

Court No. - 7

Case :- WRIT - C No. - 10430 of 2023

Petitioner :- Society, Eldeco Shaurya Resident Welfare Association, Lko. Thru. President Ashok Kumar Tiwari And Ors.

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

Counsel for Petitioner :- Anand Singh Pawar, Bhanu Bajpai

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner as well as Shri Nitin Mathur, learned Additional Chief Standing counsel appearing on behalf of respondent no.3.

2. The brief facts of the case have already been set forth by this Court in the order dated 29.11.2023. For the sake of convenience, the order dated 29.11.2023 is reproduced below:

"Heard learned counsel for the petitioners and Sri Nitin Mathur, learned Additional Chief Standing counsel appearing on behalf of the respondents no. 3.

The contention of learned counsel for the petitioner is that though the elections for the society have been notified as per order issued by the Election Officer dated 06.11.2023, a copy of which is annexure 2 to the writ petition per which the voting has been scheduled for 02.12.2023 yet in final list of members which has been issued, a copy of which has been filed as part of annexure 1 to the writ petition which includes 37 members, there are various members who have not paid their subscription and consequently, they may not be permitted to vote keeping in view the provisions of Section 15 of the Societies Registration Act, 1860 (hereinafter referred to as "Act, 2023").

However, learned counsel for the petitioners fairly states that the law in this regard has been laid down by this Court in the case of Sunil Rai and 16 Ors Vs. State of U.P and Ors passed in Writ-C No. 42642 of 2017 decided on 14.09.2017 wherein this Court after interpreting the provisions of Section 15 of the Act, 1860 has held that the membership fee can be deposited by or before the date of election which, in this case is 02.12.2023.

Placing reliance on the said judgment it is contended that the election officer should adhere to the provisions of Section 15 of the Act, 1860 and ensure that it is only those members who are not in arrears are being entitled to vote and be counted as members.

However, as the election officer has been impleaded as respondent no. 4 as such, the Court requires the version of the election officer also.

Accordingly, issue notice to the respondent no. 4 dasti as well.

Considering that the election is scheduled for 02.12.2023 as such list this case tomorrow i.e 30.11.2023 at 0215 PM.

Learned counsel for the petitioners shall also file an affidavit of service tomorrow.

Let the certified copy of this order be provided to the learned counsel appearing on behalf of the contesting parties today itself on payment of usual charges."

3. Learned counsel for the petitioner submits that in pursuance to the order of this Court dated 29.11.2023, a notice by the petitioner has been served on the respondent no.4 at 10:00 a.m. on 30.11.2023. The affidavit of the dasti service has also been filed which is taken on record.

4. From a perusal of the order dated 29.11.2023, it emerges that the petitioners want a strict compliance of the provisions of Section 15 of the Societies Registration Act, 1860 (hereinafter referred to as "Act, 2023") which pertains to members.

5. The contention is that as the election is scheduled from 02.12.2023 as such, the respondent no.4 may strictly adhere to the provisions of Section 15 of the Act, 1860 inasmuch as he should ensure that it is only those members who have paid their subscription who should vote or should only be counted as members.

6. Needless to mention that the provision of Section 15 of the

Act, 1860 have already been considered by this Court in the case of **Sunil Rai and 16 Others Vs. State of U.P. and Others in Writ C No.42642 of 2017** decided on 14.09.2017.

7. Keeping in view of the aforesaid discussion, the writ petition is **disposed of** with a direction to the respondent no.4 to strictly adhere to the provisions of Section 15 of the Act, 1860 while conducting the election scheduled to be held from 02.12.2023.

8. Let a copy of this order be issued to the parties within 24 hours as per rules.

Order Date :- 30.11.2023

S. Shivhare