

Court No. - 46

Case :- SPECIAL APPEAL No. - 725 of 2023

Appellant :- Keshav Rai And 5 Others

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

Counsel for Appellant :- Chandra Kumar Rai, Sr. Advocate

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

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

This intra court appeal is directed against the judgment and order dated 16.8.2023 passed by learned Single Judge in Writ Petition No.17199 of 2023. The writ petition has been allowed and the order passed by the Assistant Registrar referring the dispute to prescribed authority for determination of election dispute in terms of Section 25(1) of Societies Registration Act, 1860 has been set aside. Learned Single Judge has noticed the facts of the case and has prima facie doubted the credentials of the claim set up by the appellants before the Assistant Registrar for the first time in the year 2017. Learned Single Judge has further observed that the list of office bearers of the outgoing committee for the year 2015-16 was not challenged and the right to conduct election of committee of management was restricted to the outgoing committee alone. The original records apparently have also been perused by learned Single Judge while setting aside the order passed by the Assistant Registrar.

The judgment of learned Single Judge is primarily assailed with reference to the findings returned by learned Single Judge in para 13 of the judgment which is reproduced hereinafter:-

"13. In the present case, I find that the respondents were nowhere in picture and they for the first time set up some elections of 2017 and then 2020. Their case suffers from contradictory stands taken before the authorities below. There being no challenge to the list duly registered for the year 2015-16 (which has been certified as list of valid general body vide Annexure-5 to the writ petition) and even the amended bye-laws having not been assailed, I find that dispute, which was raised before the Assistant Registrar was an artificial dispute and the Court does not find any justifiable reason so as to give rise to any occasion where intervention of the Prescribed Authority is required."

It is urged on behalf of the appellants that even if the writ court found the order of Assistant Registrar to be unsustainable for the

reasons that there was no adjudication on the aspect as to whether there existed a genuine dispute of office bearers of the society or not, the proper course available to the writ court was to have remitted back the matter to the Assistant Registrar for a fresh determination of cause on this aspect. A direction could have been issued to the Assistant Registrar to ascertain as to whether there existed a bonafide dispute of office bearers or not. It is, therefore, urged on behalf of the appellants that a finding could have been returned in favour of the respondents petitioners with regard to the merits of the claim set up by the appellants.

Sri Arun Kumar for the respondent petitioners submits that the Assistant Registrar is already ceased of the claim of members of society and that the observations made in para 13 is restricted only to existence or otherwise of a bonafide dispute. It is, therefore, submitted that no interference with the order of the learned Single Judge is required.

The scope of powers vested in the Assistant Registrar under Section 25 of the Societies Registration Act, 1860 has been elaborately considered by a Division Bench of this Court in Shailendra Singh & Ors. vs. State of U.P. & Ors (2017) 6 ADJ 602 wherein following observations have been made by the Court in para 23 to 26 of the judgment:-

"23. Bearing in the mind the aforesaid principles of law, that the authority has been conferred upon the Registrar to accept list of members and office-bearers of Managing Committee under Section 4 of the Act and anyone aggrieved against the acceptance of said list of members and office-bearers, can approach appropriate forum. In the State of Uttar Pradesh, a proviso has been inserted under sub-section (1) of Section 4 by U.P. Act No. 11 of 1984, which requires that if the Managing Body is elected after the last submission of the list, the counter signature of the old members shall be obtained on the list and if the old office-bearers do not counter-sign the list, the Registrar may issue a notice to such person inviting objection from them and decide all the objections received within the specified period. In view of the said proviso, if any objection is filed by ex-office-bearers and they raise the dispute of the election, it cannot be said that the Registrar cannot decide such dispute and he is bound to refer the dispute to the Prescribed Authority. Registrar in every case cannot be forced to refer the dispute to the Prescribed Authority and based upon evidence adduced, Registrar has to take a call as to whose list of office-bearers and members is required to be taken on record. In the State of U.P. dispute or doubt pertaining to the election and continuance of office-bearer has to be decided in summary manner by the Prescribed Authority on receiving reference from Registrar or alternatively on reference being made by one fourth members of the society. Section 25 provides forum for settlement of dispute in summary manner and it does not altogether oust the authority of Registrar to accept the list of members. If such interpretation is accepted, then the power conferred on the Registrar by the proviso to Section

