

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 7678 of 2023

Applicant :- Sonu Singh

Opposite Party :- Ankit Verma,S.D.M.

Counsel for Applicant :- Sheetla Sahai Srivastava

Hon'ble Rohit Ranjan Agarwal,J.

The writ Court on 23.02.2022 in Writ-C No.1060 of 2022 had passed the following order:-

"In Re: Civil Misc. Amendment Application No.3 of 2022.

The amendment application is allowed.

Let necessary amendment in the prayer clause and in the pleadings of the writ petition be made during the course of the day.

Order on Petition.

Heard Sri Gajendra Pratap Singh, learned Senior Advocate assisted by Sri Sheetla Sahai Srivastava, learned counsel for the petitioners and Sri G.K. Singh, learned Senior Counsel assisted by Sri Puneet Kumar Pandey, learned counsel for the respondents no.1, 3 & 4 and Sri Prateek Rai, learned counsel for respondent no.2.

The petitioners before this Court claim to be members of the general body of the Society namely Sahakari Ganna Samiti, Sombhaoli, District-Hapur and in this petition they have challenged the order of the Deputy Registrar Firms, Chits and Societies, Meerut dated 15.07.2021 on the ground that since there was a serious dispute raised with regard to the election of the Committee of Management of the Society, the Deputy Registrar ought to have himself referred the matter to the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860 (hereinafter referred to as "the Act, 1860") instead of just keeping it open for a member to raise objection, if any, before the Prescribed Authority along with 1/4 members of the general body of the Society under Section 25(1) of the Act, 1860.

It is further submitted by the learned Senior Counsel appearing for the petitioner that the nature of observation that has come to be made in the order impugned, as referred to hereinabove, was a sheer formality as the Sub Divisional Magistrate had already submitted a report to the District Magistrate, Hapur on 02.11.2014, on some reference made by the District Magistrate dated 16.07.2021, on application moved by some members. He submits that since the Sub Divisional Magistrate is the authority prescribed to hear the election dispute under Section 25 (1) of the Act, 1860, a report already submitted by him with findings in respect of the election in question would certainly prejudice the proceedings.

Per contra, it is argued by Sri G.K. Singh, learned Senior Counsel appearing for contesting respondent that actually there has been no genuine dispute in respect of the election pursuant to which the Committee of Management consisting of newly elected office bearers have come to be

registered under Section 4(1) of the Act, 1860. Therefore, it was sufficient for the Deputy Registrar to have left it open for the members to raise the dispute if they get support of 1/4 members of the total members of the general body for the said purpose. On the question of report submitted by the Sub Divisional Magistrate, it is argued by learned Senior Counsel for the contesting respondent that while it is true that the District Magistrate had no authority to call for any such report but even if any such report has been called for and placed before the District Magistrate, it cannot bind the proceedings before the Sub Divisional Magistrate, if proper reference is received under Section 25(1) of the Act, 1860 with regard to the continuance of validly elected office bearers of the Society. He submits that this Court may also direct that in the event any dispute is raised, the same shall be looked into, considered and decided strictly in accordance with law without being influenced by the report submitted by the Sub Divisional Magistrate dated 02.11.2021.

From the brief facts, as born out from the pleadings raised in this petition, I find that the term of the Committee of Management of the Society is 3 years as per bye-laws and there was no dispute with regard to the Committee of Management elected in the year 2017. It was when the Committee of Management was coming to an end on 06.01.2020 that the election schedule for electing next Committee of Management was published on 23.11.2019. When no election was held, the Deputy Registrar, Societies vide order dated 20.03.2020 declared the Committee of Management in Office to have run out its term and, accordingly, proceeded to exercise his power under Section 25 (2) of the Act, 1860 to hold fresh election. This order dated 20th March, 2021 was put to challenge by means of Writ Petition No.17392 of 2021 and so also the consequential order appointing the election officer dated 01.04.2021 was also challenged in the said writ petition, but the said writ petition came to be dismissed as withdrawn as subsequently the elections have come to be held. As the elections have got held the same now have come to be recognised by the order impugned. This Committee of Management of the Society is pursuant to the election held by the Deputy Registrar Societies under Section 25(2) of the Act, 1860. The challenge to the earlier order passed, holding the Committee of Management to have term out its term to enable the Deputy Registrar of the Societies to exercise power under Section 25(2) of the Act, 1860 has come to an end with the withdrawal of the writ petition under which the said order was challenged.

In this petition petitioners have not challenged the said order. Now under the circumstance, once the Deputy Registrar has got the election held under Section 25(2) of the Act, 1860, any dispute to such an election would only be referable, in the considered opinion of the Court, to Section 25(1) of the Act, 1860 and to that extent, therefore, the observations made by the Deputy Registrar Societies in his order dated 05.07.2021 cannot be faulted with.

One of the arguments advanced by the learned counsel for the petitioner has been that under proviso to Section 4(1), the list of the office bearers elected would be submitted with the signatures of as many as possible of outgoing office bearers of the Committee of Management. In my considered view, this provision would not be attracted in the event the Committee of Management had already run out its term and the power is exercised under Section 25(2) of the Act, 1860. The proviso is always an aid to the main provision and cannot carve out any exception to the

mandate contained in the main provision. However, in the present case since the Committee of Management earlier had already completed its term and it had not held the subsequent election, signatures of the outgoing office bearers of such Committee of Management would hardly be of any relevance and significance. The purpose of the provision is to ensure genuineness of the list submitted and that it is the outgoing committee that got the election held and so there is no dispute. But here in this case, it is the Deputy Registrar who got the election held by a duly appointed election officer and, therefore, the report of such election officer would only be relevant and if the list of duly elected members of the executive body is placed with the signatures and covering letter of the election officer, that would suffice the need.

In so far as argument advanced by learned Senior Counsel appearing for the petitioner that the Sub Divisional Magistrate having already submitted a report to the District Magistrate in respect of the election, such report would prejudice the reference, if any made, is concerned, in my considered opinion, such a situation can be avoided by directing the District Magistrate to nominate some other Sub Divisional Magistrate as Prescribed Authority in the event any reference is made by 1/4th of total members of the general body of the Society.

In view of the above, therefore, I decline to interfere with the order impugned in this petition and to that extent, therefore, the petition stands dismissed with liberty to the petitioners/members of the general body of the Society to raise dispute under Section 25(1) of the Act, 1860, if they are so advised, in accordance with law.

It is, however, provided that in the event, any such reference is made by 1/4 members of the general body of the Society, as observed in the order passed by the Deputy Registrar dated 15th July, 2021, before the Sub Divisional Magistrate concerned, the Sub Divisional Magistrate shall forward the papers to the District Magistrate to nominate any other Sub Divisional Magistrate within the district as Prescribed Authority to decide the same in accordance with law.

It is further clarified that the Prescribed Authority, so nominated and appointed by the District Magistrate, shall hear and decide the matter in accordance with law giving full opportunity of hearing to the contesting parties and shall not be influenced by the report dated 2nd November, 2021 submitted by the Sub Divisional Magistrate to the District Magistrate, Hapur."

From the perusal of the aforesaid order, it is clear that the writ Court had declined to interfere with the impugned order and dismissed the writ petition.

In view of the said fact as the writ petition was dismissed giving liberty to the applicant to raise dispute under Section 25 (1) of the Act, 1860, no case for contempt is made out.

Accordingly, the present contempt application is misconceived and the same stands dismissed.

Order Date :- 18.10.2023 // SK Goswami