

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Vandana R., LL.M., Additional Munsiff

Friday, the 4th day of October, 2019/12th Aswina, 1941

IA.NOs.2848/19 & 2870/19 In OS.No.530/16.

IA.2848/19.

T.P. Sreeshaj, S/o. Late Karunakaran, aged 46 years,)
 residing at Karuna Nivas, Post. Chovva, Kannur.) Petitioner.
)

Vs.

- | | | | |
|---|---|---|--------------|
| 1 | M.C. Rameshan, Father's name not known, |) | |
| | aged 52 years, Advocate, No.521, Trade Centre, |) | |
| | Yogasala Road, Kannur – 670001. |) | |
| 2 | C.T. Yatheendradas, S/o. Raghavan, |) | |
| | aged 68 years, 'Aparna', Kakkat, now residing at |) | |
| | GM Nilayam, CHE-16/216, near Mahasiva |) | |
| | Temple, Post Chovva, Kannur District. |) | |
| 3 | P.P. Rajendran, S/o. T. Kunhikannan, |) | Respondents. |
| | aged about 66 years, Director, |) | |
| | The Chovva Educational Society, Post Chovva, |) | |
| | Kannur -670006. |) | |
| 4 | T.K. Gireeshan, S/o. T.K. Kumaran, aged 59 years, |) | |
| | Director, The Chovva Educational Society, |) | |
| | Post Chovva, Kannur -670006. |) | |
| 5 | T.K. Susheela, D/o. Govindan, |) | |
| | aged about 82 years, Thandayankandy House, |) | |
| | P.O. Chovva, Kannur-6. |) | |

- 6 T.K. Sumodh, S/o. T.K. Kumaran,)
aged about 55 years, Thandayankandy House,)
P.O. Chovva, Kannur-6.)
- 7 T.K. Hareesh Kumar, S/o. T.K. Sukumaran,)
aged about 48 years, Lab Assistant,)
Thandayankandy House, P.O. Chovva, Kannur-6.)
- 8 T.K. Sheena, D/o. T.K. Sukumaran,)
aged about 42 years, Thandayankandy House,)
P.O. Chovva, Kannur-6.)
- 9 Deepa Balakrishnan, S/o. A. Balakrishnan,)
aged 52 years, Krishna Deepam,)
Muzhappilangad, Kannur.)
- 10 C.T. Sudheendran, S/o. Late C.K. Raghavan,)
aged about 60 years, 4C, Sreerosh Willa on)
Heighty, Anayiduku, Post Thana, Kannur -670012.) Respondents.
- 11 T.P. Prakash, S/o. Late Kumaran,)
aged about 75 years, Thandarkandy House,)
Post Chovva, Kannur-670006.)
- 12 T.K. Jayaraman, S/o. T.K. KunhIRaman,)
aged 65 years, Director, The Chovva Educational)
Society, P.O. Chovva, Kannur – 670006.)
- 13 The Principal, Chovva Higher Secondary School,)
P.O. Chovva, Kannur- 670006.)

Supplemental respondent:-

- 14 Valsala Kumar, S/o. Kumaran,)
Grandson of P.K. Bapu, 64 years, Business,)
Vishnu, Chovva, Kannur.)

IA.2870/19

- 1 P.P. Rajendran, S/o. T. Kunhikannan,) Petitioners.
66 years, Director, The Chovva Educational)
Society, Post Chovva, Kannur -670006.)
- 2 T.K. Gireeshan, S/o. T.K. Kumaran, aged 59)
years, Director, The Chovva Educational Society,)
Post Chovva, Kannur -670006.)

- 3 T.K. Susheela, D/o. Govindan, 82 years,)
Thandayankandy House, P.O. Chovva, Kannur.)
- 4 T.K. Sumodh, S/o. T.K. Kumaran, 55 years,)
Thandayankandy House, P.O. Chovva, Kannur-6.)
- 5 T.K. Hareesh Kumar, S/o. T.K. Sukumaran,) Petitioners.
48 years, Lab Assistant, Thandayankandy House,)
P.O. Chovva, Kannur-6.)
- 6 T.K. Sheena, D/o. T.K. Sukumaran, 42 years,)
Thandayankandy House, P.O. Chovva, Kannur-6.)
- 7 Deepa Balakrishnan, S/o. A. Balakrishnan,)
aged 52 years, Krishna Deepam, Muzhappilangad,)
Kannur.)
- 8 C.T. Sudheendran, S/o. Late C.K. Raghavan,)
60 years, 4C, Sreerosh Willa on Heighty,)
Anayiduku, Post Thana, Kannur -670012.)
- 9 T.P. Prakash, S/o. Late Kumaran, 75 years,)
Thanderkandy House, Post Chovva,)
Kannur-670006.)

