARSHAN SURESH, ADVOCATE FOR R5;
SRI SUSHANTH V.A., ADVOCATE FOR R6, 7, 8, 9, 11
AND 12;
SRI E.P.RAGHAVENDRA, ADVOCATE FOR R10)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY R2 DTD 08.07.2022 IN CASE NO.DRB-4/S.O.R./COMPLAINT/35/2022-23; ISSUE WRIT TO THE R2 DIRECTING TO ORDER FOR AN INQUIRY AND FOR DIRECTIONS TO DECLARE THE SAID ELECTIONS HELD FOR R4 FOR 2022-23 IS BAD IN LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question order dated 08-07-2022 passed by the 2nd respondent/Deputy Registrar of Co-operative Societies and District Registrar of Societies ('the District Registrar' for short) and have sought several directions by issuance of a writ in the nature of mandamus.

2. Heard Sri G.V.Chandrashekar, learned senior counsel appearing for the petitioners; Smt. Rashmi Patel, learned High Court Government Pleader appearing for respondents 1 and 2; Sri Pawan Shyam, learned counsel for respondent No.3; Sri K.V. Dhananjay, learned counsel appearing for respondent No.4; Sri Sudarshan Suresh, learned counsel appearing for respondent No.5; Sri Sushanth V.A., learned counsel appearing for respondents 6 to 9, 11 and 12 and Sri E.P. Raghavendra, learned counsel appearing for respondent No.10.

3. *Shorn* of unnecessary details, the core facts required are as follows:

The 4th respondent is the Karnataka Film Chamber of Commerce ('Film Chamber' for short). Elections to the said Film Chamber were to be conducted on 28-05-2022 for the tenure of 2022-23. The 1st petitioner was a contestant to the post of President in the Producers Sector and the 2nd petitioner was a contestant to the post of Treasurer and the 3rd petitioner was a contestant for the post of Secretary. The elections were held on 28-05-2022. The petitioners alleging that the conduct of election was illegal, improper and seeped in fraud on various grounds had registered a complaint before the 2nd respondent/District Registrar. The allegations, *inter alia*, included fraud played by the Returning Officer. This comes to be rejected by the 2nd respondent in terms of his order dated 8-07-2022 and rejection of the said complaint of the petitioners and consequent continuation of the newly elected committee drove the petitioners to this Court in the subject petition. The petitioners have also sought at the hands of this Court by way of a writ in the nature mandamus to declare the elections held to be illegal and void with a consequent direction to conduct fresh elections to the Film Chamber.

4. This Court, having entertained the petition, at the outset, had passed an interim order that the Executive Committee constituted pursuant to the said elections shall not take major decisions involving finances or policies till the next date of hearing. The said interim order is in operation even as on date.

5. The learned senior counsel for the petitioners would give up the prayers with regard to validity, veracity and conduct of elections and a direction that is sought for conduct of fresh elections. He would restrict his prayer to the order that was passed by the District Registrar declining to accept the complaint and initiate enquiry under Section 25 of the Karnataka Societies Registration Act, 1960 ('the Act' for short).

5.1. The learned counsel taking this Court to the averments made in the petition as also to the documents appended to the petition seeks to contend that the conduct of elections was completely contrary to law as there was non-display and disclosure of voters list as mandated in law on the notice board. Disclosure of voters list was not made to the candidates, rigging of election was in large scale, respondents 5, 6, 7, 9, 11 and 12 got elected

with the support of certain persons whose identity cards have not been checked for them to be voters or otherwise, there was undue illegal influence of certain powerful political members who are named in the petition and so on and so forth. All these form part of a complaint before the District Registrar. The District Registrar ought to have taken note of the said complaint and ought to have conducted an inquiry declaring the elections to be null and void and ordered conduct of fresh elections. He would place reliance upon a judgment of the co-ordinate Bench of this Court in ***ADVOCATES' ASSOCIATION, BANGALORE v. THE DISTRICT REGISTRAR AND REGISTRAR OF SOCIETIES - (2006) 4 KLJ 526*** to buttress his submission that an inquiry under Section 25 of the Act can be made by the District Registrar by entering into the veracity of the election as well.

6. On the other hand, the learned counsel Sri K.V. Dhananjay representing the 4th respondent would contend with vehemence that the petition itself is not maintainable, as by, calling in question the order of the 2nd respondent/District Registrar, what is called in question is the election itself. These issues which are in the realm of

disputed questions of fact would need evidence and therefore, election petition ought to have been filed and not a writ petition and above all, the interim order has rendered the Executive Committee appointed pursuant to the election spineless, as the interim order takes away the functioning of the elected body. He would seek to place reliance upon the judgment rendered by the Full Bench of the High Court of Madras interpreting Tamil Nadu Societies Registration Act, 1975 which is in *pari materia* with the Act and the judgment of the Apex Court noticing/affirming Full Bench judgment of the Madras High Court.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. Though several submissions are made on merits of the matter, consideration of those submissions would arise only if the petition is held to be maintainable, as the issue of maintainability, in the case at hand cuts at the root of the matter. If the petition is held to be maintainable, all other submissions would be considered and if it is not, it would lead to a disposal lock-stock and barrel.

Therefore, I deem it appropriate to consider the issue of maintainability at the threshold.

