

Neutral Citation No. - 2023:AHC:198030

Court No. - 10

Case :- WRIT - C No. - 36342 of 2022

Petitioner :- C/M Majlishe Shura, Darul Uloom Ahalle Sunnat
Tanvirul Islam And Another

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

Counsel for Petitioner :- Suresh Chandra Dwivedi

Counsel for Respondent :- C.S.C.,Arun Kumar

WITH

Case :- WRIT - C No. - 13882 of 2023

Petitioner :- C/M Majlishe Shura Darul Uloom Ahalle Sunnat Tanvirul
Islam And Another

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

Counsel for Petitioner :- Suresh Chandra Dwivedi

Counsel for Respondent :- C.S.C.,Arun Kumar

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Suresh Chandra Dwivedi, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Shri Arun Kumar for the contesting respondents.

2. Writ C No.36342 of 2022 has been filed challenging the order of Assistant Registrar, Firms, Societies and Chits, Gorakhpur, Region Gorakhpur dated 02.11.2022 whereby he has declined to make a reference to the Prescribed Authority under Section 25(1) of the Societies Registration Act-1860 (hereinafter referred to as 'the Act, 1860'). Writ C No.13882 of 2023 has been filed challenging

consequential attestation of signatures of the respondent-Committee pursuant to the order dated 02.11.2022.

3. Since the basic dispute involved in both the petitions is same, both writ petitions are being decided simultaneously as affidavits have also been exchanged between the parties.

4. For the purposes of decision, Writ C No.36342 of 2022 is being treated as a leading case.

5. It is contended on behalf of the petitioners that there were rival claims pertaining to the elections in between the petitioner and private respondent and on 15/17.06.2016, the Assistant Registrar, Firms, Societies and Chits, Gorakhpur, Regional Gorakhpur referred the dispute to the Prescribed Authority under Section 25(1) of the Act, 1860.

6. The contesting respondents filed Writ C No.37487 of 2016 (C/M Darul Uloom Ahale Sunnat Tanvirul Islam And Another v. State of U.P. And 3 Others), in which, this Court by order dated 11.08.2016, stayed the effect and operation of the order dated 15/17.06.2016 till the next date listing.

7. It is contended that stay order was not extended on certain occasions and, in the mean time, the contesting respondents filed Writ C No.13395 of 2017 (C/M Majlishe Shura, Darul Uloom A.S.T. Islam And Another v. State of U.P. And 2 Others) challenging the order dated 16.03.2017 whereby the District Minority Welfare Officer, Sant Kabir Nagar had directed single hand operation of the accounts of Madarsa in question.

8. The Writ C No.37487 of 2016 and Writ C No.13395 of 2017 were connected together for consideration.

9. Later on, the respondent no.3 withdrew both the aforesaid writ petitions by filing Civil Misc. Withdrawal application Nos.3 of 2022 and 8 of 2022. Both the applications were allowed on 02.09.2022 dismissing the writ petitions as withdrawn.

10. Though, it is contended by Shri Arun Kumar that after dismissal of the aforesaid writ petitions as withdrawn and holding of subsequent elections, the controversy involved in the said two petitions had rendered infructuous, it has been argued by Shri Dwivedi that there is no such recital in the orders withdrawing writ petitions. Even otherwise, it is quite natural that in absence of any restrictions to hold subsequent elections, they are held by respective Committees/Societies. In the present case, two rival elections in the year 2020 were held; one by the petitioners dated 12.10.2020 and the other by the contesting respondents dated 04.10.2020.

11. It is contended that the matter reached to the Assistant Registrar who has passed the order impugned observing that the list of members of the General Body produced by the petitioners is quite different from the one which is preserved on his file. Further observation has been made that documents produced by the petitioners' side are proved to be forged and fabricated and the Assistant Registrar has arrived at a conclusion that no doubt or dispute stands substantiated so as to persuade him to refer the matter under Section 25 (1) of the Act, 1860. Consequently, he has accepted and approved the elections set up by the contesting respondents on 04.10.2020 and directed registration of list of office bearers.