Vs.

- 1 T.P. Sreeshaj, S/o. Late Karunakaran,)
aged 46 years, residing at Karuna Nivas,)
Post. Chovva, Kannur.)
- 2 M.C. Rameshan, Father's name not known,) Respondents.
aged 52 years, Advocate, No.521, Trade Centre,)
Yogasala Road, Kannur – 670001.)
- 3 C.T. Yatheendradas, S/o. Raghavan,)
aged 68 years, 'Aparna', Kakkat, now residing at)
GM Nilayam, CHE-16/216, near Mahasiva)
Temple, Post Chovva, Kannur District.)
- 4 T.K. Jayaraman, S/o. T.K. KunhIRaman,)
aged 65 years, Director, The Chovva Educational)
Society, P.O. Chovva, Kannur – 670006.)

- 5 The Principal, Chovva Higher Secondary School,) Respondents.
P.O. Chovva, Kannur- 670006.)
- 6 Valsala Kumar, S/o. Kumaran,)
64 years, Vishnu, Chovva, Kannur.)

These petitions are coming on 3rd day of October, 2019 for final hearing before me in the presence of S/Sri. K.K. Balaram, K. Babu, K.O. Prathap Nambiar & Dhanya N.P., Advocates for petitioner in IA.2848/19 and 1st respondent in IA.2870/19 and of Smt. Kavitha G., Advocate for petitioners in IA.2870/19 and respondents No.3 to 11 in IA.2848/19 and of Sri. Pramod Krishnan, Advocate for 1st respondent in IA.2848/19 and 2nd respondent in IA.2870/19 and of Sri. M.K. Prasad, advocate for 2nd respondent in IA.2848/19 and 3rd respondent in IA.2870/19 and of S/Sri. P.K. Anwar & Shumla Das, Advocate for 12th respondent in IA.2848/19 and 4th respondent in IA.2870/19 and of Sri. P.K. Mahash, Advocate for 13th respondent in IA.2848/19 and 5th respondent in IA.2870/19 and of Sri. K. Shaju, Advocate for 14th respondent in IA.2848/19 and 6th respondent in IA.2870/19 and having stood over to this day for consideration, the court passed the following:-

COMMON ORDER

I.A 2848/2019 is a petition filed by the plaintiff in the above suit to direct the Advocate Commissioner to stop further proceedings in the election process started by the Advocate Commissioner until an order is passed by this court on the clarification sought by the Advocate Commissioner.

2. I.A 2870/2019 is a petition filed by the defendants No. 3 to 11 in the above suit to direct the Advocate Commissioner to stop further proceedings to conduct the election of Chovva Chovva Educational Society and to give clarification regarding the same.

I.A 2848/2019

3. Petition averments in brief is as follows:- As per the order of the Hon'ble High Court of Kerala in OP (C) 3449/2017, this court was pleased to appoint Advocate P.P Pradeepan as the Advocate Commissioner to conduct election of Chovva Educational Society. The directions given by the Hon'ble High Court to the Advocate Commissioner is as follows:- “The Advocate Commissioner shall conduct the election after notifying a time schedule and after notifying the provisional voters list with all the 36 persons attended the meeting convened on 17-8-1997 either in person or through proxy with publicity; shall call for the objections over it; consider the objections and finalise the voters list which shall be published and after considering the objections on merits. A time schedule shall be submitted before the court for each step, in terms of the provisions if any in the bye law and the election shall be conducted accordingly in accordance with the provisions of the bye law. This shall be completed and a report shall be submitted before the court below within a period of three months”.