9. To consider whether the doors of this Court are closed, ajar or opened to the issue that is brought before it, the link in the chain of events is required to be noticed *qua* the allegations. The afore-narrated fact of conduct of elections to the posts of office bearers of Film Chamber is not in dispute. The petitioners were the contestants in the said election to the posts narrated hereinabove is also not in dispute. The allegation by the petitioners, as could be gathered from the pleadings in the petition is that there were large scale irregularities in the conduct of elections. Therefore, it becomes germane to notice the averments as to what the petitioner want at the hands of this Court. Paragraphs 3, 4, 5 and 6 of the petition read as follows:

3) That the very conduct of said elections to KFCC is improper, illegal, undemocratic and fraudulent. There are ready references such as Non-display and disclosure of voters list as mandated in the KFCC notice board, at the notice board of polling station, disclosure of voter list not made to candidates and voters during the elections, Non-obtainment of voters' signature in the counterfoil and counting votes was done in the absence of candidates in spite of candidates, petitioners volunteering to be the witness for counting the same was denied, evidence of huge election malpractice and corrupt election processes that has taken place in the said elections.

4) That as against the use of authorized, sanctioned and procedural practice of voting machines in this elections, the ballot papers method was used, this illegal act of conducting elections is against the resolution passed by respondent No.5. The Karnataka Film Chamber of Commerce – Executive Committee meeting dated 5.05.2022, even the printing of ballot papers were done by concealing the place, quantity and time of printing the ballot papers. (True copy of Executive Committee Resolution by respondent No.5 dated 5-05-2022 is annexed as Annexure-B).

5) That rigging has taken place in the elections in favour of the Respondent Nos. 5, 6, 7, 9, 11 & 12. The identity cards were not checked for the voters to promote rigging of votes, the entire process of conducting the said election is totally against the bye-laws of Karnataka Film Chamber of Commerce, its object and vision, the said elections were conducted in arbitrary, biased and undemocratic manner of conducting elections of a democratic society registered under 'The Karnataka Societies Registration Act, 1960'.

6) That there was undue illegal presence of politically powerful members of KFCC, Smt. Jayamala, Sri S.A. Chinne Gowda, Sri Basanth Kumar Patil were at the venue of voting, they have influenced voters to cast vote in favour of respondent Nos. 5, 6, 7, 9, 11 & 12 on the Election Day in the very venue of elections for more than 1 hour 20 minutes. **Politically motivated statements, assurances and offers to the voters by the agents of respondents No.3 and 5, 6, 7, 9, 11 & 12 have unduly influenced and illegally motivated voters to vote for their supported candidates against the very basic principles of general model code of elections, it is also a matter of fact that respondent No.5. Sri Ba.Ma.Harish who is present disputed president of KFCC who is elected with corrupt methods and his brother were present inside the election venue on the election process of voting and were continuously seeking votes and influencing the voters to vote in their favour which is unlawful of procedure of election conduct, the ballot papers were mismanaged, visibly damaged torn in the said venue of elections, additionally it is said that the highly influential political party who is in the power of**

ruling Government, a sitting Minister in the State Government has illegally influenced and remote controlled the said election. It is beyond any doubt the said elections were conducted in highly suspicious and atrocious manner. "

(Emphasis added)

The narration in the afore-quoted paragraphs, out of many, are that there were large scale rigging in the elections and several illegalities and irregularities. Voter list was not notified on the notice board as was required and there were votes which were cast with undue influence and illegally motivated by such persons and the President was elected by indulging in corrupt practices in the election. Saying so, at paragraph 7 onwards the attack is on the Returning Officer again in the conduct of elections. Therefore, the pleading of the petitioners is shrouded with allegations of corrupt practices, rigging and all other traits that would require a consideration for annulling the elections.

10. The petitioners, with the above allegations, go before the 2nd respondent/District Registrar by registering a complaint and seeking enquiry to be held into the conduct of election on 07-06-2022. Based on the said complaint, a notice was issued on 14-06-2022 directing appearance of the 4th respondent. The matter was

taken up on 28-06-2022 and an interim order was passed directing that no major decisions shall be taken by the Committee. The interim order reads as follows:

“....

ಮಧ್ಯಂತರ ನಿರ್ದೇಶನ

ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿಯ ದಿನಾಂಕ:28-05-2022 ರಂದು ನಡೆದ ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಯನ್ನು ಅರ್ಜಿದಾರರಿಗೆ ನೀಡಲು ಸೂಚಿಸಿದೆ ಹಾಗೂ ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದ ಮೇಲ್ಕಂಡ 1 ರಿಂದ 5 ಅಂಶಗಳ ಚುನಾವಣಾ ಸಾಮಗ್ರಿ / ಮಾಹಿತಿ / ದಾಖಲೆಗಳನ್ನು ಸಂಘದ ಚುನಾವಣಾಧಿಕಾರಿಗಳ ಸಮಕ್ಷಮದಲ್ಲಿ ಉಭಯತರರ ಒಪ್ಪಿಗೆಯೊಂದಿಗೆ ಸಂದರ್ಶಿಸಿಡಲು ಈ ಪ್ರಾಧಿಕಾರ ಸೂಚಿಸಿದೆ. ಚುನಾವಣಾ ಸಾಮಗ್ರಿ / ಮಾಹಿತಿ / ದಾಖಲೆಗಳನ್ನು ಸಂದರ್ಶಿಸಿಡಲು ಅನುವು ಮಾಡಿಕೊಡುವಂತೆ ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿಯ ಅಧ್ಯಕ್ಷ / ಕಾರ್ಯದರ್ಶಿಯವರಿಗೆ ಸೂಚಿಸಿದೆ. ಹಾಗೂ ಈ ಕಛೇರಿಯಲ್ಲಿ ಚುನಾವಣಾ ಸಂಬಂಧ ದೂರು ಅರ್ಜಿ ಇತ್ಯರ್ಥವಾಗುವವರೆಗೂ / ಮುಂದಿನ ನಿರ್ದೇಶನದವರೆಗೆ ಯಾವುದೇ ಶಾಸನಾತ್ಮಕ ಹಾಗೂ ಆರ್ಥಿಕ ತೀರ್ಮಾನ ತೆಗೆದುಕೊಳ್ಳದಂತೆ ಸೂಚಿಸಿದೆ.”

