

(2009) 09 MAD CK 0231

Madras High Court

Case No: Writ Appeal No. 855 of 2009 and M.P. No. 1 of 2009

Tamizhaga Aaramba Palli
Aasiriyar Kootani

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision: Sept. 3, 2009

Acts Referred:

- Limitation Act, 1963 - Section 5
- Tamil Nadu Societies Registration Act, 1975 - Section 11(1), 16(3), 44(1), 44(2), 44(3)
- Tamil Nadu Societies Registration Rules, 1978 - Rule 37(3)

Hon'ble Judges: S.J. Mukhopadhaya, J; N. Kirubakaran, J

Bench: Division Bench

Advocate: A. Jenasenar, for the Appellant; D. Sreenivasan, A.G.P. for RR-1 to 3 and Nalini Chidambaram for R. Saravana Kumar, for RR-5 and 6, for the Respondent

Judgement

S.J. Mukhopadhaya, J.

This Writ Appeal arises out of the order dated 3.11.2008 passed by the learned single Judge in Writ Petition No. 22399 of 2006, whereby and whereunder, the Writ Petition preferred by the appellant was dismissed.

2. A Society, by name and style, "Thamizhaga Aaramba Palli Asiriyar Kootani" was registered under the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as "the Act"), having Registration No. 147 of 1990 (hereinafter referred to as "the first Society"). The name of the first Society was removed from the Register and thereby, it deemed to have been dissolved and in the name and style of "Thamizhaga Aaramba Palli Asiriyar Kootani", the appellant-writ petitioner, a Society was formed with the Registration No. 194 of 2005 (hereinafter referred to as "the second Society").

3. By the impugned order dated 28.6.2006, the appeal preferred by the first Society u/s 44(5) of the Act was entertained and by the impugned order dated 30.6.2006, u/s

11(1) of the Act, the second Society was asked to change its name, as it was having similar name like that of the first Society.

4. The learned single Judge upheld the order dated 28.6.2006 for the reasons mentioned therein and further held that the order dated 30.6.2006 is consequential to the first order dated 28.6.2006.

5. For determination of the case, it is necessary to notice the relevant facts as referred to hereunder.

The first Society, with the Registration No. 147 of 1990, was registered in 1990. Subsequently, on the ground that the first Society was not conducting the affairs as per the provisions of the Act, on 22.9.1993, notice was issued u/s 16(3) read with Section 44(1) of the Act. It was informed that if renewal was not done without any further delay within the stipulated period, by producing reports as referred to therein, it will be construed that the first Society is not functioning and the follow-up action to dissolve the first Society u/s 44(1) of the Act will be initiated.

6. Learned Counsel for the appellant-writ petitioner-Second Society referred to the Gazette Notification, dated 25.2.1998 issued u/s 44(1) & (2) of the Act, whereby, the first Society was noticed and informed that on the expiration of the period prescribed from the date of such publication, the name of the first Society may be struck-off from the Register and the registered Society may be dissolved and it was asked to submit show cause. It is followed by the Gazette Notification issued on 2.9.1998, purported to have been issued u/s 44(3) of the Act, the English version of which reads as follows:

Tamil Nadu Government Gazette

Published by Order

Chennai, Wednesday, 2nd day of September, 1998

Maasi 13, Eswari, Thiruvalluvar Year 2029

Part VI-Annexure for Section-I

Notification of Head of Departments

Notification for the removal of the names of defunct Societies from the Register of Societies

Notification issued u/s 44(3) of the Tamil Nadu Societies Registration Act, 1978

Sl. No.	Societies Regn/Year	Name/Address
1	2	3
...	...	...
...	...	...

