

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.01.2018

+ **W.P. (C) 2029/2016 and CM Nos. 8748/2016, 21328/2016**
and CRL. M.A. Nos. 5911/2017 & 6253/2017

MAHESHWARI MANDAL (DELHI)

..... Petitioner

versus

THE STATE OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Abhinav Vasisht, Senior Advocate with
Mr Virendra Mehta, Mr Divyakant Lahoti,
Ms Priya Singh, Ms Amrita Grover,
Mr Parikshit Ahuja, Mr Mukul Gupta,
Advocates.

For the Respondent : Mr Satyakam, ASC for GNCTD for R1
and R2.
Mr Arpit Bhatia, Advocate for R3.
Mr Kamlesh Kumar, UDC, Mr D.M.
Officer/Registrar, Distt. North West,
Kanjhawala, Delhi.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 23.02.2016 (hereafter 'the impugned order') passed by the Registrar of Societies (hereafter 'the Registrar'), whereby the Registrar has declared the amendments made by the petitioner society to its Rules and Regulations, which were approved/certified on 22.09.2003, 18.05.2004 and 16.03.2007, as *void ab initio* and *nonest*. The impugned order was passed

on a complaint made by respondent no.3 and it is further alleged that the same was passed without affording the petitioner any opportunity to be heard.

2. The petitioner claims that the Registrar has no power to declare any amendments to its Rules and Regulations as *void* or *nonest* and thus, the impugned order is without jurisdiction and authority of law.

3. Briefly stated, the relevant facts necessary to address the aforesaid controversy are as under:-

3.1 The petitioner is a Society registered under the Societies Registration Act, 1860 (hereafter 'the Act'). The petitioner was initially registered on 31.05.1984 under the name of Maheshwari Mandal (Uttar Shettra) (Delhi); however, with effect from 24.09.2003, its name was changed to Maheshwari Mandal (Delhi). This was duly registered and the Registrar issued a fresh certificate of registration dated 24.09.2003.

3.2 According to the petitioner, the petitioner Society amended its Rules and Regulations after due approval from its members. The amended Rules and Regulations were also forwarded for approval to the Registrar under the cover of an application dated 09.02.2004 and the same were registered. It is stated that, similarly, the petitioner further amended its Rules and Regulations in 2006, which were also duly registered by the Registrar.

3.3 The impugned order indicates that, in all, three applications were filed: first, being application dated 28.06.2003 for change in the name of the petitioner Society; second, application dated 09.02.2004; and third, application dated 20.11.2006. These applications were approved and

certified by the Registrar on 22.09.2003, 18.05.2004 and 16.03.2007 respectively.

3.4 Respondent no.3 - who was earlier a member of the petitioner society - filed a complaint before the Registrar, *inter alia*, claiming that due notices of the meetings claimed to have been held, for approval of amendments to the Rules and Regulations had not been served to the concerned members and, therefore, the alleged resolutions passed in those meetings could not be given effect to.

3.5 Respondent no.3 also filed a suit - being Suit No. 257/2015 - before the Court of Senior Civil Judge. Apart from impugning his expulsion from the petitioner society, respondent no. 3 also claimed that the provisions of Section 12 and 12-A of the Act had been violated. He claimed that due procedure for amending the Rules and Regulations of the Society had not been followed. It is relevant to state that the Registrar was arrayed as defendant no.2 in the said suit.

3.6 In his plaint, respondent no.3 (plaintiff therein) mentioned that he had filed complaints before the Registrar and made a grievance of the same not being considered. The reliefs claimed by respondent no. 3 in the aforementioned suit are set out below:-

“a. Declare the constitution of the disciplinary committee and the expulsion/termination of the membership of the plaintiff on 20.07.2015 as illegal and direct the defendant No.1 society to allow the plaintiff to participate in the proceedings of the defendant No.1 society; and

b. Declare the amendments dated 18.08.2002, 02.11.2003, 09.04.2006 etc. carried out in the Memorandum

and Articles of Association and Rules & Regulations of the defendant No.1 society by the Governing body of the defendant No.1 society and subsequently approved by the defendant No.2 on 22.09.2003, 18.05.2004 and 16.03.2007 as illegal, null and void & direct the defendant No.2 to delete the said amendments from the Memorandum and Articles of Association and rules and regulations of defendant No.1 society; and

c. Declare the subsequent elections/appointments after the said illegal amendments in Memorandum and Articles of Association and Rules & Regulations of defendant No.1 society as null and void and dismiss the present Governing body of defendant No.1 society being illegal; and

d. Pass a decree of permanent injunction thereby directing the defendants not to alter Memorandum and Articles of Association and Rules & Regulations of the said defendant No. 1 society till final disposal of the present suit.”