Finally, the District Registrar who had passed the interim order as aforementioned, in terms of his final order dated 08-07-2022 rejects the complaint holding that the allegations made would become an election petition and for consideration of an election petition, the District Registrar has no jurisdiction and the matter has to be pursued before the competent civil Court. The order reads as follows:

“ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿ, ನಂ.28, 1ನೇ ಮುಖ್ಯರಸ್ತೆ, ಕ್ರೆಸೆಂಟ್ ರಸ್ತೆ, ಹೈಗ್ರೌಂಡ್ಸ್, ಬೆಂಗಳೂರು - 560 001. ಈ ಸಂಘದ ಚುನಾವಣೆಯು

ದಿನಾಂಕ:28-05-2022 ರಂದು ನಡೆದಿದ್ದು, ಚುನಾವಣೆಯ ಸಂದರ್ಭದಲ್ಲಿ ಹಲವಾರು ಅಕ್ರಮಗಳು ನಡೆದಿದೆ ಎಂದು ಅರ್ಜಿದಾರರುಗಳು ದೂರು ಅರ್ಜಿಗಳನ್ನು ನೀಡಿರುತ್ತಾರೆ.

ದಿನಾಂಕ: 28-06-2022ರಂದು ವಿಚಾರಣೆಯನ್ನು ನಡೆಸಲಾಯಿತು. ಉಭಯತರರು ಹಾಜರಾಗಿ ತಮ್ಮ ಮೌಖಿಕ ಹೇಳಿಕೆಗಳನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಹಾಗೂ ಅರ್ಜಿದಾರರ ಪರ ವಕೀಲರು ಮಧ್ಯಂತರ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿ ಚುನಾವಣೆ ಸಂಬಂಧ ದಾಖಲೆ / ಸಾಮಗ್ರಿಗಳನ್ನು ಸಂರಕ್ಷಿಸಿಡುವಂತೆ ಈ ನ್ಯಾಯಾಲಯವನ್ನು ಕೋರಿದ್ದು, ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿಯ ದಿ:28-05-2022 ರಂದು ನಡೆದ ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಯನ್ನು ಅರ್ಜಿದಾರರಿಗೆ ನೀಡಲು ಹಾಗೂ ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದ 1 ರಿಂದ 5 ಅಂಶಗಳ ಚುನಾವಣಾ ಸಾಮಗ್ರಿ / ಮಾಹಿತಿ / ದಾಖಲೆಗಳನ್ನು ಸಂಘದ ಚುನಾವಣಾಧಿಕಾರಿಗಳ ಸಮ್ಮುಖದಲ್ಲಿ ಉಭಯತರರ ಒಪ್ಪಿಗೆಯೊಂದಿಗೆ ಸಂರಕ್ಷಿಸಿಡಲು ಈ ಪ್ರಾಧಿಕಾರ ಉಲ್ಲೇಖ (2) ದಿನಾಂಕ: 26-06-2022 ರಂತೆ ಮಧ್ಯಂತರ, ನಿರ್ದೇಶನವನ್ನು ನೀಡಲಾಗಿತ್ತು.

