

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW

WRIT PETITION No. OF 2014(M/S)

Brahmadesam Narasimhaiyer Venkataraman (B.N. Venkataraman)',
aged about 66 years,
S/o Late B.S. Narasimhaiyer
R/o D-1/233 Jankipuram
Sector F
Lucknow-226021

..... Petitioner

Versus

Registrar,
Firms, Society and Chits,
Vikas Deep Building, Station Road,
Lucknow-226001 and others Respondents

I N D E X

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05)	Annexure No.02 True copy of Renewal of Registration of the Samithi	
06)	Annexure No.03 True copy of the list of office Bearers of Sri Ayyappa Sewa Samith of 2013-14, and 2014-15	
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Lucknow
2014

(SHYAM MOHAN)
Advocate
Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
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In Re. :
WRIT PETITION No. OF 2014(M/S)

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DATES & LIST OF EVENTS

<u>D A T E</u>	<u>P A R T I C U L A R S</u>
21.6.1983	Sri Ayyappa Sewa Samithi was registered on 31.6.1983 vide Registration No. 680/1983-84 by the Registrar of Societies Registration Act.
21.6.2010	Renewal of the registration of the Samithi for five years issued on 21.7.2014
2010	Date of Annual General Meeting not known but beyond 90 days and new committee with present President has taken into effect.
30.10.2011	Annual General Meeting for the year 2010-11 beyond 90 days, no quorum and new committee with the same President.
30.9.2012	Annual General Meeting for the year 2011-12 beyond 90 days, no quorum and new committee with the same President
13.10.2013	Annual General Meeting for the year 2012-13 beyond 90 days, adjourned for want of quorum.
20.10.2013	Adjourned Annual General Meeting for the year 2012-13 beyond 90 days, new committee with the same President and petitioner as Joint Secretary
10.3.2014	Petitioner made complaint to the respondent no. 1 on irregularities committed by President/ Secretary of the Samithi.
29.8.2014	Secretary sent notice regarding Annual General Meeting on 21.9.2014 through e-mail without agenda.

30.8.2014 Petitioner made supplementary complaint to Respondent No. 1 in continuation to the complaint dated 10.3.2014.

Respondent No.2(corrected No.3) has fixed 21.9.2014 for Annual General Meeting 2013-14

Hence the present writ petition.

Lucknow

2014

(SHYAM MOHAN)
Advocate
Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW

C. M. APPLICATION No. OF 2014
In Re. :
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aged about 66 years,
S/o Late B.S. Narasimhaiyer
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..... Petitioner

Versus

- 01) Registrar,
Firms, Society and Chits,
Vikas Deep Building, Station Road,
Lucknow-226001
- 02) Dy.Registrar,
Firms, Society and Chits,
Vikas Deep Building, Station Road,
Lucknow-226001
- 03) Sri Ayyappa Sewa Samithi
Present address: D-1385/4 Indira Nagar
Lucknow-226016
Through its Secretary
Sri V.V Subramaniyan
- 04) Acharya Shri S G Swaminathan s/o Subramaniam Ganesan
Present address: C-1059/7 Indira Nagar
Lucknow-226016
President, Sri Ayyappa Sewa Samithi.

APPLICATION FOR INTERIM RELIEF

For the facts, reasons and circumstances stated in the accompanying writ petition, supported by an affidavit, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to direct the opposite party No. 1 to consider the complaint/application made by the petitioner and take appropriate action as provided under section 22 and 24 of the Societies Registration Act against alleged office bearers who committed wrong within stipulate time as fixed by this Hon'ble Court and till disposal of the complaint

the Annual General Meeting fixed dated 21.9.2014 be directed to be postponed or direct to hold meeting of the Annual General Meeting under the supervision of any nominated persons of the Register/Deputy Registrar.

Any such other order as deem fit and proper in the circumstances of the case may kindly also be passed.

Lucknow
2014

(SHYAM MOHAN)
Advocate
Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
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Present address: C-1059/7 Indira Nagar
Lucknow-226016
President, Sri Ayyappa Sewa Samithi.

..... Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA**

The Hon'ble the Chief Justice and his companion Hon'ble Judges of the
above mentioned Court sitting at Lucknow.

