

Reserved on: 18.10.2023

Delivered on: 06.11.2023

Court No. - 7

Case :- WRIT - C No. - 8736 of 2023

Petitioner :- Sunil Kumar Jhunjhunwala And 2 Others

Respondent :- State Of U.P. Thru. Secy. Deptt. Of Institutional Finance, Lucknow And 3 Others

Counsel for Petitioner :- Apoorva Tewari, Anil Kumar Tiwari, Vivek Kumar

Counsel for Respondent :- C.S.C., Raj Kumar Singh, Rajesh Kumar Singh

Hon'ble Abdul Moin, J.

1. Heard Shri Anil Tiwari, Senior Advocate assisted by Shri Apoorva Tiwari for the petitioners, learned Standing counsel appearing for respondent nos.1 & 2 as well as Shri Rajesh Kumar Singh, learned counsel appearing for caveator-respondent no.4 and Shri Raj Kumar Singh, who has filed an application for impleadment and has been permitted to argue the matter as an intervenor.

2. The instant petition has been filed praying for quashing of the order dated 26.08.2023 passed by the Deputy Registrar, Firms, Societies and Chits, Ayodhya Region, Ayodhya, a copy of which is annexure 1 to the petition with a further prayer of mandamus commanding the respondent no.2 to not give effect to the amended bye-laws as contained in annexure no.2 to the petition, and to declare the amended bye-laws as non-est and to restrain the respondent nos.3 & 4 from taking any decision on the basis of amended bye-laws and the impugned order dated 26.08.2023.

3. A preliminary objection has been raised by Shri Rajesh Kumar Singh, learned counsel appearing for the private respondents which is also supported by Shri Raj Kumar Singh, learned counsel who has filed an application for impleadment that against the order impugned, the petitioner has a statutory remedy of appeal as provided under Section 4 (1-A) of the Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860") as applicable in State of Uttar Pradesh.

4. Elaborating the same, the argument of learned counsel for the private respondents is that as by means of impugned order dated 26.08.2023, the Deputy Registrar has approved the amended bye-laws of the society and has registered the said amendments as such, an appeal lies against the said order to the Commissioner of the division in whose jurisdiction the Headquarter of the society lies, in this case Ayodhya, and it is thus prayed that the writ petition be dismissed on the ground of alternate remedy.

5. Contradicting the same, Shri Anil Tiwari, learned Senior Advocate argues that as Sub-section (1-A) of Section 4 of the Act, 1860 has been inserted after Sub-section (1) of Section 4 of the Act, 1860 and prior to Sub-section (2) of Section 4 of the Act, 1860 as such, the remedy of appeal would only lie against the order passed by the competent authority under Sub-section (1) of Section 4 of the Act, 1860.

6. Elaborating the same, the argument is that it is only Sub-section (2) of Section 4 of the Act, 1860, per which, after the order is passed under Sub-section (1) of Section 4 of the Act, 1860, that the Registrar while sending the list mentioned in Sub-section (1) of Section 4 of the Act, 1860, would send to the Registrar a copy of Memorandum of Association including any alteration, extension or abridgement of purposes made under

Section 12, and of the rules of the society corrected up to date.

7. The argument is that as the amendments of the rules of the society are to be sent under Sub-section (2) of Section 4 of the Act, 1860 and Sub-section (1-A) of Section 4 of the Act, 1860 gives the remedy of an appeal under that section, meaning thereby, that it would only be where the order has been passed under Sub-section (1) of Section 4 of the Act, 1860 that an appeal can be filed but as in the instant case, it is the amended rules which have been accepted which would take the order impugned within the realm of Sub-section (2) of Section 4 of the Act, 1860 and thus, the petitioners would not be having a remedy of appeal against the said order leaving the only remedy available to them to approach this Court under Article 226 of the Constitution of India.

8. Heard the learned counsel for the parties and perused the record.

9. From the arguments as raised by learned counsels for the contesting parties and perusal of records, this Court first proceeds to consider the preliminary objections.

10. By means of the order impugned dated 26.08.2023, the Deputy Registrar has approved the amendment in the bye-laws of the society and has also registered the same.

11. As per the preliminary objections, the said order is appealable under Sub-section (1-A) of Section 4 of the Act, 1860. In view of the preliminary objections raised, the Court proceeds to consider as to whether there is a remedy of an appeal against the order impugned.

12. For the purpose of deciding the issue, the provisions of Section 4 of the Act, 1860 as applicable in Uttar Pradesh, would

have to be considered.