ದಿನಾಂಕ: 05-07-2022ರಂದು ವಿಚಾರಣೆಯನ್ನು ನಡೆಸಲಾಯಿತು. ಅರ್ಜಿದಾರರ ಪರ ದಿನಾಂಕ:05-07-2022ರಂದು ಮಧ್ಯಂತರ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿ ಚುನಾವಣೆ ಸಂಬಂಧ ದಾಖಲೆ / ಸಾಮಗ್ರಿಗಳನ್ನು ಸಂರಕ್ಷಿಸಿಡುವಂತೆ ಹಾಗೂ ಮರು ಚುನಾವಣೆ ನಡೆಸುವಂತೆ ಲಿಖಿತ ವಾದ ಮಂಡಿಸಿರುತ್ತಾರೆ ಹಾಗೂ ದಿನಾಂಕ:06-07-2022 ರಂದು 1 ರಿಂದ 22 ಅಂಶಗಳ ಆಕ್ಷೇಪಣೆಯನ್ನು ಹಾಗೂ ದಿನಾಂಕ: 08-07-2022 ರಂದು 1 ರಿಂದ 14 ಅಂಶಗಳ ಲಿಖಿತ ಉತ್ತರವನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಎದುರುದಾರ 1 ರ ಪರ ವಕೀಲರು ದಿನಾಂಕ:05-07-2022ರಂದು 1 ರಿಂದ 20 ಅಂಶಗಳ ಲಿಖಿತ ಉತ್ತರವನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ ಹಾಗೂ ಎದುರುದಾರ-2 ಇವರು ದಿನಾಂಕ:05-07-2022 ಹಾಜರಾಗಿ ಮೌಖಿಕ ಉತ್ತರ ಹಾಗೂ ದಿನಾಂಕ:05-07-2022 ರಂದು 1 ರಿಂದ 26 ಅಂಶಗಳ ಲಿಖಿತ ಆಕ್ಷೇಪಣೆಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಅರ್ಜಿದಾರರ ಪರ ವಕೀಲರು ದಿನಾಂಕ:06-07-2022 ರಲ್ಲಿ ಸಿಪಿಸಿ 1908 ಕಲಂ 151 ರಲ್ಲಿ ಅಡ್ವಾನ್ಸ್ ಅಪ್ಪಿಕೇಶನ್‌ನ್ನು ಸಲ್ಲಿಸಿ, ಸದರಿ ಅರ್ಜಿಯಲ್ಲಿ ತ್ವರಿತವಾಗಿ ತೀರ್ಪು ನೀಡುವಂತೆ ಈ ನ್ಯಾಯಾಲಯವನ್ನು ಕೋರಿರುತ್ತಾಳೆ ಹಾಗೂ ದಿನಾಂಕ: 08-07-2022 ರಂದು 1 ರಿಂದ 14 ಅಂಶಗಳ ಆಕ್ಷೇಪಣೆಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಎದುರುದಾರ -2 ರ ಪರ ವಕೀಲರು ದಿನಾಂಕ:07-07-2022 ರಲ್ಲಿ ಸಿಪಿಸಿ 1908 ಕಲಂ 151 ರಲ್ಲಿ ಅಡ್ವಾನ್ಸ್ ಅಪ್ಪಿಕೇಶನ್‌ನ್ನು ಸಲ್ಲಿಸಿ, ಸದರಿ ಅರ್ಜಿಯಲ್ಲಿ ದಿನಾಂಕ: 28-06-2022 ರಂದು ಈ ಪ್ರಾಧಿಕಾರ ನೀಡಿರುವ ನಿರ್ದೇಶನವನ್ನು ಹಿಂಪಡೆಯುವಂತೆ ಹಾಗೂ 07-07-2022 ರಂದು ಆಕ್ಷೇಪಣೆಯನ್ನು ಸಲ್ಲಿಸಿ, ಚುನಾವಣೆಯನ್ನು ನಿಯಮಾನುಸಾರ ನಡೆಸಲಾಗಿದ್ದು, ಸಂಘಕ್ಕೆ ಚುನಾವಣಾ ದಾಖಲೆಗಳನ್ನು / ಮಾಹಿತಿಗಳನ್ನು / ಸಾಮಗ್ರಿಗಳನ್ನು ಸಂಘದ ಸುಪರ್ದಿಗೆ ದಿನಾಂಕ: 29-05-2022 ರಂದು ಹಿಂದಿನ ಮತ್ತು ಹಾಲಿ ಅಧ್ಯಕ್ಷರ ಸಮ್ಮುಖದ ಒಪ್ಪಿಸಲಾಗಿದೆ ಎಂದು ಲಿಖಿತವಾದ ಮಂಡಿಸಿರುತ್ತಾರೆ ಹಾಗೂ ಅಡ್ವಾನ್ಸ್ ಅಪ್ಪಿಕೇಶನ್‌ನ್ನು ಅಂಗೀಕರಿಸುವಂತೆ ಈ ನ್ಯಾಯಾಲಯವನ್ನು ಕೋರಿರುತ್ತಾರೆ.

ಉಭಯತರರು ಲಿಖಿತ ವಾದವನ್ನು ಹಾಗೂ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಈ ಕೆಳಕಂಡ ಅಂಶಗಳು ಕಂಡುಬರುತ್ತವೆ.

1. ಬೈಲಾ ಪ್ರಕಾರ ಚುನಾವಣೆ ನಡೆದಿರುವ ಬಗ್ಗೆ ಕಲಂ-25ರಲ್ಲಿ ತನಿಖೆ ನಡೆಸಲು ಯಾವುದೇ ಪೂರಕ ದಾಖಲೆಗಳು ಪರಿಶೀಲನೆಯಲ್ಲಿ ಉಭಯತ್ರರರು ಯಾರು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ.
2. ಚುನಾವಣೆ ಸಂಬಂಧ ದಾಖಲೆ/ಸಾಮಗ್ರಿಗಳನ್ನು ಸಂರಕ್ಷಿಸಿರುವಂತೆ ನಿರ್ದೇಶನವನ್ನು ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿಗೆ ನೀಡಲಾಗಿದೆ.
3. ಚುನಾವಣಾಧಿಕಾರಿಗಳು ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸಲ್ಲಿಸಿದ ಲಿಖಿತ ಉತ್ತರ / ದಾಖಲೆಗಳಲ್ಲಿ ಚುನಾವಣೆಯು ನಿಯಮಾನುಸಾರ ನಡೆಸಲಾಗಿದ್ದು, ಸಂಘಕ್ಕೆ ಚುನಾವಣಾ ದಾಖಲೆಗಳನ್ನು / ಮಾಹಿತಿಗಳನ್ನು / ಸಾಮಗ್ರಿಗಳನ್ನು ಸಂಘದ ಸುಪರ್ದಿಗೆ ದಿನಾಂಕ:29-05-2022 ರಂದು ಹಿಂದಿನ ಮತ್ತು ಹಾಲಿ ಅಧ್ಯಕ್ಷರ ಸಮ್ಮುಖದ ಒಪ್ಪಿಸಲಾಗಿದೆ ಎಂದು ಲಿಖಿತ ಉತ್ತರದಲ್ಲಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಆದರೆ ಸಂಘವು ಅರ್ಜಿದಾರರಿಗೆ ಚುನಾವಣಾ ಸಂಬಂಧ ಮಾಹಿತಿ / ದಾಖಲೆಯನ್ನು ಒದಗಿಸಿರುವ ಬಗ್ಗೆ ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲ.

