

**Court No. - 10**

**Case :-** WRIT - C No. - 23555 of 2023

**Petitioner :-** Society Sri 108 Pujoyapad Advait Advait Punch Parmeshwar Panchaiti  
Akhara Bada Udasin And 4 Others

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Sankalp Narain, Jai Govind Upadhyay, Samarath Singh

**Counsel for Respondent :-** C.S.C., Aditya Upadhyay, Vibhu Rai

**Hon'ble Kshitij Shailendra, J.**

1. Heard Shri V.K. Singh, learned Senior Counsel assisted by Shri M.B. Singh, learned counsel for the petitioners, learned Standing Counsel for respondent nos.1, 2 and 3 and Shri Prabhakar Awasthi for respondent nos.4 and 5.

2. The writ petition has already been dismissed as withdrawn in respect of petitioner no.3 by order dated 16.10.2023 passed on Civil Misc. Withdrawal Application No.2 of 2023.

3. This writ petition has been filed challenging the order dated 09.06.2023 whereby the Assistant Registrar has, infact, given effect to an injunction order dated 23.05.2023 passed by the Civil Court in Original Suit No.381 of 2023.

4. The submission of Shri V.K. Singh, learned Senior Counsel is that on account of anti-institutional activities of the private respondents, a decision was taken in the meeting held on 02.05.2023 to expel private respondents from the Society and, thereafter, in another meeting dated 03.05.2023, the petitioner nos.2 was elected as temporary Secretary (Asthati sachiv). It is contended that the civil suit was filed with the following array of parties:-

"Mahant Raghu Muni,

Aged about 59 years,

Mukhiya Mahant (Paschim Padhat)

Sri 108 Pujoyapad AdvaitPunch Parmeshwar

Panchayati Akhara BadaUdasin Nirvan  
Chela of MahantSanatan Muni Ji,  
R/o Panchayati AkharaBada Udasin  
Kitganj, Prayagraj, Uttar Pradesh  
.....Plaintiff

Versus

Mahant Maheshwar Das  
Mukhiya Mahant (Uttar Padhat)  
And also Sri Mahanta  
Chela of Nanak Saran Das Ji.

Mahant Durga Das  
Mukhiya Mahant (Dakshin Padhat)  
Chela of Mahant Pancham Das Ji

Mahant Advaitanand  
Mukhiya Mahant (Purba Padhat)  
Chela of Mahant Gurusaranandji

(All the defendants' resident of Panchayati Akhara Udasin,  
Kitganj, Prayagraj Uttar Pradesh)

..... Defendants"

5. It is further contended that in the civil suit, though the petitioner nos.1 and 2 were not arrayed as parties and only petitioner nos.3, 4 and 5 were arrayed as defendants, an order of temporary injunction was passed injuncting the defendants that on the basis of Resolution dated 02.05.2023, no interference be caused in the possession and rights *qua* Society described in the Resolution dated 02.05.2023. It is further contended that when the proceedings dated 03.05.2023 were placed before the Assistant Registrar on 09.05.2023, as also noted in paragraph

30 of the writ petition, the Assistant Registrar has passed order impugned committing violation of principles of natural justice, inasmuch as, the private respondents appeared before the Assistant Registrar and produced the injunction order dated 23.05.2023 and without granting any opportunity of hearing to the petitioners despite the fact that they had sought time on 06.06.2023 to submit some documents, the order impugned has been passed. It is further contended that applications dated 12.05.2023 and 15.05.2023 were also submitted by the contesting respondents and by the order impugned, the same have been disposed off.

6. In sum and substance, the submission is that, even if the Civil Court has passed an injunction order, the same would be binding only in between the parties to the suit and once petitioner nos.1 and 2 are not parties to the suit, injunction order cannot bind them and it cannot be said to be an order in *rem*, particularly and specifically when only the defendants were restrained from interfering and not everyone. In support of his submission, reliance has been placed upon the judgment of the Apex Court in ***Shiv Kumar Tiwari (Dead) By Lrs. v. Jagat Narain Rai And Others*** reported in ***(2001) 10 S.C.C. 11***.

7. It is also contended that the Assistant Registrar was otherwise competent to examine the validity of the Resolution and the proceedings recorded therein, by an independent exercise of powers under the provisions of the Act, 1860 and, therefore, simply enforcing injunction order and recording nothing else in the order impugned, the order cannot sustain.

8. Learned Standing Counsel submits that proceedings under the Act, 1860 are held by the Administrative Officers and they are always subject to the proceedings of the civil suit and, therefore, if the Assistant Registrar has honored the order of the

civil court, no illegality can be pointed out in the said order.

9. Shri Awasthi, submits that the proceedings dated 02.05.2023 being contrary to the registered Bye-laws of the Society are invalid. He has placed relevant Clauses of the Bye-laws and submits that for taking such decisions as have been taken in the aforesaid meeting, the complete quorum of entire General Body should be there, however, only three persons have taken the decision dated 02.05.2023 and, therefore, the same cannot sustain. He has also argued that the petitioners have filed an application seeking recall of the order dated 06.06.2023 and claimed relief for its disposal in terms of prayer No.3 of the writ petition. Further submission is that seeking impleadment in the suit in question, an application under Order I Rule 10 Civil Procedure Code, 1908 (in short 'C.P.C.') was filed, discussion whereof is contained even in the injunction order and application was not pressed and hence, rejected for want of prosecution which shows that the petitioners are not taking any interest in the matter before the Civil Court nor have they assailed the injunction order and, therefore, injunction order is operative.

10. Having heard learned counsel for the parties, I find that the civil suit in question is at initial stage. Any observation made by this Court, at this stage, with regard to either validity of the Resolutions dated 02.05.2023 and 03.05.2023 or injunction order would certainly prejudice the rights of the parties to the litigation at initial as well as at final stage. Therefore, the Court refrains itself from making any observation regarding nature of injunction order as remedy of filing application seeking vacation of the injunction order under Order XXXIX as well as appeal under Section 104 read with Order XLIII(1)(r) C.P.C. is still available to the affected parties.

11. At the same time, the order impugned which simply enforces injunction order, terming it to be *ex-parte* order in view of the stand taken by the petitioners themselves that despite time sought on 06.06.2023 for filing objections immediately after two days, the order was passed and, therefore, the principles of natural justice have been violated, I find that a very detailed recall application dated 14.06.2023 has been filed before the Assistant Registrar, a copy whereof has been annexed as 'Annexure No.19' to the writ petition. The recall application not only discloses array of parties, nature of suit but also various other aspects and is still pending.

12. Though the submission was made that probably Assistant Registrar while entertaining the recall application would consider the same as a review application and may say that review is not maintainable, I find that since recall has been sought in the matter of alleged violation of principles of natural justice and terming the action of Assistant Registrar as a procedural error, it is directed that the Assistant Registrar will look into the recall application and will decide the same on its own merits after hearing petitioners as well as respondent nos.4 and 5 **on or before 15.12.2023.**

13. None of the parties shall be allowed any adjournment in the matter and the documents they want to exchange in between them, must be exchanged **before 20.11.2023.**

14. The order impugned dated 09.06.2023 **shall remain subject to the order to be passed on the recall application.**

15. The writ petition stands **disposed off.**

**Order Date :- 19.10.2023**  
Jyotsana