13. For the sake of convenience, Section 4 of the Act, 1860 along with amendments made from time to time are reproduced as under:

"4 (1)". Annual list of managing body to be filed - Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the [Registrar]², of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

[1: In its application to the state of Uttar Pradesh, "section 4" renumbered as "section 4 (1)" Vide U.P. Act 52 of 1975, section 4 (w.e.f. 10.10.1975)].

[2: In its application to the state of Uttar Pradesh, In section 4, for the words "Registrar of Joint Stock Companies" was substituted by "Registrar" vide U.P. Act 25 of 1958, Section 2 (w.e.f. 25.8.1958)]

³Provided that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old office bearers do not counter sign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

[3: Vide U.P. Act no. 11 of 1984, Section 4 (w.e.f. 30.4.1984)].

(1A)⁴ An Appeal against an order made under this section may be preferred to the commissioner of the division in whose jurisdiction the Headquarter of the society lies, within one month from the date of communication of such order:

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

[4: Vide U.P. Act no. 08 of 2022, Section 3 (w.e.f. 18.7.2022)].

(2)⁵ Together with list mentioned in sub-section (1), there shall be sent to the Registrar a copy of memorandum of association including any alteration, extension, or abridgement of purposes made under section 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the preceding year of account.

[5: Vide U.P. Act no. 52 of 1975, section 4 (w.e.f. 10.10.1975)].

SECTION 4-A AND 4-B

"4-A.⁶ Changes, etc., in rules to be intimated to Registrar.- A copy of every change made in rules of the society and intimation of every change of address of the society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change."

[6: Vide U.P. Act 52 of 1975, Section 5 (w.e.f. 10.10.1975)].

"4-B.⁸ (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank passbook of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, resignation or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

⁷"Any change in the list of General Body shall not be valid unless it is approved by the managing body."

[7: Vide U.P. Act no. 08 of 2022, Section 4 (w.e.f. 18.7.2022)]

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office-bearers and two executive members of the society.

[8: Vide U.P. Act no. 23 of 2013, Section 2 (w.e.f. 09.10.2013)]."

14. It would also be convenient to reproduce the statement of

objects and reasons which led to the amendment of Section 4 of the Act, 1860 by insertion of Sub-section (1-A) which for the sake of convenience is reproduced as under:

"STATEMENT OF OBJECTS AND REASONS

The Societies Registration Act, 1860 (Act No. 21 of 1860) has been enacted by the Parliament to provide for the registration of literary, scientific and charitable societies. There is no provision of appeal in the said Act against the decision of the Registrar given under sections 3 and 4 and the decision of the Prescribed Authority given under section 25 of the said Act due to which the only remedy available is to file a writ petition which is time-consuming and expenditure-provable for the common man. Therefore, it has been decided to amend the said Act to make Commissioner as the appellate authority for the decision of the Registrar and the Prescribed Authority given under the said sections. Further, in order to ensure that changes in the list of General Assembly happens in a rational way, it has been decided to amend section 48 to provide that any change in the list of General Assembly should be considered valid only after the approval of the managing body. Also, in order to ensure that the transfer of immovable properties does not take place in an irregular manner, it has been decided to insert a section in the said Act providing that if the immovable property of the society is transferred without prior permission of the competent Court, the same shall not be lawful. A need has also been felt to put an end to the representation of unqualified persons in societies. Hence, it has been decided to amend the said Act to provide that a person who is found guilty by the competent Court in any criminal matter where the punishment is a sentence of two years or more, then such a person shall be ineligible to hold office in a Society.

In order to incorporate the aforesaid amendments, it has been decided to amend the aforesaid Act.

The Societies Registration (Uttar Pradesh Amendment) Bill 2021 is introduced accordingly."

15. A perusal of the aforesaid section thus makes it clear that Subsection (1) of Section 4 of the Act, 1860 provides for filing of a list every year of managing body to be filed with the

Registrar. The proviso to Sub-section (1) of Section 4 of the Act, 1860 provides that if the Managing Body is elected after the last submission of the list, the counter signature of the old members be obtained on the list. If the old office bearers do not counter sign the list, the Registrar may issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period, and he shall decide all objections received within the said period.

16. Sub-section (1-A) of Section 4 of the Act, 1860 provides an appeal against an order made under **this section** to be preferred to the Commissioner of the Division within one month but the appellate authority may admit an appeal even after the expiry of the said period, provided sufficient cause is shown.

