

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2020

CORAM

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.S.No.339 of 2020
and A.Nos.3105 & 2973 of 2020
and OA.No.640 of 2020

The Kennel Club of India
(Registration No.16/1959)
Rep.by its Secretary cum Treasurer
C.V.Sudarshan,
Registered Office at Old No.89, New No.28,
AA Block First Street,
Anna Nagar,
Chennai 600 040

....Plaintiff

Vs.

1. The Government of Tamil Nadu
Rep.by its Secretary to Government
Commercial Taxes & Registration Department,
Secretariat, St.George Fort,
Chennai 600 009.
2. The Inspector General of Registration
No.120, Santhome High Road,
Bharathi Nagar, Raja Annamalaipuram,
Chennai 600 028.
3. The District Registrar (Admin)
AIG Cadre,
Chennai Central,
Chennai 600 014.

4. Capt.Sunny Jacob

5. Partha Sekhar Chatterjee

6. Somnath Mukherjee

7. Nagina

8. R.Chockalingam @ R.C.Lingam

9. D.Krishnamurthy

10.Vikram Dhamodaran Defendants

Prayer:- Plaint filed under Order IV rule 1 of OS Rules r/w order VII Rule 1 of the CPC.

a. declaring that the plaintiff is registered Society No.16/1959

b. pass an order of permanent injunction restraining the defendants 1 to 3 their men, subordinates, officers, agents etc., from taking any action against the plaintiff society based on any proceedings taken or orders passed regarding Society Registration No.276/97

c. declare that the order dt:07.10.2020 passed by the 3rd defendant in proceedings No.1845/D2/2020 in respect of the affairs of Society Registration No.276/97 is illegal, unlawful and not binding on the plaintiff.

d. declare that order dt:18.08.2020 of the second defendant passed in proceedings No.Na.Ka.22921/II/2019 is illegal and unlawful and not

binding on the plaintiff.

e. declare that the show cause notice dt:29.10.2020 issued by the first defendant in letter No.5097/MI/2020-2 is illegal, unlawful and not binding and enforceable against the plaintiff

f. award the costs of the suit to the plaintiff.

For Plaintiff : Mr.R.Srinivas

for Mrs.Mythilisrinivas

For Defendant : Mr.T.M.Pappiah

Special Government Pleader
for D1 to D3

Mr.S.S.Rajesh for D4

JUDGMENT

The suit is filed for various relief which are as follows:-

a. declaring that the plaintiff is registered Society No.16/1959

b. pass an order of permanent injunction restraining the defendants 1 to 3 their men, subordinates, officers, agents etc., from taking any action against the plaintiff society based on any proceedings taken or orders passed regarding Society Registration No.276/97

c. declare that the order dt:07.10.2020 passed by the 3rd defendant in proceedings No.1845/D2/2020 in respect of the affairs of Society Registration No.276/97 is illegal, unlawful and not binding on the plaintiff.

d. declare that order dt:18.08.2020 of the second defendant passed in proceedings No.Na.Ka.22921/II/2019 is illegal and unlawful and not binding on the plaintiff.

e. declare that the show cause notice dt:29.10.2020 issued by the first defendant in letter No.5097/MI/2020-2 is illegal, unlawful and not binding and enforceable against the plaintiff

f. award the costs of the suit to the plaintiff.

2. The learned counsel appearing for the plaintiff submitted that the Kennel Club of India was registered in the year 1959 under Registration No.16/1959. The objects and functions of the club are to maintain the pedigree and the stud book of all pedigree dogs and grant permission for the conduct of dog shows to all its 57 affiliated clubs throughout India and the Society bearing Registration No.16/1959 became defunct due to non filing of returns for some time. Thereafter due to misconception and wrong advice, a new Society in the registration district of Chennai Central was registered in the name of Kennel Club of India with Registration No.276/1997. Thereafter as some objections arose the original society registered in Reg.No.16/1959 was revived as per law. The Government by its order dated G.O. Rt.No.444 dated 03.05.2006 regularised the Registration No.16/1959. It is also stated that

merged with original society registered in No.16/1959 based on the resolution passed in the Annual General Meeting on 30.09.2005 and it was also resolved to continue the Society in Registration No.16/59. However, the merger was not registered due to oversight, as per Section 30(3) of the Tamil Nadu Societies Registration Act, 1975 and taking advantage of the same, now the defendants have raised some issues as if the Secretary had committed misappropriation and pursuant to such objections, an order has been passed by the Secretary to Government, Commercial Taxes & Registration Department by order dated 07.01.2020 for appointing a Special Officer to take over the Society bearing Reg.No.276/1997 and also the order passed by the Inspector General of Registration rejecting the application pursuant to exemption by its order dated 18.08.2020 and show cause notice dated 29.10.2020 are also challenged in the suit.