3.7 The said suit was contested by the defendants therein including the Registrar. In his reply, the Registrar took an unequivocal stand that he had no power to interfere in the day-to-day functioning of a registered society and the judgment of the Court would be implemented in letter and spirit. The relevant extract from the Written Statement filed by Registrar in the said suit is quoted below:-

“The then registrar conducted the hearing but has not passed any judgment on the hearing conducted as per the records available in the file of the society. It is pertinent to mention here that provision the society registration act-1860 as applicable to NCT of Delhi. The Registrar have no power to interfere in day to day function of the registered society. As the complainant has filed a suit in court of law the matter is

subjudice. The Judgment of the court will be implemented in letter and spirit.”

3.8 While the aforesaid suit was pending, the Registrar passed the impugned order accepting respondent no.3’s claim regarding irregularities in holding of the meetings, where the resolutions for amending the Rules and Regulations of the Society are stated to have been passed.

3.9 Respondent no.3 also filed an application under Order XXXIX Rule 1 and 2 Code of Civil Procedure for the stay of termination of his membership of the petitioner’s society. He became a life member of the petitioner society in the year 1995 and had decided to contest the elections for being elected as a member of the Managing Committee of the petitioner Society in 2012. It is the petitioner’s case that it is at the time (that is, at the time of standing for elections in 2012) that he had discovered that certain amendments had been carried out in the Rules and Regulations of the petitioner society and consequently filed complaints before the Registrar and thereafter filed the suit. The interim relief sought for by respondent no.3 was declined by an order dated 19.09.2015. In the said order, the Civil Judge noted that the petitioner had contested the elections for being elected as a member of the Managing Committee under the amended Rules and Regulations, which were sought to be challenged in the suit.

3.10 Respondent no.3 also preferred an appeal against the said decision rejecting his prayer for interim relief, which was also rejected on 21.01.2016.

3.11 Thereafter, respondent no.3 filed a writ petition before this Court being W.P. (C) 315/2016, *inter alia*, seeking an order directing the Registrar of Societies to pass a speaking order on the complaints made by

the petitioner therein. The said petition was disposed of by an order dated 15.01.2016. The operative part of the said order reads as under:-

“Though, the counsel for the petitioner has not been able to satisfy this Court that the Registrar of Societies can perform adjudicatory functions, yet the said issue is left upon and the Registrar is directed to dispose of the complaints filed by the petitioner as expeditiously as possible within a period of four weeks.

The petitioner is directed to communicate a copy of this order to the Registrar of Societies.

With the aforesaid directions, the present writ petition and the application are disposed of.”

3.12 The impugned order has been passed in compliance of the aforesaid order.

Reasons and Conclusions

4. The first and foremost question to be addressed is whether the Registrar had the power to adjudicate the disputes raised by the petitioner. Section 1 of the Act specifically provides that any seven or more persons associated for any literary, scientific, or charitable purpose, or for any purpose as is described in Section 20 of the Act, may form themselves into a society by subscribing their names to a Memorandum of Association and filing the same with the Registrar. Section 2 of the Act provides that the Memorandum of Association would contain the name of the society; the objects of the society; and the names and addresses and occupations of the governors, council, directors, committee, or other governing body to whom the management of the affairs of the society is entrusted. It also mandates that the copy of the rules and regulations of the society, certified to be a

correct copy by not less than three of the members of the governing body, shall be filed within the memorandum of association. Section 3 of the Act mandates that upon receipt of memorandum and certified copy being filed with the Registrar, the Registrar would certify under his hand that the society is registered under the Act. It also provides that the Registrar shall be paid the specified fee for every such registration.

5. Section 12 of the Act enables the societies to alter, extend or abridge the purpose for which it is formed. Section 12 of the Act, as in force in Delhi reads as under:-

“12.Societies enabled to alter, extend or abridge their purposes.— Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.”

6. By virtue of Delhi Act 9 of 1954, Section 12A, 12B & 12C have been introduced in the Act as applicable to Delhi. The said provisions read as under:-

“12A. Registration of change of name.—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered, or in the opinion of the Registrar so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change the name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issue under sub-section (2) a fee of rupee one or such large fee and exceeding rupees five as the State Government may, from time to time, direct; and all fees so paid shall form part of the Consolidated Fund of India.

*12B. Effect of Change.--*The change in the name of a society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society; and any legal proceeding which might have been continued or commenced by or against it by the former name may be continued or commenced by or against it by the new name.

12C.Registratin of change of names effected before coming into force of Delhi Act 9 of 1954.-If any society registered under this Act has, before the date of the coming into force of the Societies Registration (Delhi Amendment) Act, 1954 intimated to the Registrar the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of a fee provided for in sub-section (3) of section 12A, register the change of such name and issue a certificate to the society under sub-section (2) of the said section 12A. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in sections 12 and 12A.”