17. Sub-section (2) of Section 4 of the Act, 1860 provides that together with the list mentioned in Sub-section (1) i.e. the list which is to be filed with the Registrar of the names, addresses and occupations of the Governors, Council, Director etc. entrusted with the management of the affairs of the society, the Registrar shall also send a copy of the Memorandum of Association including any alteration, extension or abridgment of purposes made under Section 12 and of the rules of the society corrected up to date.

18. Thus, a plain reading of Sub-section (1), (1-A) and (2) of Section 4 of the Act, 1860 leads to the conclusion that a person aggrieved by an order of the competent authority made under Section 4 may file an appeal to the Commissioner of the Division. The appeal as provided under Sub-section (1-A) lies against all order passed under Section 4 and not only against an order passed under Sub-section (1) of Section 4 of the Act, 1860.

19. Though from the aforesaid discussion, it is clear that an appeal shall lie against all orders passed under Section 4 of the Act, 1860 yet as an abundant precaution, the Court may also see the statement of objects and reasons which led to the aforesaid amendment, per which Sub-section (1-A) of Section 4 of the Act, 1860 was brought into force.

20. However, whether the statement of objects and reasons can be used to determine the true meaning and effect of the substantive provisions of a statute ?

21. This aspect of the matter has been considered by the Hon'ble Supreme Court in the cases of **Narain Khamman Vs. Parduman Kumar Jain (1985) 1 SCC 1** as well as **Kumar Jagdish Chandra Sinha and Others Vs. Eileen K. Patricia D'Rozarie (MRS) (1995) 1 SCC 164**.

22. The Apex Court in the case of **Narain Khamman (supra)** has held as under:

"12. It is now well settled that though the Statement of Objects and Reasons accompanying a legislative Bill cannot be used to determine the true meaning and effect of the substantive provisions of a statute, it is permissible to refer to the Statement of Objects and Reasons accompanying a Bill for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy."

23. Likewise in the case of **Kumar Jagdish Chandra Sinha (supra)**, the Apex Court has held as under:

"13. It is undoubtedly true that the Statement of Objects and Reasons accompanying a legislative bill cannot be used to ascertain the true meaning and effect of the substantive provisions of the legislation, but it can certainly be pressed into service for the limited purpose of understanding the background, the antecedent state of affairs and the object the legislation sought to achieve."

24. From perusal of the aforesaid judgments, it emerges that though it is undoubtedly true that the statement of objects and reasons accompanying a legislative bill cannot be used to ascertain the true meaning and effect of the substantive provisions of the legislation but it can certainly be pressed into service for the limited purpose of understanding the background, the antecedent state of affairs and the object the **legislation sought to achieve** or the evil which the statute sought to remedy.

25. Considering the aforesaid, the Court now has to consider the statement of objects and reasons in order to find out the object the legislation by way of introducing the provision of appeal, sought to achieve or the evil which the statute sought to remedy.

26. Perusal of statement of objects would indicate that the object the legislation sought to achieve was that as there was no provision of appeal in the Act, 1860 against the decision of the Registrar given under Sections 3 & 4 and the decision of the prescribed authority given under Section 25 of the said Act due to which the only remedy available was to file a writ petition which was a time-consuming and expenditure provable for the common man therefore, it was decided to bring in the provision of an appeal.

27. Thus from the statement of objects also it clearly emerges that a provision of appeal has been made against the orders passed under Section 4 of the Act, 1860.

28. The Court concludes that Sub-section (1-A) of Section 4 of the Act, 1860 provides for an appeal against an order made under Section 4 of the Act, 1860 to the Commissioner and not only against Section 4(1) of the Act, 1860.

29. Accordingly, as by means of the order impugned dated 26.08.2023, the Deputy Registrar has approved the amendment in the bye-laws and has registered the same, consequently against the order passed under Section 4 of the Act, 1860 a statutory remedy of appeal is available to the petitioners before the Commissioner of the Division.

30. Keeping in view of the aforesaid discussion, the preliminary objection as raised by the private respondents is upheld.

31. However, as the petitioners have directly approached this Court against the order impugned despite having the remedy of appeal and this Court has been seized of the matter as such it is provided that in case an appeal is filed by the petitioners before the appropriate authority within a period of two weeks from today along with a certified copy of this order then the appellate authority shall proceed to decide the appeal in accordance with law on merits after hearing all the parties concerned within a period of two months from the date of filing of the appeal.

32. Accordingly, the writ petition is **dismissed** on the ground of alternate remedy, subject to aforesaid observations.

Order Date :- 6.11.2023
S. Shivhare