12. The submission of Shri Dwivedi is that once in 2016, almost identical situation arose and matter was referred to the Prescribed Authority, which order was suspended for the time being, in view of

dismissal of the writ petitions as withdrawn on 02.09.2022, earlier order would stand revived as no other observation was made by the High Court while dismissing the aforesaid writ petitions as withdrawn. It is further submitted that, even otherwise, insofar as the two rival elections are concerned, the circumstances were of nature where, even if, the claim of the petitioners was suffering from some doubt, there being two rival proceedings, the Assistant Registrar had no jurisdiction to declare one of the proceedings as fabricated, null and void. He has referred to Section 25(1) of the Act, 1860, particularly, the proviso attached thereto, where power of setting aside elections of the office bearers vests with the Prescribed Authority. In support of his submission, learned counsel for the petitioner has placed reliance upon the following Authorities:-

(a). *Christ Church College Society, Kanpur And Others v. State of U.P. And Others* reported in 2012(8) ADJ 385;

(b). *All India Council v. Assistant Registrar, Firms, Societies And Chits, Varanasi* reported in 1988 (0) Supreme(All) 173.

13. Shri Arun Kumar, learned counsel for the contesting respondents submits that right from the year 2011, the Society elected by the rival claimants was being recognized and petitioner not being outgoing Committee had no power to conduct any meeting for the purposes of holding elections of 2020. He further submits that reason behind withdrawal was that the earlier elections had lost their significance and, hence, the matter became infructuous in view of subsequent elections. He further submits that erstwhile Manager Gulam Nabi had died and, hence, there was no good ground to further pursue the *lis*, which had rendered infructuous. He further submits that the Assistant Registrar has every power to examine the validity of the lists before him and,

once, he has found that the documents produced by the petitioners, particularly, lists of General Body were quite different in comparison to the record available with him, passing of the order impugned does not suffer from any illegality.

14. Learned Standing Counsel has argued that Assistant Registrar was well within his power to examine whatever was there before him and any observation made by him based upon the record does not mean that he has acted beyond his jurisdiction.

15. Having heard learned counsel for the parties, I find that the election dispute in between the rival claimants is continuing since long. Though the office bearers of Society were elected in 2016 but, in any case, reference was made to the Prescribed Authority on 15/17.06.2016, which order was stayed for the time being and the aforesaid writ petitions were later on dismissed as withdrawn. The dismissal of withdrawal may or may not have any effect upon subsequent elections or the validity of the previous proceedings as there was no adjudication made to the order dated 17.06.2016 in the earlier round of litigation, however, in relation to the elections of 2020, there were certainly rival claimants. Declaring the documents produced by the petitioners as forged and fabricated, certainly does not fall within competence, power and jurisdiction of the Assistant Registrar as it is sole prerogative of the civil court to make such an observation. Reference to Sections 31 and 34 of the Specific Relief Act, 1963 and Section 45 of the Indian Evidence Act, 1872 can be made in this regard.

16. Section 31 of the Specific Relief Act, 1963 may be invoked before the Civil Court when any instrument, void or voidable, if left outstanding, may cause serious injury to any person and, under such circumstances, the said instrument may be adjudged as void through

a decree of the Civil Court. As per section 34 of the Specific Relief Act, any person claiming any declaration as to his character may obtain a decree from the Civil Court in that regard. In any such proceedings, external aid in the form of expert opinion under section 45 of the Indian Evidence Act, 1872 can always be taken by the Court. For a ready reference, Sections 31 and 34 of the Specific Relief Act, 1963 are being quoted herein-below:-

"31. When cancellation may be ordered.- (1) Any person against whom a written instrument is, void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books of the fact of its cancellation."

"34. Discretion of court as to declaration of status or right. -Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

17. Section 45 of the Indian Evidence Act, 1872 is quoted herein-below:-

"**45.** Opinions of experts.- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts.

Such persons are called experts."

18. This Court by order dated 28.08.2023 in ***Writ C No.15412 of 2023 (Committee Of Management Intermediate College v. State Of U.P. And 3 Others)*** has held that no Administrative Authority has any power to declare any document as forged or fabricated.

19. Nevertheless, there being two rival claims, by making cryptic observation dislodging claim of the petitioners and denying making reference appears to be contrary to provisions of Section 25(1) of the Act, 1860 read with its proviso.

20. In view of above, considering the fact that the contesting respondents at the strength of elections dated 04.10.2020 are continuing to exercise managerial powers, while directing the Assistant Registrar to forthwith make a reference to the Prescribed Authority under Section 25(1) of the Act, 1860, both the writ petitions stand ***disposed off*** with the observation that such a reference shall be made **on or before 15.11.2023.**

21. The Prescribed Authority shall decide the reference after providing full opportunity of hearing to the rival claimants **on or before 31.03.2024.**

22. The orders impugned in the both the writ petitions shall remain subject to the decision to be taken by the Prescribed Authority.

23. Till the disposal of the reference as directed hereinabove, *status quo* with regard to affairs of the Society **shall be maintained.**

Order Date :- 13.10.2023

Jyotsana