7. It is apparent from the plain reading of the sections 12, 12A, 12B and 12C of the Act read with section 3 of the Act that the Registrar does not have any power to adjudicate any issues with regard to the amendment of any purpose or object of the society. However, in terms of Section 12A of the Act, the Registrar has the power to review registration of the change in name of a society if in its opinion the same resembles or is identical to the name of any existing society.

8. At this stage it is also relevant to mention that a Division Bench of this Court in ***Dushyant Sharma v. Haryana Wrestling Association & Ors: LPA No. 18/2012, decided on 10.01.2012*** had observed that section 12 of the Act enabled a society to alter or amend its objects and purpose and did not extend to registering any amendment in Rules and Regulations of the society.

9. The learned counsel appearing for the respondent was also unable to point out any provision in the Act which empowers the Registrar to perform any adjudicatory function in respect of the disputes raised by the petitioner.

10. Mr Abhinav Vasisht, learned Senior Advocate appearing for the petitioner also pointed out that where ever the State Legislatures intended the Registrar to perform any adjudicatory function, the State Legislatures had enacted express provisions in that regard. He referred to the provisions of Section 12D of the Act as applicable in the State of Uttar Pradesh. The said section reads as under:-

“12D. Registrar's power to cancel registration in certain circumstances.-(1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds:-

- (a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force;
- (b) that its activities or proposed activities have been or are or will be subversive or the objects of the society or opposed to public policy;
- (c) that the registration or the certificate of renewal has been obtained by misrepresentation of fraud.”

11. This Court finds much merit in the aforesaid contentions advanced on behalf of the petitioner. Plainly, the Act as applicable to Delhi does not include any provision which entitles the Registrar to cancel a registration once the same has been granted. As stated above, there is also no

provision which empowers the Registrar to examine and adjudicate any dispute with regard to any alleged irregularity in the procedure adopted by the society to amend its Rules and Regulations.

12. Mr Bhatia, learned counsel appearing for respondent no.3 had referred to Section 21 of the General Clauses Act, 1897 and on the strength of the said provision submitted that since the Registrar had the power to grant registration to a society, it is implicit that he would also have the power to cancel such registration. This court is not persuaded to accept this contention. Section 21 of the General Clauses Act, 1897 reads as under:

“21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws.

Where by any central Act or regulation, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions (if any), to add, to amend, vary or rescind any notification, orders, rules or bye-

laws so issued.”

13. A coordinate Bench of this Court in ***Brij Mohan Gupta v. Registrar of Societies : (2012) 189 DLT 577*** had repelled the contention that Section 21 of the General Clauses Act, 1897 could be invoked by the Registrar of Societies to cancel the registration of the society. The Relevant extract of the said decision reads as under:-

“I am, therefore, of the view that section 21 of the General Clauses Act could not have been invoked in the facts of the present case by the Registrar to cancel the registration of the society. The *inter se* disputes between the petitioner and

respondent nos. 2 to 6 with regard to management and control of the society in question cannot be decided in these proceedings. It shall be open to the parties to raise all such issues in appropriate civil proceedings, and in accordance with the law. As above noted, this Court has not gone into the issue of illegality, if any, committed by the deponent of the affidavit, namely, the President of the society in the present case. The said issue may be raised and decided on its own merits, in appropriate proceedings, if and when raised.’’

14. Mr Bhatia also contended that any registration or approval obtained by any authority by playing a fraud would be *nonest* and *void* and the concerned authorities would have the necessary authority to undo the same. He also referred to the decision of the Madras High Court in ***Ramasamy v. The State of Tamil Nadu and Ors.***: *W.P. No.5908/2012*, decided on ***17.07.2014*** and the decision of the Allahabad High Court in ***Shridhar Misra and Ors v. Jaichandra Vidyalankar and Ors.*** : ***AIR 1959 ALL 598*** in support of his contention.

15. This Court is not inclined to examine the question whether the certificate for registration of the amendments in the Rules and Regulations was obtained from the Registrar by playing a fraud and thus could be revoked. This is so because no such reason has been referred to by the Registrar for passing the impugned order; the impugned order has not been passed on the basis that any fraud had been perpetuated on the Registrar. More importantly, particulars of fraud have to be pleaded and established for securing any order accepting such pleas. It is apparent that in this case the Registrar has not proceeded on the basis that it had been defrauded into granting approval/certificate. On the contrary, the Registrar has proceeded on the basis that “there were certain irregularities in approving/certifying

the amendments”. Undisputedly, the same cannot be construed as a finding of fraud.

16. As noticed above, respondent no 3 has already instituted a suit challenging the amendments made to the petitioner’s Rules and Regulations and the issues raised before the Registrar can be examined in those proceedings.

17. In view of the above, the petition is allowed and the impugned order is set aside. All the pending applications are disposed of.

18. The parties are left to bear their own costs.

JANUARY 03, 2018
pkv

VIBHU BAKHRU, J