ಉಭಯತ್ರರರು ಹಾಜರಾಗಿ ತಮ್ಮ ಲಿಖಿತ ವಾದವನ್ನು ಹಾಗೂ ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸಿರುವುದರಿಂದ ಈ ನ್ಯಾಯಾಲಯವು ಪರಿಶೀಲಿಸಿ ಈ ಕೆಳಕಂಡ ಆದೇಶ ಹೊರಡಿಸಿದೆ.

ಆದೇಶ

ಕರ್ನಾಟಕ ಚಲನಚಿತ್ರ ವಾಣಿಜ್ಯ ಮಂಡಳಿಯ ದಿನಾಂಕ: 28-05-2022 ರಂದು ನಡೆದ ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸಲ್ಲಿಸಿದ ಉಭಯತ್ರರರ ಅಡ್ವಾನ್ಸ್ ಅಪ್ಲಿಕೇಶನ್‌ನ್ನು ಈ ನ್ಯಾಯಾಲಯ ಪುರಸ್ಕರಿಸಿದೆ ಹಾಗೂ ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸಿರುವ ಮನವಿಯ ಅಂಶಗಳು ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದ ವ್ಯಾಜ್ಯವಾಗಿರುವುದರಿಂದ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಪರಿಹಾರ ಕಂಡುಕೊಳ್ಳುವಂತೆ ಅರ್ಜಿದಾರರ ಮನವಿಯನ್ನು ವಿಲೇವಾರಿಗೊಳಿಸಿದೆ.

ಈ ಆದೇಶವನ್ನು ದಿನಾಂಕ:08-07-2022 ರಂದು ನನ್ನ ಸ್ವಸಹಿ ಮತ್ತು ಕಛೇರಿ ಮೊಹರಿನೊಂದಿಗೆ ಹೊರಡಿಸಿದೆ.”

It is this order that drives the petitioners to this Court in the subject petition. Since there was an interim order throughout the pendency of proceedings before the District Registrar, this Court entertained the petition and granted interim order that is in subsistence at the outset.

11. As observed hereinabove, the senior learned counsel for the petitioners gives up the prayer with regard to declaration of

elections to be null and void and a prayer for re-election. He restricts his submission to the complaint registered before the District Registrar and the impugned order where he says that he had no jurisdiction to entertain the petition which is akin to election petition. Therefore, it becomes necessary to notice Section 25 of the Act. Section 25 of the Act reads as follows:

"25. Enquiry by the Registrar, etc. - (1) *The Registrar may on his own motion and shall on the application of the majority of the members of the governing body or of not less than one-third of the members of the society, hold an enquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an enquiry into the constitution, working and financial condition of a registered society.*

(2) *The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely,-*

- (a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;**
- (b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;**

(c)(i) he may, notwithstanding anything contained in this Act or in any rule or regulation prescribing the period of notice for a general meeting of the society, require the governing body of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the governing body of the society refuses or fails to call a meeting, he shall have power to call it himself;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the rules or regulations of the society and its proceedings shall be regulated by such rules or regulations;

(iii) when an enquiry is made under this section, the Registrar shall communicate the result of the enquiry to the society concerned."

(Emphasis supplied)

Section 25 deals with an inquiry by the Registrar on his own or on an application by majority members of the Governing Body or not less than 1/3rd members of the Society to hold an inquiry or direct some person to hold an inquiry with regard to constitution, working and financial condition of the Society. It is seeking to conduct an inquiry in the conduct of elections, the petitioners registered a complaint. The narration in the complaint is what is found in the averments in the petition which are quoted hereinabove, all of which would undoubtedly require evidence and considering the evidence of the kind that the petitioners had sought, in the

considered view of this Court, would not be within the realm or jurisdiction of the District Registrar, as it would become a power akin to the civil Court in deciding an election petition after recording of evidence, which power admittedly the District Registrar does not possess under the statute.

12. It is germane to notice the Full Bench judgment of the High Court of Madras in ***C.M.S.EVANGELICAL SUVI DAVID MEMORIAL HIGHER SECONDARY SCHOOL COMMITTEE v. THE DISTRICT REGIYRAR CHERANMAHADEVI***¹. The High Court of Madras was interpreting Section 36 of the Tamil Nadu Societies Registration Act which is verbatim similar to Section 25 of the Act quoted hereinabove. The Full Bench has held as follows:

"11. Chapter IV relates to Inspection, Inquiry, Cancellation, Winding up and appeal of a society. Section 36 relates to the power of the Registrar to inquire into the affairs of the registered society and the said Section reads thus:

36. Power of the Registrar to enquire 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

¹ 2005(2) CTC 161

or direct some person authorized by the Registrar by order in writing in this behalf to hold, an enquiry, 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 the power to call upon, the registered society and the officers of society to produce such books, accounts and documents and furnish 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 under Section 37, he may issue such direction to the registered society, or any member of the registered society, as the Registrar may deem fit.