4(1) will become redundant and otiose and if reference is made mandatory in every case, the second part that provides for reference by one fourth members would also be a meaningless provision. Said interpretation would also be against the true intendment of the Legislature, which has empowered the Registrar to decide the objection raised before him and accept list of office-bearers and members of Managing Committee and the said order always being subject to the provisions of Section 25(1) of the Act or alternatively Civil Suit.

24. Under Societies Registration Act, as applicable in the State of Uttar Pradesh, Registrar has been given wide power, such as, under Section 3-A of the Societies Registration Act for renewal of certificate of registration; under Section 4 to register the annual list of the Managing Body; under Section 4-A (U.P. Amendment) intimation to the Registrar regarding the change etc. in rules; under Section 12-A power to approve change the name of the Society; under Section 12-B in respect of change of name and object of the Society; and, under Section 12-D power to cancel registration in the certain circumstances. Under Section 22 the Registrar is empowered to call for information, and under Section 23 he can direct the society to furnish its account or copy of the statement of receipts and expenditure for any particular year duly audited by the Chartered Accountant. Section 24 also empowers the Registrar in directing the investigation of affairs of the Society and under Section 25 he has power to refer the dispute of the election or for continuance of the officebearers to the Prescribed Authority.

25. The powers conferred under the aforesaid sections clearly demonstrate that the Registrar is the principal Executive Officer to exercise his power in respect of the affairs of the Society. Thus, his power under Section 4 cannot be divested only on the ground that under Section 25 he has the authority to refer the dispute pertaining to election and continuance of office-bearers and, accordingly, even if some frivolous dispute is raised in respect of the election or continuance of the officebearers, the same should be mandatorily referred. If there is a dispute of two parallel groups of the society, the Registrar can always examine whether the persons of rival group, who have raised the dispute, are member of the society or not. He can record his prima facie satisfaction in this regard as to who has the authority to convene the meeting and hold elections; persons who have participated are valid members of society; elections have been held as per bye-laws of society and if he is satisfied that the dispute is genuine and it is a dispute inter se between the members of the society, then he can refer the dispute to the Prescribed Authority.

26. The view which we are taking in the present case has already been taken by a learned single Judge of this Court in the case of Committee of Management Gyan Bharti Shiksha Sadan v. State of U.P., (2015) 1 All LJ 165, and we, accordingly, endorse the view taken by the learned single Judge of this Court. Coming to the facts of the present case as the order passed by the Assistant Registrar has not even been looked into by the learned single Judge, as such, the order passed by the learned single Judge is hereby quashed and set aside and the learned single Judge is requested to decide the matter afresh after hearing the parties as to whether the case in hand is of an ingenuine dispute and it would be an exercise in futility to refer the matter to the Prescribed Authority and in case it has got any semblance of truthfulness,

men the dispute can be referred to the Prescribed Authority."

In the facts of the present case, it is apparent that the Assistant Registrar merely noticed the claim of the appellants and referred the dispute to the prescribed authority without any prima facie consideration of the claim of the appellants with regard to bonafide nature of the dispute raised. We are, therefore, in agreement with the view taken by learned Single Judge that the Assistant Registrar could not have acted as a post office so as to refer the dispute to the prescribed authority. Interference made by the learned Single Judge with the order of Assistant Registrar for such reasons is sustained. However, we clarify that once the order of the Assistant Registrar dated 6.4.2023 is quashed, the matter shall stand remitted to the concerned Assistant Registrar for a fresh examination of issue in light of the observations made in Shailendra Singh (supra) and a fresh decision would be taken after hearing the parties by the Assistant Registrar within a period of two months, without being influenced by any observation of writ Court on the merits of the claim.

The special appeal, consequently, is disposed of in terms of the above observations.

Order Date :- 22.11.2023

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