

Court No. - 10

Case :- WRIT - C No. - 27139 of 2023

Petitioner :- The C/M Sri Ram Prasad Chhedi Lal Yadav And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shivendu Ojha,Ratnakar Upadhyay,Sr. Advocate

Counsel for Respondent :- C.S.C.,Laxman Pathak

Hon'ble Kshitij Shailendra,J.

1. Heard Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, learned counsel for the petitioners, learned Standing Counsel for the respondents no.1, 2 and 3 and Sri Gautam Baghel along with Sri Laxman Pathak, learned counsel for the respondent no.4 and perused the record.

2. Considering the nature of order impugned, this Court passed following order on 03.10.2023:-

"1. A request for passing over of the case has been made by learned counsel for the contesting-respondent.

2. Shri Radha Kant Ojha, learned Senior Advocate appearing for the petitioners by referring to the proceedings of Writ C No. 40440 of 2022 (C/M Sri Ram Prasad Chhedi Lal Yadav Shiksha Samiti and another vs State of U.P. and 2 others) and two orders passed therein submits that the Commissioner, though has decided the appeal by order dated 14.06.2023, challenged in the present writ petition, he was supposed to exercise the power as an Appellate Authority under section 4 (1) A of Societies Registration Act, 1860 (as amendment and applicable in the State of U.P.), whereas he has concluded that since the registration of the society has not yet been cancelled under section 12-D, the appeal under section 12-D is not maintainable. He therefore submits that the Commissioner has failed to appreciate the nature of lis and has also, at the same time flouted the direction issued by this Court in the earlier round of litigation. He further submits that the appeal has been found to be not maintainable under section 12-D, whereas it was very much maintainable under section 4(1) A of the Societies Registration Act, 1860. Shri Ojha further submits that since other finding has been recorded by the Commissioner, which could be recorded by the Prescribed Authority, ultimately the matter should be

referred to the Prescribed Authority.

3. Before forming any opinion on the merits of submissions advanced, a request for adjournment made by learned counsel for the contesting respondent is accepted.

4. Put up this case as fresh on 18.10.2023.

5. It is made clear that the matter shall not be adjourned on the next date and arguments shall be advanced on the aforesaid line."

3. Learned Senior Counsel today sticks to his argument that dismissal of his appeal as not maintainable is bad. On the insistence of the Court, memo of appeal has been produced before this Court which has been perused.

4. The Court finds that the appeal was titled as an Appeal under Section 12-D of the Societies Registration Act and was filed in furtherance of the orders passed in the earlier round of litigation as noted above.

5. It is contended by Sri Ojha that though the dispute was beyond Section 12-D, mere mention of wrong provision of law would not be fatal to the petitioners' cause and the Commissioner was under statutory obligation to decide the appeal considering the nature of challenge made before him. He further submits that the dispute is regarding filling up of short term vacancy and, therefore, it falls within Section 25(1) of the Act and, under the circumstances, the Assistant Registrar was not justified to compel the petitioners to approach the Prescribed Authority after satisfying the statutory requirement of 1/4th quorum, rather he should himself have referred the dispute to the Prescribed Authority and, therefore, the order impugned before the appellate authority was unsustainable.

6. Learned Standing Counsel submits that once the petitioners chose to file appeal under Section 12-D of the Act, the Commissioner was justified to deal with the same under the said provision of law and, therefore, dismissal is justified. He further submits that other findings have also been recorded in the order impugned.

7. Sri Gautam Baghel, learned counsel for the respondent no.4, submits that the dispute is in relation to the induction of the petitioner no.2 as member in the society and, therefore, it falls within the scope of Section 4-B(2) and since the petitioner failed to satisfy his induction as valid member in the society despite sufficient opportunity provided to him, as noted in the order impugned, the Commissioner has decided the matter in its entirety and not merely by looking at the provision mentioned on the memo of appeal. Sri Baghel has read various observations recorded in the order impugned and submits that the order is on merits and should not be interfered with.

8. Having heard the learned counsel for the parties, I find that at various places of the order, Section 12-D as well as maintainability of appeal in the light of said provision has been dealt with.

9. It is well settled that merely quoting wrong provision of the statute for exercising power would not invalidate the order passed by the authority if it is shown that such order could be passed under other provisions of the statute. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Vikram Singh Junior High School Vs. District Magistrate (Fin. & Rev.) and others: (2002) 9 SCC 509.**

10. Considering the nature of the orders impugned before the Commissioner, I find that the appeal was not under Section 12-D of the Act but was substantively under Section 4(1-A) of the Act. Therefore, dismissal of appeal treating it to be under Section 12-D and as not maintainable is not justified, however, at the same time, in so far as other findings recorded in the order impugned are concerned, the Court finds that the petitioners had failed to produce certain documents asked for which might have material bearing on the issue involved even before the Commissioner. It is therefore a question of providing further opportunity to the petitioners to file documents as referred to in Section 4-B of the Act.

11. In view of the above, the writ petition is **disposed of** in the following terms:-

(i) The order impugned dated 14.06.2023 passed by the Commissioner, Prayagraj Division, Prayagraj in Appeal No.63 of 2023 (Computerized Case No. C202302000000063) (The C/M Sri Ram Prasad Chhedi Lal Yadav Shiksha Samiti and others Vs. Assistant Registrar, Firm and others) is **quashed**.

(ii) The appeal is restored to its original number and status.

(iii) The petitioners are directed to produce the documents asked for by the Commissioner in the notices already on record, along with certified copy of this order, by **15th of December, 2023**.

(iv) The Commissioner shall decide the appeal after providing full opportunity of hearing to the parties concerned on merits and will not treat the appeal as under Section 12-D but under Section 4 (1-A) of the Act.

(v) The decision shall be taken by **15th of February, 2024**.

(vi) All the grounds on merits as well as jurisdiction of the Assistant Registrar shall remain open to be argued by the parties before the Commissioner.

Order Date :- 16.11.2023
AKShukla/-