3. It is alleged that though the defendants participated in the earlier election in the year 2007, 9th defendant lost and a suit was also filed in respect of the above election, which is still pending in C.S.No.634 of 2017 and C.S.No.519 of 2018 filed by Nagina/7th defendant and Krishnamoorthy/9th defendant respectively. Hence it is his

contention that the entire order passed by the defendants 1 to 3 is to be declared as null and void. When the matter is pending, an application has been taken by the defendants 4, 7 to 10 for interim injunction to suspend the election of the office bearers of the plaintiff Society and defer its Annual General Meeting said to be held on 18.12.2020. The order dated 20.09.2018 clearly indicates that the Secretary committed a misappropriation and the above order has been challenged before the Inspector General of Registration. Subsequently an order has been passed and appeal has been filed, however, the same has been withdrawn. Hence they seek an interim injunction for suspending the election of the office bearers.

4. Heard both sides and perused the materials available on record. Since the dispute is very narrow from the submission made by both sides, this Court has come to the conclusion that there is no dispute with regard to one club namely the Kennel Club of India though it was registered in two Registration Numbers, both are in agreement to continue the club in Reg.No.16/1959, now the only dispute remains to be with regard to the manner, the election is to be conducted. Such view of the matter, this Court is inclined to dispose of the suit itself as there is no

serious triable issue involved in this matter.

5. This Court finds that originally Society was registered in the year 1959 in the name of Kennel Club of India and returns have been filed for the year 1981 and 1982 as borne out by the records. Thereafter, it appears that returns have not been filed and the society has become defunct. Subsequently, as the society registered in No.16/1959 has become defunct the members have registered the Kennel Club of India in another Registered No.276/1997 at Chennai.

6. The resolution passed by the members in the Annual General Meeting indicates that they resolved to amalgamate Kennel Club of India bearing Reigstration No.276 of 1997 with the Kennel club of India bearing Registration No.16/1959 and consequently Kennel Club of India bearing Reg.No.16/1959 shall continue to carry on its activities and functions in accordance with law. The members infact have agreed and consented to pass a special resolution. It is also relevant to note in the above resolution, the 4th 8th and 9th defendants have also participated and signed as members in the resolution. It is also relevant to note that pursuant to the above said resolution, Inspector General of Registration

in his letter dated 18.10.2005 clearly stated that club bearing Reg.No.16/1959 and Reg.No.276/1997 were amalgamated as per the resolution passed by the members and intimated the District Registrar to set right the mistakes crept in publishing about Registration No.16/1959. From the above correspondence it is very clear that IG of Registration is also aware of the fact that two clubs have been amalgamated and recognised by the authorities. G.O.Rt.No.444 dated 03.05.2006 passed by the Commercial Taxes and Registration Department also makes it clear that Society originally registered in No.16/59 has become defunct for non filing of returns and have been revived and exemption have been accorded by the Government in the above Government Order. The club was originally Registered in No.16/1959 and all the members infact acted under Reg.No.16/59 only, merely because to revive the registration due to defunct of the earlier registered society and they registered a Society latter at a point of time in different number, it cannot be said that the latter club which was registered in different number is a different one from the earlier one registered. The members consciously adopted a resolution amalgamating both the clubs as one and the same. It is also brought to the notice of this Court by the learned counsel Mr.Srinivas that even in the present election, the person challenging the election

process on the ground that there are two different registrations has filed a nomination and his nomination is also accepted. On perusal of the records, this Court also could see that one of the defendants namely, D.Krishnamurthy/ 9th defendant has in fact filed a nomination and his nomination was also accepted for the election to be conducted for the club bearing No.16/1959. In Such view of the matter the Government itself has revived Reg.No.16/1959 by G.O.Rt.444 dated 03.05.2006 and amalgamation also has been recognised by the Inspector General of Registration as early as on 18.10.2005 and a communication also has been addressed to the District Registrar.

