

Court No. - 10

Case :- WRIT - C No. - 30827 of 2023

Petitioner :- Ram Janam Singh

Respondent :- Sub Divisional Magistrate And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C., Ashish Srivastava, Prabhakar Awasthi

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Indra Raj Singh, learned counsel for the petitioner, Sri I.P. Srivastava, learned Additional Chief Standing Counsel, for the State-respondents and Sri Prabhakar Awasthi, learned counsel for the respondent no.4.

2. The dispute regarding the society has come before this Court on numerous occasions, reference whereof would come in this order.

3. Admittedly, one Ashutosh Singh was elected as Manager in the elections held on 24.06.2018 in which one Paras Nath was elected as Deputy Manager. Sri Ashutosh Singh died in April, 2021, whereafter, according to the learned counsel for the respondent no.4, he became Manager of the Society, whereas the contention of the learned counsel for the petitioner is that the vacancy was filled up, as per the Bye-laws, by Sri Paras Nath and it was Sri Paras Nath who became the Manager for the remaining term.

4. An order was passed on 20/22.06.2021 by the Assistant Registrar, Azamgarh approving the claim of the respondent no.4 on the basis of some proceedings dated 23.05.2021. A consequential order was passed on 30.06.2021. Both the orders were challenged by the Committee of Management, Janta Higher Secondary Education and another represented by Sri Paras Nath by filing Writ-C No.17857 of 2021, and, admittedly, Ram Janam Singh (petitioner in the present petition) was not in existence and he claims to have been subsequently enrolled as a member in 2022.

5. The aforesaid writ petition was partly allowed by this Court by order dated 29.10.2021 setting aside the orders dated 22.06.2021 and 30.06.2021 and the matter was remitted to the Assistant Registrar to hear both the parties on the issue of election of Manager and members of Committee of Management of the Society with an observation that in case any dispute arises, the matter should be referred to the Prescribed Authority under Section 25(1) of the Act.

6. The Assistant Registrar, thereafter, passed another order on 03.03.2022, again accepting the claim of the respondent no.4 and setting aside certain proceedings relied upon by the rival side including enrollment of new members done on 26.12.2021 and 24.01.2022.

7. The said order dated 03.03.2022 was again set aside by this Court in Writ-C No.12326 of 2022 by order dated 25.05.2022 and following observations were made:-

"8. The question, therefore arises whether election dated 23.5.2021 was validly held and also another question at the same time whether petitioner no. 2 the Deputy Manager/ Secretary could have continued to function as Manager Secretary without holding election to fill up interim vacancy. There is yet another question that would also require to be determined as to whether clause 5(g) can be interpreted to include eventuality of death also the one to cause interim vacancy and then again question would be as to whether elections as claimed by the petitioner here before this Court, to have been held on 06th February, 2022 are valid or not.

All these above questions are questions of fact that needed determination by a competent authority. It is a case in my considered view, which requires reference under Section 25(1) of the Societies Registration Act, 1861 and Assistant Registrar, Societies Azamgarh Division has exceeded his authority in recognizing an election to be valid and discarding continuance of petitioner no. 2 to be invalid and so also elections claimed by petitioner no.2 dated 06th February, 2022 to be invalid. The determination of membership in such circumstances were at one point of time, Vice President had treated respondent no. 3 to be a rank outsider, is also required to be gone into so also the resolution claimed to have been passed by the Committee of Management enrolling new members. Prescribed Authority is also required to go into the resolutions viz-a-viz provisions with regard to enrollment of the members of the society.

9. In view of above, the order dated 03.03.2022 passed by respondent no. 1, Assistant Registrar, Societies is hereby quashed. The Assistant Registrar, Societies is directed to refer the matter to the Prescribed Authority by transmitting the records of the case within three weeks from today. The decision shall be taken by the prescribed authority strictly in the light of relevant provisions of the byelaws within a further period of three months after giving full opportunity of hearing to the respective parties."

8. It appears that pursuant to the aforesaid order dated 25.05.2022, the reference is still pending before the Prescribed Authority and, in the meantime, the petitioner, at the strength of his enrollment as a member, started pressing his claim before the Prescribed Authority and, under such circumstances, the respondent no.4 objected to the intervention made by the petitioner.

9. As a result of the said dispute, the order impugned has been passed on 18.08.2023 with an observation that the petitioner appears to be interfering in order to maintain the dispute with regard to office bearership and his objections were rejected fixing 24.08.2023 as the date for hearing.

10. Sri I.R. Singh, learned counsel for the petitioner, has argued that the Prescribed Authority has relied upon the order dated 22.06.2021 passed by the Assistant Registrar and the order impugned is based upon the said discussion. He submits that the order dated 22.06.2021 was already set aside by this Court by order dated 29.10.2021 and became nonest and, therefore, it was not open for the Prescribed Authority to place reliance thereon. He further submits that the directions contained in the subsequent order dated 25.05.2022 regarding stand of the respondent no.4 (who was respondent no.3 in Writ-C No.12326 of 2022) had also not been complied with and, therefore, the successive orders passed in writ petitions have been given a complete go-bye.

11. Learned Standing Counsel submits that the reference is still pending and it will be decided in accordance with the directions issued by this Court and the order impugned being interlocutory in nature, the writ petition is not maintainable.

12. Sri Prabhakar Awasthi, learned counsel for the respondent no.4, submits that the earlier round of litigation was in between the Committee headed by Sri Paras Nath on the one hand, and the respondent no.4 on the other hand, in relation to the proceedings of 2021, whereas the petitioner, admittedly, claims to have been enrolled in January, 2022 and, therefore, he has no locus in the present matter. He further submits that the reference is yet to be decided, however, the petitioner is interfering in the proceedings and, therefore, the Prescribed Authority was justified in passing the order rejecting the claim of the petitioner.

13. Having heard the learned counsel for the parties, I find that the orders passed by this Court relate to the controversy and filling up of vacancy on the post of Manager pursuant to the death of Ashutosh Singh and reference was made by recording such findings. The petitioner, who claims to be enrolled as a member by the Committee of Sri Paras Nath in January, 2022, except to justify his alleged enrollment, has no independent locus in the dispute which has been referred to the Prescribed Authority. **Therefore, if, expressly or impliedly, the petitioner has been excluded from the hearing, the Court does not find any fault in the approach of the Prescribed Authority. At the same time, reliance placed upon the order dated 22.06.2021 appears to be thoroughly misconceived and misplaced inasmuch as the said order was already set aside by this Court, as observed above.**

14. Since the petitioner claims to be enrolled by the Committee of Management of Sri Paras Nath, for the purposes of any dispute, his alleged interest is being taken care of by Sri Paras Nath, who was earlier litigating as office bearer of the Society.

15. Separate claims made by one or the other members during the pendency of reference does not appear to be justified as it would certainly obstruct not only hearing process but also proceedings would be delayed.

16. In view of the above, while **setting aside the findings** recorded in the order impugned dated 18.08.2023 based upon the Assistant Registrar's order dated 22.06.2021, ousting the petitioner from the proceedings is held to be justified.

17. Pending reference shall be decided by the Prescribed Authority as per the directions already issued.

18. The writ petition stands **disposed of**.

Order Date :- 18.10.2023

AKShukla/-