

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 458 of 2023

Appellant :- C/M Pratibha Shikshan Samiti, Barabanki Thru. Manager Satyanaam Sharma And Another

Respondent :- State Of U.P. Thru. Prin.Secy. Deptt. Of Finance U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Anurag Kumar Singh

Counsel for Respondent :- C.S.C.,Girish Chandra Verma

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Rajan Roy,J.

Supplementary affidavit filed on behalf of the appellant-petitioners is taken on record.

Heard Shri Raghvendra Singh, learned Counsel for the appellant, learned Additional C.S.C. for the State and Shri G.C. Verma, learned Counsel for the opposite party no. 4.

This is a special appeal by the appellant-petitioner challenging the judgment dated 30.08.2023 passed by the writ Court in Writ C No. 7344 of 2023 by which the writ petition of the appellant-petitioner challenging an order of the Deputy Registrar, Firms, Societies and Chits, Ayodhya Region, Ayodhya dated 06.07.2023, as also, its corrigendum dated 10.07.2023, has been dismissed on the ground that the order has been passed under Section 4 of the Societies Registration Act, 1860 (hereinafter referred as the Act, 1860) and there is a provision of an appeal against such an order under Section 4(1) of the said act.

The facts of the case in brief are that there is a society by the name of Pratibha Shikshan Samiti, Vikas Khand, Dewa, District - Barabanki which was registered with the Registrar of Societies on 20.12.2003 bearing Registration No. 847/2003-04. A dispute arose in the Society in the year 2009 on account of which writ petition was filed wherein an order dated 23.09.2013 passed by the Deputy Registrar, Firms, Societies and Chits, Ayodhya Region, Ayodhya declaring the Committee of Management as time barred w.e.f. 20.12.2008 under Section 25(2) of the Act, 1860 was challenged. The said order was stayed by this Court on 25.11.2013, till the next elections which were due in the month of January, 2014. In the interregnum, on 18.01.2009, elections to the Committee of Management of the Society had already taken place and in the said election, the opposite party no. 4, Indra Kumar represented by Shri G.C. Verma, Advocate was elected as Manager, a fact which Shri Raghvendra Singh, learned Counsel appearing for the appellants does not dispute. The tenure of Shri Indra Kumar

was up to the year 2014. These facts are undisputed. Ultimately, the said writ petition came to be decided vide judgment dated 17.03.2023 and the order of the Deputy Registrar was quashed. The writ Court opined that no order was passed after expiry of the term of the outgoing Committee of Management in the year 2008 and election convened by the outgoing Committee of Management on 18.01.2009 was perfectly legal, especially as, no order was passed by the prescribed authority under Section 25(2) of the Act, 1860. In the aforesaid election, Indra Kumar, was elected as Manager.

In the meantime i.e. prior to disposal of the aforementioned petition, in the year 2019, elections were held in which the appellant no. 2, Satyanaam Sharma, was elected as Manager of the Committee of Management and his term was till January, 2024, a fact which is not disputed by Shri G.C. Verma, learned Counsel for Indra Kumar, though, Shri Verma submitted that the said election was held on basis of an invalid list of members of the general body which contained the name of 184 persons, though, there were only 74 valid members. He however does not dispute the fact, at least before us, that based on the said election, appellant no. 2 claims to be entitled to work as Manager till January, 2024.

After the judgment dated 17.03.2023, referred above was rendered, as per Shri G.C. Verma, learned Counsel appearing for the opposite party no. 4, Indra Kumar, elections were held and based on the said elections, the opposite party no. 4 was elected as Manager of the Committee of Management and accordingly a list of elected members of Committee of Management was submitted to the Deputy Registrar under Section 4 of Act, 1860 impugned before the writ Court. Objections were filed by the appellants to the said list whereupon an order dated 06.07.2023 was passed by the Deputy Registrar which was impugned by the appellants' herein before the writ Court by means of writ petition bearing Writ C No. 7344 of 2023 which has been dismissed on ground of alternative remedy on 30.08.2023, as stated herein. Against the aforesaid background, this appeal has been filed.

The contention of Shri Raghvendra Singh, learned Senior Counsel appearing for the appellants is that election to the Committee of Management of the Society was held in 2019 wherein appellant no. 2 was elected as Manager and the term of such Committee of Management is upto 2024. This election has not been challenged under Section 25 of the Act, 1860 nor before the writ Court by opposite party no. 4 or any other person. The Deputy Registrar has no jurisdiction to decide an election dispute nor to nullify any election or to hold that the

continuance of any member of the Committee of Management is invalid and this power is vested only upon the prescribed authority under Section 25 of the Act, 1860, yet by the order dated 06.07.2023, this is precisely what he has done. He relied upon judgments reported in **2014 (1) ADJ 44, Committee of Management, Anjuman Kherul Almin & Ors. Vs. State of U.P. & Ors.; 2010 (7) ADJ 643, Gram Shiksha Sudhar Samiti Junior High School & Ors. Vs. Registrar, Firms Societies and Chits U.P. & Ors.; AIR 1988 All. 236, All India Council & Anr. Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi & Anr.**; to contend that the Deputy Registrar has acted in violation of the provision of Section 4 of the Act, 1860 and has passed an order beyond the power vested in him under the said provision, therefore, the order passed by him was beyond his jurisdiction, as, such existence of alternative remedy would not be a bar in such a case but the learned writ Court did not consider this aspect of the matter and in fact has not considered any of the arguments of the appellants which were advanced before it and has passed the impugned judgment accepting the plea and the objection of the opposite party no. 4 that there was an alternative remedy against such an order passed under Section 4, which in fact is not sustainable. When fundamental questions touching the jurisdiction of the Deputy Registrar to pass such an order under Section 4 have been raised, then the same should have been considered by the writ Court and the appellants-petitioners could not have been relegated to the alternative remedy mechanically and in a routine manner.

