

Nadar Mahajan Sangam S. Velaichamy Nadar Kalloori and Others

Vs

District Registrar (Societies) and Others

Civil Appeals Nos. 2880-82 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

07.04.1997

ORDER

1. Leave granted.
2. These appeals by special leave arise from the judgment of the Division Bench of the Madras High Court, made on 9-1-1997 in CMA No. 843 of 1996 and WPs Nos. 9771 and 12007 of 1996.
3. N. M. S. S. Velaichamy Nadar College was established by Nadar Mahajan Sangam in the year 1965 and election to the Society which runs the College, is the bone of contention. Untrammelled by procedural formats and its ramifications in the process of election, the heart of the matter is good management of the College. Who is entitled to run the institution and administer property of the said institution is the crux of the question. It is not a in dispute that though the term of the previous Society/Committee expired on 31-3-1966, elections could not be held for one reason or the other. As a consequence, at the pain of entrustment of the management to the third agency, elections came to be held on 9-6-1996, which proved to be an abortive attempt. Consequent thereon, a complaint was made to the Registrar in Form No. 7 on 12-6-1996. An enquiry appears to have been held by the Registrar which failed in the process from legal perspectives but the report was submitted on 19-6-1996. In the meanwhile, OS No. 417 of 1996 was filed for perpetual injunction. An interim mandatory injunction was issued in IA No. 292 of 1996 directing the District Registrar appointed under the Tamil Nadu Societies Registration Act, 1975 (for short "the Act") to find out the factual position and then to submit the report. In the meanwhile, writ petitions came to be filed. Ultimately, the Division Bench came to the conclusion that the learned trial Judge had abdicated his functioning as an adjudicatory authority; he should have recorded the evidence and the findings by himself. Instead, he directed the Registrar to conduct an enquiry and, thereby, it is a case of abdication of judicial functioning. Accordingly, the impugned order was passed.
4. We have heard learned counsel for both the parties. With a view to shorten the litigation, the appropriate course would be as under.
5. The civil court is directed to appoint an Advocate as a Commissioner. The Advocate-Commissioner would take all the members of the Society existing as on 14-5-1996 as valid members. He should conduct the elections afresh in accordance with the procedure prescribed under the bye-laws of the Society. Till the elections are held, the Principal shall continue to hold charge of the management of the institution and will act as Receiver of the Court under Order XL, Rule 1, CPC. He shall be answerable to the Court. On receipt of the report from the Advocate-Commissioner, the civil court shall pass appropriate orders in the light of the report thus submitted and dispose of the suit accordingly. The expenditure incurred and fees of the Advocate-

Commissioner should be as determined by the civil court. Elections are directed to be conducted within a period of six weeks from the date of the appointment of the Advocate-Commissioner by the trial court. The trial court is directed to appoint the Commissioner within two weeks from the date of the receipt of the order. The trial court is directed to dispose of the suit, after the election report is submitted, within three months thereafter. The fee of the Advocate-Commissioner should be determined by the trial court. The same shall be borne by the successful party. Initially, the same may be paid by the Principal from the college funds and later recovered by the College from the successful party to the suit.

6. The appeals are accordingly disposed of. No costs.