The humble petition of the petitioner most respectfully showeth :

- 1) That by means of the present writ petition, the petitioner is praying for appropriate direction to respondent no. 1 to consider and proceed on the complaint/application made by the petitioners dated 10.3.2014 and supplementary complaint dated 30.8.2014. by which the petitioners prayed for taking appropriate action against financial irregularity committing by President/Secretary of the Society i.e responding No. 3 for misappropriating the property of the society as well as calling the Annual General Body Meeting without issuance of any agenda to the members of the society. A copy of the complaint dated 10.3.2014 made by the petitioner who is the Joint Secretary of Sri Ayyappa Sewa Samithi before the respondent no.1 for taking appropriate action as well as the supplementary complaint dated 30.8.2014 are annexed herewith as **Annexure No. 1** collectively.

The petitioner is also praying for mandamus commanding the respondents not to proceed in the meeting fixed dated 21.9.2014 of Annual General Meeting without following the due process as mentioned in the by-laws of the society i.e. giving 14 days along with the agenda and all other documents which sought to be considered in Annual General Meeting as provided under Clause 13 of byelaws/Memorandum of Association of the society.

- 2) That the petitioner state that he has not filed any writ petition against the aforesaid grievance before this Hon'ble Court either at Lucknow or at Allahabad and that this is his first writ petition.
- 3) That the petitioner states that he has not received any caveat requiring her to serve copy of the petition to any counsel in the event of challenge to the present cause of action.
- 4) That Sri Ayyappa Sewa Samithi , Govind Cottage, 51/27 Udaiganj Road, Lucknow was registered on 21.6.1983 vide Registration No.680/1983-84 by the Registrar of the Society under Societies Registration Act and the terms of the society has already been renewed on 21.6.2010 for five years on the documents submitted by the petitioner as officiating Secretary of the society and the renewal of the registration certificate has been issued on 21.7.2014. A copy of the renewal of registration is being annexed herewith as **Annexure No. 2**.

- 5) That the last election of the Governing Council was held for the year 2013-14 and the petitioner was elected as Joint Secretary and the said Executive Committee is continuing for the year 2014-15 also. A copy of the office bearers of the Sri Ayyappa Sewa Samithi of 2013-14 and 2014-15 is collectively annexed as **Annexure No. 3**
- 6) That the byelaws of the society was framed as Memorandum of Association of Sri Ayyappa Sewa Samithi, Lucknow and the name of the Samithi known as Sri Ayyappa Sewa Samithi and in clause 3 the Aims, Objectives and Functions of the society is to celebrate Mandala Pooja of Lord Ayyappa during Mandala Period regularly, to conduct Bhajanas in praise of Lord at periodical intervals, to arrange special Bhajanas by inviting Artists, locally or from outside, to arrange at periodical intervals, functions of devotional, religious and entertainment character, either free or otherwise, to celebrate various festivals, Birth Anniversaries, Death Anniversaries of Saints and Sawants, to organize, build & maintain Library etc., to build otherwise acquire buildings, premises, sites etc. to carry on the objects of the Samithi, to construct the Temple for Lord Ayyappa and other Hindu Deities in a suitable plot in Lucknow, to raise funds for carrying on the proposed activities of the Samithi by subscription, donations in cash and kind, grants from Govt. sale of tickets and other lawful means, A copy of the Memorandum of Association of Sri Ayyappa Sewa Samithi is being annexed herewith as **Annexure No. 4.**
- 7) That Clause 1(a) provides the eligibility of membership as those who are 18 years of age and who agree to subscribe to the aims and objects of the Samithi and adhere by the Rules and Regulations of the Samithi.
- 8) That Clause 2 provides three types of members namely patrons who contribute Rs. 250/- or more shall be enlisted as patrons, Life Members who will pay Rs. 100/- as subscription/contribution shall be enlisted as life member, person who pay an annual subscription of rs. 10/- shall be enlisted as ordinary member and Clause 3 provides that all members have equal rights and privilege, Clause 4 provides Management and Administration i.e. Executive Committee of the General Body of the Samithi for day to day management and administration of the Samithi, to be elected every year out of the General Body of the Samithi and its Annual General Meeting and shall consist one President, One Vice

President, One Secretary, One Joint Secretary, One Treasurer, Six Ordinary Members and One Auditor.