On the other hand, Shri G.C. Verma, learned Counsel for the opposite party no. 4 has submitted that he was not given time to file counter affidavit before the writ Court, therefore, his client's version has not come in the order of the writ Court on merits but the elections held in 2019 in which the appellant no. 2 was elected as Manager was held on an invalid list of members of general body and as a consequence of the judgment dated 17.03.2023, such elections and continuance of the appellant no. 2 as Manager was nullified. This is precisely what has been ordered by the Deputy Registrar who has not decided any election dispute but has only detailed the consequences of the judgment dated 17.03.2023. The Deputy Registrar is not supposed to act as a post office. He is obliged to refer a dispute regarding membership of a society or election dispute to the prescribed authority only if there is genuine dispute in this regard, and not a sham dispute such as the one claimed by the appellants. He relied upon the decisions rendered in **Writ C No. 1304 of 2022, C/M The Public Educational Association Belhari Sultanpur & Ors. Vs. State of U.P. & Ors.; Special**

Appeal No. 337 of 2022, State of U.P. & Ors. Vs. C/M The Public Educational Assosication Belhari Sultanpur & Ors; Writ C No. 40440 of 2022, C/M Sri Ram Prasad Chhedi Lal Yadav Shiksha Samiti & Anr. Vs. State of U.P. & Ors.; 2012 SCC Online (All.) 1491, C/M Chacha Nehru Vidyalaya Vs. State of U.P. & Ors.; 1995 UPLBEC (2) 1242, Kishan Shiksha Sadan Vs. State of U.P. & Ors.; 2010 SCC Online (All.) 1773, Jamia Rizviya Vs. State of U.P. & Ors.; 2013 UPLBEC (2) 1144, Brahmacharya Ashram Shri Sarvar Sanskrit Mahavidyalaya & Anr. Vs. Commissioner, Gorakhpur Division, Gorakhpur & Ors.; 2006 UPLBEC (3) 2146, C/M Adharsh Janta Uchchattar Madhyamik Vidyalaya & Ors. Vs. State of U.P. & Ors.; in support of his contention.

Shri Verma addressed us on the merits of the matter, as regards the entitlement of the appellants to continue as Manager of the Society in question, even though the writ Court has not touched upon the merits.

We have heard learned Counsel for the parties and have perused the material available on record, especially the judgment impugned before us and we find that the writ Court has not considered the question as to whether the Deputy Registrar could have passed such an order in exercise of his powers under Section 4 of the Act, 1860 and whether he had traveled beyond the scope of such power vested in him and has thereby encroached upon the powers which are vested in a specific forum prescribed in law under Section 25 of the same Act i.e. the prescribed authority. The writ Court has simply dismissed the writ petition of the appellants on the ground of availability of alternative remedy without going through the jurisdictional issues involved in the petition. We thus find merit in the submissions of Shri Ragvendra Singh that this aspect of the matter should have been considered by the writ Court along with the availability of alternative remedy and then a considered decision should have been taken. The legal position is very well settled that the Deputy Registrar, when a list as referred under Section 4 of the Act, 1860 is filed before him, in the event of any dispute as to an election or a dispute pertaining to membership or continuance of a member of the Committee of Management of a Society, can conduct a limited inquiry to ascertain as to whether the dispute is a genuine one or a sham dispute. Of course, he is not to act as a post office but he cannot exceed the scope of inquiry as referred herein above. In the event he finds that the dispute is a sham dispute then of course he can accept the list of members of the Committee of Management under Section 4 which by itself will not confer any sanctity or validity upon such list which can always be challenged appropriately before the appropriate forum, as per

law. However, if he finds that there is a genuine dispute then he has no option but to refer it to the prescribed authority under Section 25 or the aggrieved party can itself invoke the jurisdiction of the prescribed authority. Now, this was an aspect which ought to have been taken into consideration by the writ Court in the light of contents and nature of the order passed by the Deputy Registrar, as to whether the exercise of jurisdiction by him was within the bounds of Section 4 or beyond it? As, if he arrived at a conclusion that it was beyond jurisdiction vested in him under Section 4 then the writ Court would have to consider as to whether in such circumstances, existence of an alternative remedy would persuade it to dismiss the writ petition on the said ground or it would interfere in the matter in exercise of his discretionary extra-ordinary jurisdiction. The exercise of discretion in this regard had to be a considered one, keeping in mind the above aspects. Of course, the dispute of membership of the general body of the society is referable to a decision under Section 4(B) read with Section 15 of the Act, 1860 but the contention of Shri Raghvendra Singh, learned Counsel for the appellants is that what the Deputy Registrar has done is to negate his right to continue as Manager of a validly elected Committee of Management based on the election of 2019 till January, 2024, especially as, the judgment dated 17.03.2023 does not declare this election as illegal. In effect, he has nullified the election of the appellants based on his understanding of the judgment dated 17.03.2023 which was impermissible, as, it involved a dispute referable to Section 25 of the Act, 1860 under which only the prescribed authority could have taken the decision on the said issue. The writ Court has not considered his arguments on the aforesaid aspect.

For the reasons given herein above but without making any comments on the merits of the assertions and counter-assertions of the parties herein, we are of the opinion that the matter requires re-consideration by the writ Court in the light of the aforesaid, therefore, we set aside the judgment of the writ Court with a request for consideration afresh. The writ petition shall consequently stand restored and would be listed before the writ Court on **11.10.2023 as fresh.**

The appeal is **allowed** in the aforesaid terms.

Order Date :- 22.9.2023/Lokesh Kumar

[Rajan Roy, J.] [Pritinker Diwaker, C.J.]