4. Accordingly, the Advocate Commissioner has published a provisional voters list on 26-7-2019 as directed by the Hon'ble High Court. On 27-7-2019, the Advocate Commissioner had filed a memo before the court seeking some clarification. The petitioner submits that

the said clarification. The petitioner submits that the said clarification was not warranted as per the order of the Hon'ble High Court. Thereafter, since the Advocate Commissioner was found acting in a biased manner, the plaintiff and the defendants No. 2, 3 to 11 and 14 filed two separate petitions as I.A 2600/2019 and I.A 2677/2019 seeking to change the Advocate Commissioner. Those petitions were dismissed on 5-9-2019. Thereafter, the case was posted to 1-10-2019. On 26-9-2019, the petitioner received the copy of one interim report of the Advocate Commissioner. The said report is prepared in total violation of the order of the Hon'ble High Court as well as the order of this court. The petitioner contends that the election notification was published on 25-7-2019 and the election was to be completed by 24-8-2019. Now the Advocate Commissioner has filed a report stating that he is starting the election process on the basis of the provisional list published on 26-7-2019. The Hon'ble High Court has fixed 36 persons who attended the meeting convened on 17-8-1997 as the voters of the society. So, the Advocate Commissioner should have confined to that voters to prepare final list of voters. The Advocate Commissioner in his report also stated that he has sought clarification from this court and this court had directed the commissioner to prepare the voters list as per the provisions of the bye law. The petitioner contends that the print out of the daily status of the case would go to show that there is no such order. The petitioner further contends that the interim order of the Advocate Commissioner would reveal that he has started an investigation and trial to disqualify 8 persons from 36 persons who are found eligible to vote as per the order of the Hon'ble High Court.

The Advocate Commissioner has also relied on so many interim orders and commission report in OS 305/2008. All those orders are non-existing orders in view of the final judgment in OS 305/2008 . The Advocate Commissioner is also seen given membership to one of the legal heirs of deceased members. The petitioner submits that it is the prerogative of the committee to give membership to a person. Further 8 persons who were found eligible by the Hon'ble High Court to casts their votes were seen removed from among the list of eligible voters prepared by the Advocate Commissioner. The petitioner submits that the Advocate Commissioner is seen acting swiftly to conduct the election without taking this court into confidence by reporting the election process one by one as directed by the Hon'ble High Court. Now, the Advocate Commissioner has been fixed the date for filing of the nomination on 30-9-2019. The Advocate Commissioner ought to have submitted a final voters list before this court and ought to have sought consent of this court to go ahead with that list to the next stage of election. Instead of doing so, the Advocate Commissioner has fixed the date of the election process to very near dates in a very hasty manner. Moreover, the Advocate Commissioner has stated that 18 persons out of the 36 eligible voters entitled to vote are dead and Advocate Commissioner has included the name of legal heirs of only 7 such deceased members. The report is silent as to whether Advocate Commissioner had taken steps to inform the legal heirs of other remaining 11 deceased members. Hence, this petition to direct the Advocate Commissioner to stop the further proceedings in the election process until an order is passed this court on the clarification sought

by the Advocate Commissioner.

5. Respondent No. 12 entered appearance and filed counter statement stating that the petitioner cannot invoke Section 151 of C.P.C to stay the election. The remedy available to the petitioner is to challenge the election after the publication of its result. The respondent also denies all the allegation against the Returning Officer. The respondent also denies the contention that memo filed by the Advocate Commissioner seeking clarification is still pending and hence the Advocate Commissioner cannot continue the election process before this court passes an order on the said memo. The respondent contends that the memo filed by the Advocate Commissioner is not a petition and hence, a question of passing an order on memo does not arise. The respondent further submits that this court has given required clarification to the Advocate Commissioner in the open court orally and hence, no separate speaking order is necessary for the Returning Officer to proceed with the election. The respondent also denies the contention that as per the order of the Hon'ble High Court only 36 persons were given the power to cast their votes . The Advocate Commissioner has performed his duties in an unbiased manner. Only because of the fact that the Hon'ble High Court has directed to consider meeting held on 17-8-1997 to prepare the preliminary voters list does not mean that the Advocate Commissioner cannot consider the objections raised by the members and look into the matter as to who are the eligible members to cast their votes. The respondent submits that the permission to cast votes through proxy is a matter specifically defined in the bye law of the society. As such there was nothing wrong

on the part of the petitioner to allow proxy. Similarly, inclusion of one of the legal heirs of the deceased members is also in strict adherence of the bye law of the society. Hence, there is nothing wrong in the order of the Advocate Commissioner permitting one among the legal heirs of the deceased members to cast their votes. The respondent contends that the above petition is only filed to drag the matter. Hence, the petition may be dismissed.