- 9) That clause 10 provides the Power and Duties of the Executive Committee i.e. the control all income and expenditure of the Samithi and to utilize the funds of the Samithi for the furtherance of the aims and objects of the Samithi, preserve, maintain, manage and develop property of all kinds that has been or may be acquired by the Samithi by purchase, lease or otherwise, for such duties as may be prescribed.
- 10) That clause 11 provides duties of the office bearers in which President shall generally guide and supervise the affairs of the Samithi and shall preside of all meetings of general body and the Executive Committee, Secretary shall be the Chief Executive Officer of the Samithi who shall correspond on behalf of the Samithi and arrange functions etc. arrange for holding meeting of the committee and of the General Body, Maintain all records including the record of proceedings of the Committee and the General Body Meeting, prepare an annual report of the activities of the Samithi, Power to execute agreement , contracts etc. on behalf of the Samithi. The Joint Secretary shall generally assist the Secretary and act for him in his absence.
- 11) That clause 12 provides that the meetings of which clause (a) provides that the Committee shall meet as often as may be necessary for the transaction of the business and shall be convened by the Secretary, or on the signed requisition of three or more members for the consideration of any particular subject or subjects. The quorum of such meeting shall be six, of whom at least four shall be non office bearers. Notice of such meeting shall ordinarily be given to each member together with the Agenda at least 24 hours before such meetings. In urgent cases a decision may be arrived at by circulation of the papers amongst the members of the committee and the same should be ratified at its next meeting.
- 12) That clause 13 provides that the General Body meeting shall consists of all the three types of members and clause 13(A) provides that there shall be an Annual General Body meeting as early as possible after close of the year but not later than 90 days of the close of the year, to confirm the minutes of the previous general body meeting, consider and adopt the report and audited accounts of the Samithi for the previous year ,

Consider any other matter that may have been given notice of the members or brought forward at the meeting with the permission of Chair.

- 13) That Clause 14 of the Memorandum of Association provides that to conduct the General Body meeting 14 days notice indicating the date, hour and venue in regard to the Annual General Meeting and 7 days notice in regard to Special General Body Meeting shall be given to every member along with the copy of agenda and amendments if any to the Rules together with a copy of the Annual Report and Audited Accounts shall be supplied to every member atleast three days in advance of the date of the meeting.

Members desirous of moving resolution or amendments to the Rules and By-laws shall given written notice to the Secretary at least seven days before the date of the General Body Meeting, those who want to put question in the meeting shall give notice in writing at least two days before the meeting.

- 14) That Clause 17 provides Accounts i.e. the Committee shall cause true accounts to be kept of all sums of money received and expended by the Samithi and of the matters in respect of which such receipt and expenditure take place, and of the assets and liabilities of the Samithi and clause 18 provides Audit of accounts of the Samithi shall be audited by an auditors appointed by the General Body and his report shall be submitted to the Body along with Annual Report.

- 15) That Clause 22 provides that all the provisions of the Societies Registration Act 1860 will apply to the Samithi.

- 16) That since meeting of Annual General Body is being called for last about 3-4 years without providing any agenda and providing any documents which were required to be considered in the Annual General Meeting to the Members of the Samithi as such the provisions of By-laws continuously being violated by the President/Secretary of the Society and reason behind that was that the members of the Samithi may not come to know about the transactions made by the President and Secretary of the society, sale and purchase of the land of the Samithi or from the Samithi, no audit inspection made, the audit not being made every year within the stipulated period of 90 days of close of the year and

the audited accounts made by the auditor and anomalies, is not being placed in the Annual General Meeting for discussion.

- 17) That the petitioner who being the Joint Secretary of the society and looking affairs of the society, and the bungling made with the collusion of the President and Secretary by usurping funds of the Samithi without taking cognizance of the Executive Committee of the Samithi as well as member of the society and not placing same in the ordinary meeting of the Executive Committee and also not placing in the annual general body meeting. So the petitioner made complaint on 10.3.2014 to the respondent no. 1 pointing out the irregularities officially, financially and otherwise being committed by the President/Secretary of the Samithi in violation of the various provisions of the by-laws of the Samithi as well as the provisions of the Societies Registration Act.