7. Now the Government Orders appointing a Special Officer to take over the club on the ground that Reg.No 276/1997 is a different society is nothing but clear non application of mind by the authorities and infact the very resolution adopted by the members to merge both registration has not been taken into consideraton by the first defendant while passing an order in appointing Special Officer and issuing show cause notice. It is also further to be noted that when the Government order itself revived the original club and all the members also accepted that they are the members of one club namely the Kennel Club of India

and in the objects of the club also there is no dispute by any member. Such being the situation, merely because due to some wrong advise, the club has been registered in a new number and the same cannot be a ground to destroy the original structure of the club, which was registered and existing from the year 1959. In such view of the matter, this Court is of the view that the very suit itself need not go for trial, since after going through the records, this Court has come to the conclusion that the only apprehension from the submission made by the contesting defendants before this Court is that election has to be conducted in a fair manner. Except that apprehension with regard to the amalgamation and revival of the clubs, there is no dispute. In such view of the matter to remove the apprehension of the respondents/defendants herein this Court is of the view that if the apprehension is removed and the election is conducted in a fair and democratic manner, it will address the grievance of the defendants also and will serve the object of the club also.

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8. In such view of the matter this Court deems it fit to appoint Mr. Justice K. Kannan, a retired Judge of Punjab & Haryana High Court to over see the election process and conduct the election for which both side have no objection. It is also not disputed by both sides that election

process had already been commenced and taking note of the fact that there was a confusion with regard to the existence of two clubs and orders have been passed by the Government in respect of the one club bearing Reg.No. 276 /1959, though the members in both clubs are one and the same, this Court is of the view that in the interest of justice, fresh election has to be conducted in democratic manner. Accordingly this Court appoints Mr.Justice K.Kannan, retired Judge of Punjab & Haryana, High Court. The Election Officer shall conduct election by giving advertisement as per bye law and receive the nomination and conduct election as per bye laws within three months from the date of receipt of a copy of this order.

9. It is also made clear the entire election only relates to Reg.No.16/1959 and not in respect of Reg No.276/97 It is already stated above that the society is the one and the same bearing No.16/59 since 276/97 is also registered by the same members and it has become defunct such view of the matter election for the office bearers to be elected only for the kennel Club of India bearing Reg.No.16/1959

10. It is also made clear that this Court has already held that

the orders passed by the 1st & 3rd defendants by non application of mind and such orders cannot be used by anybody for canvassing in the forthcoming election to be conducted by the election officer and the fee of the Election Officer is fixed at Rs.3,00,000/- .

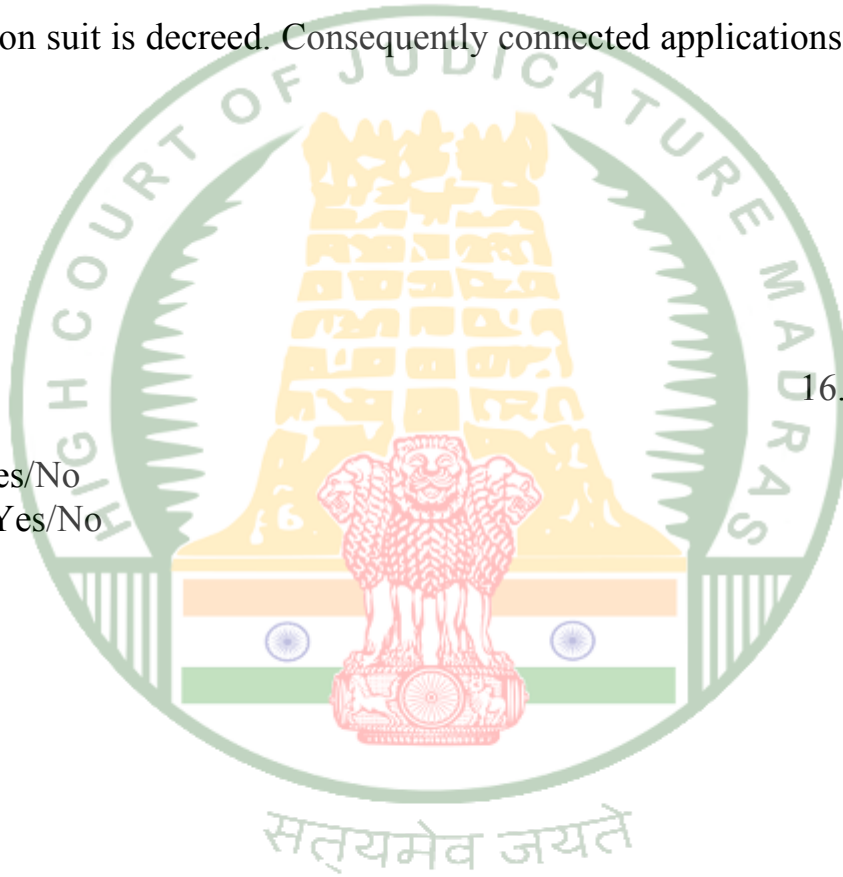
11. Election to be conducted as per by laws. The Election Officer shall see that ballot papers are sent to all the members and received as per by law and Election Officer can conduct Annual General Meeting either virtually or physically. With this observation the suit is disposed of.

