

Court No. - 10

Case :- WRIT - C No. - 10530 of 2021

Petitioner :- C/M Dr. Rajendra Prasad Madhyamik Vidyalaya And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C.,K.K.Rao

Hon'ble Kshitij Shailendra,J.

In Re:- Impleadment Application No.2 of 2021

1. Heard Sri Vinod Kumar Singh along with Sri K.K. Rao, learned counsel for the applicant-Praveen Kumar Rao, seeking impleadment in the present writ petition.
2. There is no dispute about the fact that the order impugned was passed on a complaint moved by the respondent no.6, namely Ram Sanehi Rao, who was none other than the father of the petitioner and whose particulars and array have already been deleted by the petitioner under the order passed in the year 2021.
3. The present application has been filed seeking impleadment on two grounds, firstly, that the applicant is son of Ram Sanehi Rao and, secondly, that as per the Bye-laws of the Committee, in a meeting held on 11.06.2021, the applicant-Praveen Kumar Rao has been elected as Manager/ Mantri.
4. Though, serious dispute has been raised with regard to the locus of the applicant to participate in the proceedings of the present writ petition, I find that there is no dispute regarding the fact that applicant is a member of the concerned Society and if not as a son of Ram Sanehi Rao, he has a right to participate in the proceedings at least in the capacity of a member and apprise the Court about the nature of dispute involved.
5. Despite serious objections raised by the learned counsel for the petitioners, the impleadment application is **allowed** if not under Order 1 Rule 10 CPC, then certainly under Chapter XXII Rule 5-A of the High Court Rules, 1952.
6. Sri Vinod Kumar Singh, learned counsel for the applicant-Praveen Kumar Rao is directed to carry out impleadment of Praveen Kumar Rao as respondent no.6 in the array of parties during the course of day.

Order on Writ Petition

1. This Court, by order dated 02.09.2021 and recently on 15.09.2023, directed that prayer for interim relief shall be considered. Therefore, this Court proceeds to consider the merits of the case.

2. By the order impugned dated 25.01.2021, the Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur (respondent no.3) has referred the matter to the Prescribed Authority in purported exercise of power under Section 25(1) of the Societies Registration Act, 1860.

3. Learned counsel for the petitioner submits that in the elections of 2007, 2012 and 2017 the society headed by the petitioner has been successively elected and no dispute was ever raised in relation to the elections of 2007, 2012 and 2017, however, while the term of five years pursuant to the elections held in 2017 was continuing, the father of the newly impleaded respondent no.6 filed a complaint before the Assistant Registrar stating that no elections were held after 2007 and all the proceedings being fabricated and unregistered, last elections held in 2017 are invalid.

4. It is contended that the Assistant Registrar, without recording lawful satisfaction to the genuinity of the dispute, has observed that there is a dispute existent in respect of the elections dated 24.06.2012, 02.10.2015, 25.06.2017 and 04.10.2020 as well as the tenure of first three elections out of the said four and, therefore, the matter has been referred for the purposes of taking a decision on the aforesaid elections and proceedings.

5. Learned counsel has placed reliance upon the following judgments of this Court:-

"(i) Shiv Murti Verma Vs. State of U.P. and others: 2011 (3) ADJ 755; and

(ii) Kisan National Education Trust Pratapganj and another Vs. Prescribed Authority (S.D.M.) and others: 2019 (1) ADJ 817)."

6. By placing reliance upon the aforesaid judgments, it has been argued that a reference to decide an infructuous dispute can neither be ordered nor can it be decided and, therefore, by cryptically making a reference, the Assistant Registrar has violated the proposition of law settled in the aforesaid judgments.

7. On the other hand, Sri Vinod Kumar Singh, learned counsel has

argued that none of the lists of office bearers is registered in the office of the Assistant Registrar pursuant to the elections relied upon by the petitioner side and, therefore, every member including the newly impleaded respondent no.6 has every right to assail the validity of the latest elections and the Assistant Registrar not being empowered to adjudicate the validity of an election, has rightly referred the matter to the Prescribed Authority.

8. Prima facie, I am of the opinion that for making a reference the Assistant Registrar has to record finding with regard to bona fide and genuine dispute or doubt and, in any case, he cannot make a reference in relation to the tenure or the elections held in past about which even no adjudication can be made by the Prescribed Authority.

9. Nevertheless, the members at the strength of 1/4th quorum can certainly approach the Prescribed Authority under the same provision, i.e. Section 25(1) of the Act, 1860.

10. Leaving the rights of anyone to satisfy statutory requirement of 1/4th, before approaching the Prescribed Authority, I am, prima facie, satisfied that the order of reference is not according to law and is held in teeth of the judgments of this Court in the case of **Shiv Murti Verma (supra)** and Kisan **Kisan National Education Trust Pratapganj (supra)**.

11. While this Court was inclined to stay the effect and operation of the order impugned, Sri Vinod Kumar Singh, learned counsel submits that the order impugned may be set aside leaving the rights of the parties open to be adjudicated before the Assistant Registrar or the Prescribed Authority in view of the fact that the petitioners have held subsequent elections in 2022, as stated by the petitioners.

12. In view of the above, the writ petition succeeds and is **allowed**.

13. The order impugned dated 25.01.2021 passed by the Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur (respondent no.3) is **quashed**.

14. The parties concerned are at liberty to approach the Assistant Registrar or the Prescribed Authority strictly in accordance with the statutory provisions contained under Section 4 or 25 of the Act, 1860.

Order Date :- 2.11.2023/AKShukla/-