

AD-91
Ct No.09
16.06.2023
TN

WPA No. 1861 of 2023

Sri Shambhu Dey
Vs.
The State of West Bengal and others

Mr. Sanjib Bandopadhyay,
Mr. Manoj Kr. Mondal
.... for the petitioner

Mr. Lalit Mohan Mahato,
Mr. Jiaul Haque
.... for the State

Mr. Ujjwal Datta,
Mr. Indranuj Dutta
.... for the respondent nos. 6 to 8

Two moot issues have fallen for consideration in the present writ petition.

The petitioner has challenged the veracity of the registration of a Society under the West Bengal Societies Registration Act, 1961 (hereinafter referred to as “the 1961 Act”).

It is argued that in view of the said society having not furnished all documents as per the extant Regulations, the said registration ought to be cancelled.

It is further argued by the petitioner that the petitioner is the allottee of the said property, in respect of which the Society has obtained registration, by showing the same to be the address of its

registered office. However, the same was done by perpetrating fraud patently, on which score the petitioner made a representation before the Registrar of Societies. Initially, the Registrar had called for the relevant records from the Society.

Subsequently by virtue of a direction of a coordinate Bench of this court, the Registrar decided on the representation of the petitioner. However, the Registrar refused to recall the registration or cancel the same.

The first question which has arisen is whether the function of the Registrar in registering a Society and/or cancelling such registration is an administrative or a *quasi-judicial* action. A subsidiary question thereto is, if administrative, whether the Registrar could assume the jurisdiction to cancel the registration subsequently upon discovering violation of the statute at the time of registration, by deeming such power to be vested in the Registrar within the contemplation of Section 21 of the General Clauses Act.

Secondly, on merits, whether the petitioner was entitled to an order by the Registrar for cancellation of the registration awarded to the Society-in-question, namely, the Ramgarh Shivmandir Unnayan Samity.

In respect of the first issue, learned counsel for the petitioner cites a full Bench judgment of the Gauhati High Court reported at *AIR 2019 Gau 3 [Atowar Rahman s/o Daroga Ali vs. State of Assam and others]* for the proposition that the order of cancellation of certificate of registration is an order within the meaning of “orders” under Section 21 of the General Clauses Act as well as Assam General Clauses Act. The Registrar, it was held, can cancel the registration of society after giving opportunity of hearing to the parties.

On the contrary, learned counsel appearing for the respondent nos. 6 to 8 cites a judgment of the Supreme Court reported at *(2002) 5 SCC 685 [Indian National Congress (I) vs. Institute of Social Welfare and others]* to argue before the court that the Supreme Court clearly distinguished between a *quasi-judicial* and an administrative function. It was held by the Supreme Court that in case of *quasi-judicial* functions, powers cannot be arrogated by an authority to itself. While so distinguishing, the Supreme Court had been pleased to observe that a *quasi-judicial* act is one which has to be according to the Rules (statutory) whereas an administrative function is dictated by policy and expediency. The Supreme Court, while so discussing, also entered into the subtle nuances of

the interplay between the two and discussed the situations where there may be ingredients of both.

Learned counsel for the respondent nos. 6 to 8 also cites a judgment of a learned Single Judge of the Delhi High Court reported at 2012 SCC OnLine Del 2535 [*Brij Mohan Gupta vs. The Registrar of Societies*]. By placing reliance on the said judgment, it is argued that the Delhi High Court placed reliance on the Supreme Court judgment which has been cited by the respondents and thereafter went on to proceed on the premise that an act of registration/cancellation by the Registrar under the Societies Registration Act is not an administrative but a *quasi-judicial* function.

It is, thus, argued by the respondents that the *quasi-judicial* power exercised by the Registrar cannot be enhanced with a component which has not been vested statutorily on the Registrar.

Learned counsel for the State, as per previous direction of court, files a report which indicates that there is no provision for registration of a Society in the 1961 Act and Rules thereunder requiring the submission of documents, that is, NOC in non-judicial stamp paper related to the premises or land where the registered office of the Society is proposed to be situated.

However, it has further been disclosed that in order to avoid any dispute regarding the registered address of the society, the office of the Registrar of Firms, Societies and Non-Trading Corporations, West Bengal has made the submission of NOC in non-judicial stamp paper by the owner of the land/premises where the registered office of the Society is proposed to be situated, necessary as an usual procedure, although there is no specific provision in the Act and the Rules made thereunder.

Learned counsel appearing for the petitioner, taking a cue from the said report, submits that under Section 5 of the 1961 Act, sub-section (1)(b) mandates that the address of the registered office of the association has to be contained in the Memorandum. Hence, since such mandate flows from the statute, it is argued that the production of relevant documents in that regard is necessary. If a fraud is practised on the authorities by the person seeking to get a registration, it is open to the Registrar to reopen the issue of registration, since fraud vitiates all.