- 18) That in the said complaint the petitioner pointed out to the Registrar of Society that the President or Secretary is signing even in a single minutes of meeting as per records in the minutes books of the Samithi, minutes of many meeting left blank, for 3 years since 2010-11, the minutes were not properly drafted nor signed by the President nor Secretary, under Chairmanship of S.G. Swaminathan not a single meeting had the agenda of ratifying the minutes of previous meeting, there are errors, omissions on the part of President/ Secretary under Chairmanship of Sri S.G. Swaminathan amount embezzlement of funds, in the year 2011-12 the Mandala Poojan expenses were of order of Rs., 59,000/- and Income amount of Rs. 37,000/-. Likewise in the year 2013 the Mandala Poojan expenses were of the order of Rs. 99,000 whereas income was around Rs. 60,000/- only, in the year 2013-14 the expenses were of the order of Rs. 1,25,000/- whereas the income is Rs. 60,000/- only, the expenses have been made without any approval of the society or placing the same before the Executive Committee. As such there is negative gain and expending the money beyond the funds of the Samithi. It was also pointed out that like Annual General Meeting in which elected President for the first time is not available on record and no Annual Report has been prepared either by the President/Secretary of the society which should be placed in the annual general meeting, no member of the Samithi has ever bothered to inspect the minutes of book or how it is being maintained.

19) That in the supplementary complaint dated 30.8.2014 filed before the deputy Registrar of the society it has been pointed out by the petitioner that Secretary has issued notice calling for AGM dated 21.9.2014 on personal e-mail without specifying agenda whereas under by-laws of society there is no provision for sending notice on e-mail, no confirmation received by post as well as any agenda has not been circulated which is to be placed before the Annual General Meeting for consideration and under by-laws of the society the members have right to lodge their version atleast 7 days prior to meeting for which there must be agenda circulated to the members of the society, no record of audit accounts either being informed to the members of the society or executive Committee/ Office bearers of the society and in absence of that calling meeting fixing 21.9.2014 for Annual General meeting of the society is altogether violation of by-laws of Samithi so prayed for staying the General Body meeting and take immediate action. The intimation regarding meeting of A.G.M has been sent on e-mail to the petitioner on 29-8-2014, without any agenda, copy of which email information is annexed herewith as **Annexure No. 5**

20) That the Registrar of society is sitting tight over the matter and not taking any action so far on the complaint/application made by the petitioner on 10.3.2014 and 30.8.2014 where under section 24 of the Societies Registration Act once an information received under section 22 or otherwise have power to investigate and inspect or investigate into the affairs of the society and call the record of the society as such the Registrar/Deputy Registrar is not discharging the function which is provided under statute.

21) That Section 22 and 24 of the Societies Registration Act empowers the Registrar or the person nominated by him on receiving complaint/information for right of inspection/investigation into the affairs of the society and call the society to produce the books of accounts and other records and examine on other members of the employer or society, under sub-section 3-A have also right to seize all the records including account books of the society and the Registrar after receiving the investigation report may direct for removal any defect and also took procedure under section 12-A for cancellation of the registration as well as under section 13-D for dissolution of the society. Even then the Registrar/Deputy Registrar of the Society sitting tight over the matter after receiving the complaint filed by the petitioners who is Joint Secretary of the Samithi pointed out the irregularities committed by the

President/Secretary of the Society and till date Registrar/ Deputy Registrar has not taken cognizance on complaint/application of the petitioner.

- 22) That the statutory provisions obligate upon Registrar/Deputy Registrar on receiving the complaint to make investigation and for that take appropriate action calling the records of the society as well as looking the records could take appropriate action under section 12-A as well as section 13-B of the Societies Registration Act which they are not following and sitting tight over the matter even after receiving complaint made by the petitioner informing illegality and irregularities committed continuously as well as contravention of the by-laws as well as the contravention of the provisions of the Act.
- 23) That without applying provisions of the by-laws which requires 14 days notice along with the agenda as provided under by-laws of the society namely clause 13 and 14 as well as section 4 of the Societies Registration Act and without circulating agenda to the members of the society the meeting has been fixed on 21.9.2014 of Annual General Meeting in violation of the aforesaid provisions as such the so called meeting deserves to be stayed in the interest of justice.
- 24) That feeling aggrieved and having no other alternative and efficacious remedy, the petitioner begs to prefer the instant writ petition in terms of Article 226 of the Constitution of India, on the following, amongst other, grounds :

G R O U N D S

- A) Because the Registrar of society is sitting tight over the matter and not taking any action so far on the complaint/application made by the petitioner on 10.3.2014 and 30.8.2014 where under section 24 of the Societies Registration Act once an information received under section 22 or otherwise have power to investigate and inspect or investigate into the affairs of the society and call the record of the society as such the Registrar/Deputy Registrar is not discharging the function which is provided under statute.