12. *Rule 15 contemplates that the notice of the situation of a registered society and of any change thereof shall be in form V and the same shall be filed with the Registrar within three months from the date of registration of the society or after the date of change as the date may be. Rule 16 contemplates that the registered society register the members of specified in sub-section (1) of Section 14 shall be in Form VI. Section 14(1) contemplates that every registered society shall maintain a register containing the names, addresses and occupations of its members. By virtue of the above Rules, Form V and Form VII are to be maintained by the registered society itself.*

13. *In terms of sub-rule (1) of Rule 17, the registered society shall file with the Registrar within one month from the date of registration of the society, a copy of the register of members maintained by the society. In case any change among the members of the society or the committee in terms of sub-rule (2) of Rule 17, notice of such change shall be filed in Form No. VII within three months from the date of such change to the*

Registrar. The said notice of change shall be accompanied by the resolution of the meeting effecting such change.

14. Form VII contains the name of the society, date of registration, the year of registration and the details of change. Filing of the said Form is in order to ensure that such change in the committee or the members is entered in the register maintained in the office of the Registrar as maintenance of such record is compulsory.

15. For the purpose of such registration when Form No. VII is filed, the Registrar shall necessarily satisfy himself as to whether the particulars furnished in Form No. VII are true and correct.

16. Under sub-section(1) of Section 36, 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. It is argued that in view of the word "into the constitution" employed in Section 36, the power of the Registrar to inquire into the affairs of the society shall include the power to inquire into the election of members. It is further argued that in terms of sub-section (9) of Section 36 of the Act, the power of the Registrar to enquire into the affairs of the society shall also include such direction to hold fresh election as well.

17. A conspicuous reading of the above mentioned provisions show that the Act is intended to regulate the affairs of the society in accordance with the provisions contained therein and the rules made thereunder and that the registration is made compulsory on certain contingency and for its enforcement the provisions confer only the administrative power of the Registrar to ensure that the registered society to function strictly in accordance with the provisions of the Act or the Rules made thereunder, more particularly for maintenance of accounts for audit purpose; framing of bye-laws in conformity with the object of the society for which it is

formed and registered; in respect of application of funds of the registered society, conduct of annual General Meetings and extraordinary general meeting and amalgamation and division of registered societies. The Registrar has power to direct the registered society to furnish in writing such information or explanation in respect of any document which the registered society is required to file with him.

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.

19. In this context it could also be kept in mind the intention of the Legislature not to confer a power of supersession of the Committee on the Registrar as by insertion of Tamil Nadu Act 16 of 1994, such power is vested only in the Government and even when the Registrar is satisfied after enquiry under Section 36 that the society which has contravened any of the provisions of the Act or the Rules made thereunder or the society is insolvent or must necessarily become so or that the business of any such registered society is conducted

fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum filed with the Registrar, he may only cancel the registration.

20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of sub-section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to to the power under Section 37 to cancel the registration. Hence, the power under sub-section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does

not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court. Accordingly, the issue is answered. Post the Writ Appeals for disposal accordingly."

(Emphasis supplied)

The Full Bench clearly holds that the Registrar cannot hold an inquiry under Section 36 of the Act therein to consider a petition which is akin to challenging the allegations. The Court holds that the power of the Registrar therein cannot be stretched to annulling an election or giving a direction to hold fresh elections, as the Registrar therein had directed conduct of fresh election which would amount to indirectly setting aside the earlier election and such power was not conferred upon the Registrar. The Apex Court in a judgment rendered later, notices the full Bench judgment (*supra*) with approval in **S.DAVID STEPHEN AND OTHERS v. C.M.S.E.S.D. MEMO.HR.SEC.SCHO.COMMT AND OTHERS**². The Apex Court has held as follows:

"We have heard Mr. R.Balasubramanian, learned senior counsel for the appellants, and Mr.C.Selvaraju, learned senior counsel for the respondent No.1.

² **Civil Appeal No.5989-5991 of 2009** decided on **20-03-2012**

2. The controversy in these appeals relates to Form-VII under the Tamil Nadu Societies Registration Rules (for short, 'the 1978 Rules') submitted by the appellants on the one hand and the respondent No.1 on the other. Rule 17(2) of the 1978 Rules provides that notice of any change among the members of the society or of the committee shall be filed in Form No.VII within three months of such change. From 1999 onwards the dispute between the appellants and the respondent No.1 pertaining to the election of the members of the society and of the committee of the respondent No.1 society has been going on. The matter has been considered by the single Judge, Division Bench and Full Bench on different occasions. The present appeal arises from the order dated October, 31,2008 passed by the Mudurai Bench, High Court of Madras.

3. The Full Bench of the High Court in Writ Petition Nos.2969 of 2001, 331 of 2002, 170 and 217 of 2004 in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal v. The District Registrar, Cheranmahadevi, Tirunelveli District and others, decided on March 23, 2005 case reported in (2005) 2 M.L.J. 335 held as follows:

".....Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court...."

4. So far there has been no adjudication of the validity of the election of the members of the society or of the committee which took place in 1999, 2006 and 2009 by the civil court although no more than one occasion the District Registrar has gone into the said question.

5. The learned senior counsel for the appellants and the respondent No.1 and the learned counsel for the State are *ad idem* that validity of the election of the members of the Society or of the Committee can only be adjudicated by the competent civil Court and no other forum. They also do not dispute the correctness of the exposition of the law by the Full Bench in *C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal* (*supra*) as noted above.

6. We are informed by Mr. Balasubramanian, learned senior counsel for the appellants that the last notice of change in Form VII of the 1978 Rules was submitted by the appellants in the month of June, 2010 but in view of the pendency of the appeals before this Court, the Registrar has returned Form VII to the appellants.

7. Mr. C.Selvaraju, learned senior counsel for the respondent No.1, submitted that the respondent No.1 filed Form VII before the Registrar on January 23, 2012 which is pending and no decision has been taken thereon so far.