12. Since the entire suit is disposed of and election officer is already appointed to conduct fresh election, Annual General meeting scheduled to be held on 18.12.2020 is not required at all. However it is made clear that since the Election time is extended for another three months by this Court the Annual General Meeting for approval of other business of the club including the election can be conducted after the election is over. The election officer is also at liberty to appoint any other officer for his assistance and fee for such officer appointed by the Election Officer shall be borne by the club and till the Election is over

the present office bearers shall continue to run the society. However, it is made clear that they can sign the cheques only in respect of maintenance of the club and paying the salary etc., and no other decision with regard to the financial burden should be taken up by them. With the above observation suit is decreed. Consequently connected applications are also closed.

16.12.2020

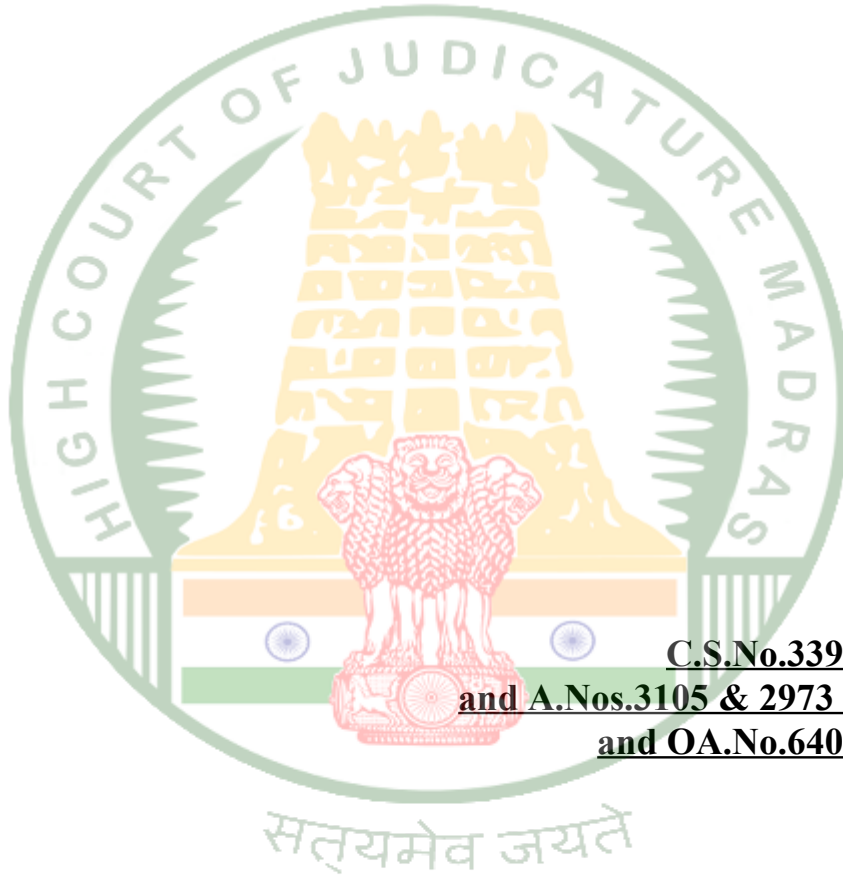
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