I.A 2870/2019

6. Petition averments in brief is as follows:- Defendants No. 3 to 11 also filed petition to stay the further proceedings to conduct the election of Chovva Educational Society. The petitioners contend that as per report of the Advocate Commissioner, a final list of voters list is seen prepared by excluding 8 persons from the 36 persons, whose names were already fixed by the Hon'ble High Court. The petitioners submit that the Advocate Commissioner has relied on an interim order and report in OS 305/2008 to arrive at such a conclusion. The petitioners contend that those interim orders on which the Advocate Commissioner relied is not in existence since the suit as such is dismissed. The Advocate Commissioner also did not hear those 8 persons before removing them. That apart the Advocate Commissioner has included 9 persons in the final voters list stating them to be the legal heirs of deceased members. The Advocate Commissioner has no right or power to conduct enquiry among the legal heirs of deceased members and to include one among the legal heirs in the final voters list. The petitioners contend that the persons cited as legal heirs of deceased members are not the members of the society and no

membership is given to them since the society has not convened any general body after 17-8-1997. Hence, the Advocate Commissioner has no such right to include the legal heirs of the deceased members in the voters list. The Advocate Commissioner is acting beyond the powers of the Returning Officer and in violation of the order of the Hon'ble High Court. As such, it has become necessary to stop further proceedings of the Advocate Commissioner.

7. Respondent No. 4 entered appearance and filed counter statement adopting the same contention put forward in the counter statement in I.A 2848/2019.

8. Heard both sides.

9. Both the petitioners in I.A 2848/2019 and I.A 2870/2019 has come before this court seeking a relief from this court to direct the Advocate Commissioner to stop further proceedings in the election process started by the Advocate Commissioner. It is the case of the petitioners that the Advocate Commissioner has by memo dated 27-7-2019 sought some clarification from this court with regard to whether any one of the legal heirs of the deceased member can be given the right to vote in the election and also whether a proxy can be permitted to cast vote for and on behalf of the members who are bedridden and suffering from old age ailments.

10. On perusal of records, it can be seen that admittedly this court has not given any speaking order with regard to the clarification sought by the Advocate Commissioner. But instead, this court had directed the Advocate Commissioner to proceed with the election process as per the provisions of the bye law in the open court. Now the

petitioner contends that in the absence of any speaking order from this court, the advocate commissioner cannot proceed with the election process. It is to be noted that as per the order of Hon'ble court in OP (C) 3449/2017, the Hon'ble High Court has given specific direction to the Advocate Commissioner with regard to the course to be adopted by him in conducting the election. The order of the Hon'ble High Court reads as follows:- "The Advocate Commissioner shall conduct the election after notifying a time schedule and after notifying the provisional voters list with all the 36 persons attended the meeting convened on 17-8-1997 either in person or through proxy with due publicity; shall call for the objections over it; consider the objections and finalise the voters list which shall be published and after considering the objections on merits. A time schedule shall be submitted before the court for each step, in terms of the provisions if any in the bye law and the election shall be conducted accordingly in accordance with the provisions of the bye law. This shall be completed and a report shall be submitted before the court below within a period of three months".

11. As per the order of the Hon'ble High Court, it can be seen that the only direction given to the Advocate Commissioner is to submit a time schedule before this court for each step. It is seen from the proceedings that the Advocate Commissioner has in compliance of the order of the Honb'le High Court filed interim report with regard to each step taken by him in conducting election process. No further obligation is cast on the Advocate Commissioner to consult or get approval from this court with regard to each step taken by him in

conducting election. Further it is to be noted that Hon'ble High Court had given specific direction to complete the election process within 3 months.

12. The contention that Advocate Commissioner shall not proceed with the election process until he gets a clarification from this Hon'ble court lacks merits. Even according to the petitioner in I. A 2848/2019, the memo filed by Advocate commissioner is unwarranted. In paragraph No.4 of the affidavit filed in I.A 2848/2019, the petitioner has averred that “ On 27.07. 2019, the Advocate Commissioner gave a memo to the Court seeking some clarification which was not warranted as per the order of the High Court. When the petitioner himself has a case that Advocate Commissioner need not seek any clarification from this court, then filing a petition stating that Advocate Commissioner should not proceed with the election process until he gets a clarification from this court can only be considered as a one to drag the proceedings.

13. From the discussion in the preceding paragraphs, I find no ground to stay the proceedings of the Advocate Commissioner and hence both the petitions are dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 4th day of October, 2019).

ADDITIONAL MUNSIFF.

mmh/-

**Carbon Copy of
Common Order
in IA.2848/19 &
2870/19 IN OS.530/16
Dated. 04/10/2019.**