8. After arguing the matter for some time, the learned senior counsel for the appellants and learned senior counsel for the respondent No.1 agreed for the following order:

- (i) The appellants may re-submit Form VII, which was returned to them, to the District Registrar, Cheranmahadevi, Tirunelveli within two weeks from to-day.
- (ii) The District Registrar, Cheranmahadevi, Tirunelveli shall then hold an enquiry into the matter and satisfy himself as regards the particulars furnished in Form VII (re re-submission) by the appellants and Form VII submitted on January 23, 2012 by the respondent.
- (iii) After the completion of the enquiry, if the District Registrar accepts one of such Forms, the aggrieved party shall be at liberty to approach the civil Court for appropriate orders.

- (iv) *In case the District Registrar is not satisfied with the particulars in Form VII submitted by the appellants as well as the respondent No.1 and does not accept any of these Forms, both the parties shall be at liberty to approach the civil Court for redressal of their grievance.*
- (v) *The District Registrar shall abide by the decree/order that may be passed by the civil Court in the matter.*

9. Mr. B.Balaji, learned counsel for the State of Tamil Nadu, has no objection to the above agreed order.

10. Consequently, the appeals are disposed of in terms of the above agreement. It is directed that the District Education Officer, Cheranmahadevi at Tirunelveli shall manage and administer the society (respondent No.1) and the Schools till decision of the civil Court.

11. Interlocutory application Nos. 7-9 of 2009 stand disposed of.

12. Needless to say that the enquiry by the District Registrar and the adjudication by civil Court shall be uninfluenced by the impugned judgment."

(Emphasis supplied)

It is further germane to notice that the co-ordinate Bench of this

Court in **MR.K.NARAYANA v. DISTRICT REGISTRAR (CIRCLE-**

2) AND ANOTHER³ has held as follows:

"Petitioner is knocking at the doors of writ court for laying a challenge to the endorsement dated 13-09-2022, issued by respondent No.1-District Registrar (Circle-2), a copy whereof is at Annexure-A. It reads as under:

.....

³ **W.P.No.19281 of 2022 decided on 26-09-2022**

2. In more or less similar matters this Court has taken the view, as rightly contended by learned HCGP appearing for the Registrar, that in matters of this nature involving disputes to the validity of election to a Society which does not answer the description of other authorities under Article 12 of the Constitution of India, have to be worked out elsewhere, arguably before the Civil Court. This Court is in complete agreement with the submission of learned HCGP and therefore, declines indulgence.

In the above circumstances, writ petition is disposed off. To facilitate availments of alternate remedy, the official respondents are directed to preserve all the election material including the ballot papers in question for a period of three months reckoned from this day."

(Emphasis supplied)

13. On a coalesce of the judgments rendered by the Full Bench of High Court of Madras, the Apex Court later affirming the judgment of the Full Bench and the judgment of the co-ordinate Bench, what would unmistakably emerge is that the District Registrar cannot assume power of a civil Court to consider the importance of evidence in election matters in the garb of conducting enquiry under Section 25 of the Act. Conduct of elections or declaration of elected candidates or a direction seeking holding of fresh election will have to be before the competent civil Court. It is further germane to notice the judgment rendered by the co-

ordinate Bench in the case of **AMIYA VILAS SWAMI AND OTHERS v. SHANKHA BRITA DAS AND OTHERS**⁴ wherein it is held as follows:-

"32. Section 25 of the Act reads as under:

25. Enquiry by the Registrar, etc.—(1) The Registrar may on his own motion and shall on the application of the majority of the members of the governing body or of not less than one-third of the members of the society, hold an enquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an enquiry into the Constitution, working and financial condition of a registered society.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely.—

- (a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;
- (b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;
- (c)(i) he may, notwithstanding anything contained in this Act or in any rule or regulation prescribing the period of notice for a general meeting of the society, require the governing body of the society to call a general meeting at

⁴ (2008) 3 KLJ 16

such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the governing body of the society refuses or fails to call a meeting, he shall have power to call it himself;

- (ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the rules or regulations of the society and its proceedings shall be regulated by such rules or regulations;*
- (iii) when an enquiry is made under this section, the Registrar shall communicate the result of the enquiry to the society concerned.*

33. Section 25 as extracted above clearly shows that, the Registrar can hold an enquiry in the matter of Constitution, working and the finance. This power the Registrar can exercise either suo motu or on application, whether such enquiry gives finality to the dispute, whether it provides for adequate remedy to the parties to agitate their grievances.

34. Reading of provisions of Section 25 shows that, the Registrar can hold an enquiry and under Section 25, sub-section (2), clause (c), sub-clause (iii), he can communicate the result of the enquiry to the society concerned. Section is silent as to what happens to the report, or whether the Registrar can take further decision on the basis of enquiry. If a society is to be communicated with the result of the enquiry, whether such a society is bound by the report or whether the society in pursuance of the said report could take action, all that is provided is only enquiry and submitting of report. Under Section 27-A of the Act, the Government can appoint an Administrator, if the society fails to hold an election even after expiry of the term of the governing body and if there is long pendency of litigation or is not able to hold the annual general meeting, in such circumstances, the power is conferred on the State Government to appoint Administrator. This is again the discretion of the State Government. It is not mandatory for the State Government to appoint Administrator based on report or based on information. The appointment of an Administrator will not resolve the inter se dispute between two groups claiming to

constitute valid governing body or valid general body. In this case, both the groups are claiming that they are in the management or they are in the governing body. Provisions of Section 25 or 27-A do not provide for power to adjudicate, as to whether 'A' group is in governing body or 'B' group is in governing body.