147/90 Thamizhaga Aaramba
Palli Aasiriyar
Kootani
No. 13, Kori Pudu
Street,
Vannarapalayam,
Cuddalore. 1990

7. It appears that after the said Notification dated 2.9.1998, the first Society did not choose to prefer any appeal u/s 44(5) of the Act and with the name and style, the second Society (appellant herein) was registered on 7.11.2005 with the Registration No. 194 of 2005. By proceedings dated 2.5.2006, the third respondent-District Registrar, Cuddalore, informed that the first Society, bearing Registration No. 147 of 1990 had been dissolved and notified u/s 44(4) of the Act and no appeal had been preferred by the first Society against the striking of its name from the Register. However, as the first Society became functional, the appellant-second Society filed a suit in O.S. No. 301 of 2006 before the District Munsif Court, Cuddalore, seeking relief of permanent injunction restraining the respondents 4 to 6 herein and their agents, etc., from using or acting in the name of the second Society (appellant herein). The suit is still pending.

8. In the meantime, the first Society preferred appeal u/s 44(5) of the Act before the State against the order striking of its name, and the appeal was referred back to the second respondent-Inspector General of Registration, Chennai. From the impugned order dated 28.6.2006, it appears that the appeal was referred with an order to grant exemption to the first Society in regard to the limitation prescribed under Rule 37(3) of the Tamil Nadu Societies Registration Rules, 1978 (hereinafter referred to as "the Rules"). The reason was shown by the third respondent-District Registrar, by letter dated 27.6.2006 that it was not possible to consider the matter earlier, as the name of the first Society was removed from the Register, though there was no Notification issued u/s 44(4). The second respondent-Inspector General of Registration, by the impugned order dated 28.6.2006, having noticed the aforesaid facts and the report that the first Society is continuously functioning since 1991, ordered to submit a delayed reports from the year 1990-1991 to till date to the District Registrar for necessary action.

9. Learned Counsel appearing for the appellant-second Society (writ petitioner) further submitted that the Gazette Notification dated 2.9.1998 was actually issued only u/s 44(4) of the Act; mere mentioning of a wrong provision of law, i.e. Section 44(3), will not render the Gazette Notification illegal, as under the said Notification, it was informed that the name and style of the first Society has been struck off (removed) from the Register. Reliance was also placed on the impugned order dated 3.11.2008 passed by the learned single Judge in Writ Petition No. 22399 of 2006, wherein, in paragraphs 12 and 13, the following observations were made:

12. Evidently, the instances in Section 44(3)(b) is not attracted in the present case. Gazette Notification dated 02.09.1998 though u/s 44(3)(b), deeming it is a Notification u/s 44(4). The learned Senior Counsel for Writ Petitioner made meticulous submissions persuading the Court that the Gazette Notification dated 02.9.1998 is actually u/s 44(4) and Section 44(3)(b) is due to an inadvertent mistake.

13. Before publication of notice u/s 44(4) of the Act, there are two essential requisites:

i. Notice u/s 44(1)

ii. Gazette Notification u/s 44(2)(b)

As pointed out earlier, these two preceding steps have been satisfied by issuing notice and also by publishing Gazette Notification dated 25.02.1998 u/s 44(2)(b) of the Act. While so, the Gazette Notification dated 02.09.1998 can hardly be denied as the one u/s 44(4) of the Act. In fact, the learned Senior Counsel for Respondents 4 & 5 Mrs. Nalini Chidambaram did not raise serious objection as to the misquoting of provision viz., u/s 44(3)(b), in the Notification dated 02.09.1998.

10. It was also submitted on behalf of the appellant-second Society that the name of the first Society having been struck off from the Register on 2.9.1998 and no appeal having been preferred within a year, the appeal preferred by the first Society, subsequently, is barred by limitation prescribed under Rule 37(3) of the Rules. Further, according to the learned Counsel for the appellant-second Society, in the meantime, the second Society having come into existence, the second Society ought to have been noticed before passing final order in the proceedings u/s 44(5) of the Act. It is also contended that the appellate authority has no suo-motu power to condone the delay as sought to have been done by the impugned order dated 28.6.2006.

11. Learned Senior Counsel appearing on behalf of the contesting respondents submitted that no Notification was issued u/s 44(4) of the Act, but proceedings were issued u/s 44(3) of the Act, which was the reason for not preferring any appeal. However, later on, having come to know that the respondents are treating the said Notification u/s 44(4) as mentioned in the proceedings dated 2.5.2006, the appeal was preferred and the ground of delay was explained. It was also submitted that before the learned single Judge, it was brought to the notice that the first Society was not a party-respondent to the present case.