As regards the second question, which is interconnected with the above discussions, it is also submitted that in the present case, the registration having not been obtained properly by production of documents on non-judicial stamp paper pertaining to

the consent of the owner of the land, which is the petitioner, the said registration itself is vitiated and the Registrar could very well cancel the same.

Learned counsel for the petitioner has also placed reliance on Sections 22 and 25 of the West Bengal Societies Registration Act, 1961 and argues that the power of the Registrar to call for information or explanation vested under Section 22 would be a toothless formality in the event the Registrar did not have power to cancel the registration. Even in the present case, Section 22(1) was duly invoked by the Registrar, which indicates that Section 22 is applicable to the present case. Moreover, even the court can dissolve a registered society, although the prerequisites for the same are not applicable in the present case.

Heard learned counsel for the parties.

The first question which has arisen is whether the power of the Registrar to register a Society under the 1961 Act and/or cancel such registration is an administrative function or a *quasi-judicial* one.

Although the Supreme Court judgment cited from the Bar deals with the cases where distinctions between *quasi-judicial* and administrative functions have been laid down and the same has been followed by a learned Single Judge of the Delhi High Court in

the context of the said principle being applicable to the Societies Registration Act, thereby not conferring power to the Registrar to cancel or reopen the registration itself, the judgment cited by the petitioner is that of a full Bench of the Gauhati High Court, which also has strong persuasive value. In the Gauhati High Court judgment, it was clearly observed that the power of Registrar as regards registration of Society is administrative in nature and not *quasi-judicial*.

Hence, it was observed that order of cancellation of certificate of registration is an order within the meaning of orders under Section 21 of the General Clauses Act.

A careful consideration of the provisions of the statute does not reveal that there is any power vested on the authority granting registration, that is, the Registrar, to recall the order of registration or to review the same. Although there is no specific power of cancellation vested in the Registrar under normal circumstances, undoubtedly, the Registrar has power to call for information or explanation under Section 22 by a written order, in cases where the Registrar deems fit. On receipt by the society of an order under subsection (1) of Section 22, it would be the duty of the officer concerned to furnish such information or

explanation. Sub-section (3) thereof provides that for failure to comply, there is a token sanction provided under the statute by way of a fine.

Carrying on further, Section 23 of the Act vests power in the State Government to investigate the affairs of a Society where, on information received, the Government is of the opinion that there are circumstances suggesting that the business of a Society is being conducted with intent to defraud its creditors, members or any other persons etc.

Section 25, which is for dissolution by court, provides that the court may, on the application of the Registrar or on the application of not less than 1/10th of the members, make an order for the dissolution of a Society in certain cases. The said cases also include any contravention by the society of the provisions of the Act.

Hence, a clear reading of the different provisions of the Act reveals that the Registrar does not have power to cancel the registration, once granted. Rather, Section 23 vests the State Government with such power to investigate and take corrective measures in the event there is any subsequent mismanagement in the affairs of the Society after such registration.

Even the court has been vested with a power, but only on an application of not less than 1/10th of the members of the Society or on an application of the Registrar. One can easily link the provisions of Section 22 of the power of the Registrar to call for information or explanation with a following application by the Registrar before the court for dissolution under Section 25. In such cases, however, it is not the Registrar but, on an application of the Registrar or 1/10th of the members, that the court has the authority to take up such issue.

In the present case, even without going into the disputed issue as to whether the function of registration is a *quasi-judicial* or administrative function, it is seen that the cancellation sought by the petitioner before the Registrar is something which is beyond the scope of the authority of the Registrar. Even assuming the best case of the petitioner that the Registrar had the power to reopen such registration, the issue raised by the petitioner is the contravention of a mere technical provision introduced as a matter of convenience by the office of the Registrar of Firms.

However, as admitted by the Registrar of Firms in his note, there is no provision for registration of a Society under the Act or the Rules made thereunder requiring the submissions of documents by way of

NOC on non-judicial stamp paper from the registered owner, which is the alleged violation canvassed by the petitioner in the present case.

That apart, on a more basic premise, it is evident that only a civil court has the jurisdiction to decide on the allegations made by the petitioner to the effect that the Society-in-question has sought to usurp the land of the petitioner, to which the Society does not otherwise have title. Such question can only be raised before and addressed by a competent civil court having jurisdiction to take up such issues and not decided by the Registrar of the Cooperative Society or by the writ court, without taking detailed evidence.

As such, even if the contravention of such procedure introduced by the Registrar's office was committed by the Society, it cannot be said that the same authorizes the Registrar under the Societies Registration Act to cancel the registration outright and/or recall the order of registration.

Hence, there is no scope of interference in the present writ petition.

However, it is made clear that it will be open to the petitioner to approach the competent civil court with the disputes regarding the title to the property, on which the society-in-question has shown its registered office to be situated, before a competent

civil court. If such issues are raised, the said court shall decide the same in accordance with law without being prejudiced or influenced in any manner by any of the observations made herein.

WPA No. 1861 of 2023 is disposed of accordingly in the light of the above observations.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)