35. *Section 9 of the CPC confers power on the Civil Court to try all the suits of civil nature, except which are expressly or impliedly barred. It is nobody's case that, the jurisdiction of the Civil Court is expressly barred under the provisions of the Act. It is only by implication, the jurisdiction of the Civil Court is sought to be ousted. Implication is an indirect method of ousting the jurisdiction of the Civil Court. In such a case, the provisions which oust the jurisdiction of the Civil Court, must provide for a mechanism to adjudicate such dispute. The cumulative effect of the statutory provision should provide for adequate remedy on par with the jurisdiction of the Civil Court. In such circumstances, it can be inferred that the jurisdiction of the Civil Court is impliedly excluded.*

36. *In this regard, a decision is relied by the learned Senior Counsel for the appellant in Dhulabhai's case, the Apex Court has considered as to, what constitutes the ouster of jurisdiction of the Civil Court by implication, and has observed that, the Civil Courts' jurisdiction must be held to be excluded, if there is an adequate remedy to do, what the Civil Court would normally do in a suit. This observation clearly indicates that the special statute, which provides for adjudication of the dispute, must give finality and must provide a jurisdiction that is vested in the Civil Court vis-a-vis, the enquiry that is contemplated under the special statute to be on par with the jurisdiction of the Civil Court. Such provisions would impliedly exclude the jurisdiction of the Civil Court. The Apex Court while interpreting Section 9 of the CPC has further observed that, sufficiency of the remedies is one of the criteria. Further observed that, even the sufficiency of the remedies provided for by statute may be relevant but a decisive, what is required to be seen is, that the remedies normally associated with the actions in Civil Courts are prescribed by the said statute to infer the implied bar. The exclusion of the jurisdiction of the Civil Court should not be normally inferred unless the statute by implication provide for adequate remedies and complete mechanism for adjudication of*

the dispute, this can be gathered from the intention of the legislation and scheme of the Act. If the entire scheme provides for complete adjudication of the matter and gives finality and gives adequate or sufficient remedies to the aggrieved party, it can be held that, by implication the jurisdiction of the Civil Court is barred. It is useful to extract the conditions specified in para 32 of the Dhulabhai's case. The Apex Court has laid down as many as seven conditions:

- (1) Where the statute gives a finality to the orders of the special Tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
- (2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.*

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the later case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

- (3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*

- (4) *When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.*
- (5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.*
- (6) *Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.*
- (7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.*

37. *It is clear from the above observation that, an examination of the scheme of the particular Act is necessary to find out the adequacy or the sufficiency of the remedies provided.*

38. *The jurisdiction of the Civil Court is excluded without there is an express bar under law, where there is adequate remedy available to the party to adjudicate their grievance under the special statute. If the procedure of enquiry provided under the Civil Procedure is fulfilled otherwise under the provisions of special statute, it is sufficient to infer the implied bar. The affording an opportunity and holding an enquiry must be found under the special statute. In such circumstances, whether expressly barred or not by implication, the jurisdiction of the Civil Court is ousted.*

39. *In identical circumstances, the Apex Court in a decision in the case of Nagri Pracharini Sabha, while interpreting Section 25 of the Societies Registration Act as amended in Uttar Pradesh has held that, though*

Section 25 of the said Act provides for a remedy to challenge the election of the members of the governing body, but it is subject to compliance with certain statutory requirement and in case if a member who cannot comply with the requirement, he can still file a suit for adjudication of the election dispute, even though the remedy is provided for adjudication of election dispute, if the aggrieved party cannot invoke the said provision for want of compliance of the statutory requirement, still he is not barred to challenge the same in common law Court, it is clear that there must be remedy to the aggrieved party.

40. In this case, reading of Section 25 does not provide for raising any such dispute nor provide for adjudication, hence it cannot be inferred or understood to mean that the dispute touching the Constitution or a dispute between the members and the members and members and the society could be adjudicated. What is not provided in law cannot be inferred."

(Emphasis supplied)

If the facts obtaining in the case at hand are considered on the touchstone of the principles laid down in the afore-quoted judgments, the unmistakable inference would be that the petition would not be maintainable before this Court, as the petitioners have to knock the doors of the competent civil Court seeking to annul the elections.

14. The indirect effort made to submit that petitioners are not seeking inquiry into the conduct of elections is neither here nor

there, as elections are over, the Executive Committee is in place and the averments in the petition point at corrupt practice like large scale rigging and several other illegalities and irregularities in the conduct of elections. It is, therefore, the petitioners have to approach the competent civil Court for appropriate relief. This Court would not entertain the petition after the elections are over, even for a direction to the District Registrar to enquire into the conduct of elections. No fault can be found with the order of the District Registrar declining to entertain the complaint, as it was in the realm of challenging the elections.

15. Insofar as judgment relied on by the learned senior counsel for the petitioners in the case of **ADVOCATES' ASSOCIATION** (*supra*) the same would be inapplicable to the facts of the case at hand. Even otherwise, interpreting Section 25 of the Act, there are plethora of judgments, a few of them are quoted hereinabove, which clearly hold the enquiry akin to annulment of elections cannot be the scope of Section 25 of the Act. Therefore, the said judgment would not lend any assistance to the learned senior counsel for the petitioners.

16. In the result, I pass the following:

ORDER

- (i) Writ Petition is dismissed.
- (ii) Liberty is reserved to the petitioners to approach the competent civil Court for redressal of their grievances, if any.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

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