12. We have heard the learned Counsel appearing on behalf of the parties and perused the records.

13. Admittedly, the first Society having Registration No. 147 of 1990 is not a party-respondent, either in the Writ Petition, or in the present Writ Appeal. In the absence of the first Society as a party-respondent, it is not desirable to interfere with the impugned orders dated 28.6.2006/30.6.2006 passed by the authorities.

14. If the name of the first Society is restored to its Register, the consequential effect is that the second Society is liable to change its name. For the said reason, if by the impugned order dated 30.6.2006, the second Society has been asked to change its name, and the learned single Judge refused to interfere with the same, in the absence of any illegality, no interference is called for.

15. We appreciate the contention made on behalf of the appellant-second Society that the Notification dated 2.9.1998 is a Notification issued u/s 44(4) of the Act, striking off the name (removal of the name) of the first Society from the Register. However, as the Notification was wrongly shown to have been issued u/s 44(3) of the Act, and that was the reason for not preferring an appeal by the first Society within time, and if they came to know of the same by proceedings dated 2.5.2006, then the said Notification dated 2.9.1998 purported to have been issued u/s 44(3) is treated to be a Notification u/s 44(4) of the Act and in that case, if they prefer an appeal even after long delay, u/s 5 of the Limitation Act, it is always open for the appellate authority to extend the prescribed period of limitation for preferring such appeal, and thereby, to entertain the appeal by condoning the delay. The reasons for satisfaction are only required to be recorded in the order and for that, no separate petition is required to be filed, if the reasons for the delay are already on record. u/s 5 of the Limitation Act, no prescription is made to file a separate petition for condonation of delay, and even on the basis of the prayer made in the appeal, the appellate authority has inherent power to condone the delay, if the appellate authority is satisfied with the grounds shown.

16. In the above background, if by the impugned order dated 28.6.2006, the appellate authority intended to condone the delay to exempt the period in entertaining the appeal, no illegality can be alleged on the same.

17. In view of the aforesaid facts and that the first Society is not a party-respondent before this Court, we are not inclined to entertain the writ appeal preferred by the appellant-second Society. However, it has been brought to our notice that the appeal u/s 44(5) of the Act has not yet reached finality. u/s 44(5)(b) of the Act, the Government or the Inspector-General of Registration, on being satisfied that the Registered Society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration.

18. By the impugned order dated 28.6.2006, though the grounds for exempting the delay in entertaining the appeal have been shown, reference to a report has been given that the first Society had obtained budget accounts from the General Body for the years 1990-1991 to 2004-2006 and also held Election for the office bearers during the said years, the District Registrar has stated that the first Society is functioning continuously from the year 1990-1991, but no specific order of restoration of the first Society in the Register has been ordered. As specific order of restoration in the name of the first Society is required to be passed, if the appellate

authority intended to allow it, in the absence of such order of restoration, we are of the view that the appeal u/s 44(5) has not reached finality.

19. The case is accordingly remitted to the second respondent-Inspector General of Registration to pass final orders on the appeal u/s 44(5) of the Act filed by the first Society, taking into consideration the grounds shown in the impugned order dated 28.6.2006.

20. So far as the appellant-second Society is concerned, we are not expressing any opinion as to whether it should prefer an appeal u/s 45 of the Act against the cancellation of its registration made recently by the proceedings of the third respondent-District Registrar, Cuddalore, dated 19.5.2009. We leave it open for the appellant-second Society to decide its course of action and it may decide as to whether it will intervene in the appeal filed by the first Society, before the Inspector General of Registration, and/or pursue the suit as was preferred by the appellant-second Society, which is pending or will prefer appeal u/s 45 of the Act against the said proceedings dated 19.5.2009.

21. The Writ Appeal stands disposed of with the aforesaid observations. No costs. The Miscellaneous Petition is closed.