- B) Because Section 22 and 24 of the Societies Registration Act empowers the Registrar or the person nominated by him on receiving complaint/information for right of inspection/investigation into the affairs of the society and call the society to produce the books of accounts and other records and examine on other members of the employer or society, under sub-section 3-A have also right to seize all the records including account books of the society and the Registrar after receiving the investigation report may direct for removal any defect and also took procedure under section 12-A for cancellation of the registration as well as under section 13-D for dissolution of the society. Even then the Registrar/Deputy Registrar of the Society sitting tight over the matter after receiving the complaint filed by the petitioners who is Joint Secretary of the Samithi pointed out the irregularities committed by the President/Secretary of the Society and till date Registrar/ Deputy Registrar has not keen cognizance on complaint/application of the petitioner.
- C) Because the statutory provisions obligate upon Registrar/Deputy Registrar on receiving the complaint to make investigation and for that take appropriate action calling the records of the society as well as looking the records could take appropriate action under section 12-A as well as section 13-B of the Societies Registration Act which they are not following and sitting tight over the matter even after receiving complaint made by the petitioner informing illegality and irregularities committed continuously as well as contravention of the by-laws as well as the contravention of the provisions of the Act.
- D) Because without applying provisions of the by-laws which requires 14 days notice along with the agenda as provided under by-laws of the society namely clause 13 and 14 as well as section 4 of the Societies Registration Act and without circulating agenda to the members of the society the meeting has been fixed on 21.9.2014 of Annual General Meeting in violation of the aforesaid provisions as such the so called meeting deserves to be stayed in the interest of justice.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to :-

- i) issue a writ, order or direction or writ in the nature of mandamus commanding the respondent no. 1 to consider and proceed on the complaint made by the petitioner by exercising power provided under section 22 and 24 of the Societies Registration Act within time as fixed by this Hon'ble Court expeditiously and till consideration of the complaint the Annual General Body meeting fixed dated 21.9.2014 be directed to be postponed or be directed to be held under the supervision of the nominated member of the respondent no 2.

- ii) issue any other appropriate writ, order or direction in favour of the petitioner as the Hon'ble Court may deem fit in the circumstances of the case.

and

- iv) award the costs of the petition to the petitioner.

Lucknow
2014

(SHYAM MOHAN)
Advocate
Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW

WRIT PETITION No. OF 2014(M/S)

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Present address: C-1059/7 Indira Nagar
Lucknow-226016
President, Sri Ayyappa Sewa Samithi.

..... Respondents

A F F I D A V I T

I, Brahmadesam Narasimhaiyer Venkataraman (B.N. Venkataraman)', aged about 66 years, S/o Late B.S. Narasimhaiyer, Religion : Hindu, Qualification – B.E.(Electrical & Electronics), Occupation – Retired, R/o D-1/233 Jankipuram, Sector F, Lucknow-226021 the deponent, do hereby solemnly affirm and state on oath as under :-

- 1) That the deponent is petitioner himself in the above-noted writ petition, as such, is well conversant with the facts and circumstances of the case deposed hereunder.
- 2) That the contents of paragraph 1 to of the accompanying writ petition are true to my personal knowledge and those of paragraph are believed to be true on the basis of information derived from record, while those of paragraphare believed to be true based on legal advice.
- 3) That the annexure nos.1 to filed with the writ petition are true copies of their originals and the same have been compared by me personally.

Lucknow
2014

DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of paragraph 1 to of this affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed, so help me God.

Lucknow
2014

DEPONENT

I identify the deponent, who has signed in my presence.

CLERK

Solemnly affirmed and verified on 2014 at a.m./p.m. by Shri, the deponent, who is identified by Shri, Clerk of, Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that she understands contents of this affidavit, which are read over and explained to her by me personally.

OATH COMMISSIONER