15th April, 2024
(AK)
35

W.P.A 20648 of 2022
IA No: CAN 2 of 2023

Contai Punyasloka Vidyasagar Murti Pratistha Samiti
Vs.
The State of West Bengal and others

Mr. Haradhan Banerjee
Mr. Amitav Pain
Ms. Manideepa (Paul) Roy
Mr. Sounak Bhattacharya
Mr. ParthaPratim Mukhopadhyay
...for the petitioner.

Mr. Soumen Kr. Dutta
Mr. Subham Dutta
Mr. Sk. Sayan Uddin
...for the added respondent.

1. Written notes of arguments filed by the parties be kept on record.
2. However, in view of the short question involved, the matter is taken up for hearing here and now and being decided as hereunder:
3. Learned senior counsel appearing for the petitioner contends that the private respondent, who was the erstwhile secretary of the subject society, was removed by a meeting dated September 16, 2017.
4. Thereafter, the petitioner, who was the new incumbent in the post of Secretary, deposited returns on behalf of the society which was accepted by the Registrar.

5. However, subsequently, in the next November, return was again deposited by the private respondent, acting as the Secretary of the Association, allegedly *de hors* the law.

6. Learned senior counsel further argues that the removal of the private respondent is at present sub-judice before the competent civil court, since the private respondent has challenged his removal in a suit which is now pending between the parties.

7. In connection with the said suit, it is pointed out, an order of status-quo was passed.

8. Learned senior counsel appearing for the petitioner places reliance on various averments made in the vacating application as well as the injunction application filed in the suit by the private respondent to show that the private respondent has admitted that the petitioner has been acting as Secretary of the Association, although it has been alleged that such action is illegal.

9. Whatever may be the nature of the allegation, such admission that the petitioner is now operating as Secretary is itself sufficient to interpret the status-quo order in the said context, meaning thereby that the petitioner has been permitted by the civil court to carry on acting as a Secretary by dint of the removal of the private respondent.

10. In such context, the present writ petition has been filed seeking a direction on the registrar of societies to accept the returns filed on behalf of the society by the petitioner as its Secretary.

11. Learned senior counsel places reliance on Section 17 of the West Bengal Societies Act, 1961. It is contended that in terms of the said Section, in particular sub-Section (4) thereof, penalty may be imposed in case of contravention of the rider stipulated in sub-Section (1), that is, within thirty days after the holding of every annual general meeting there shall be filed with the Registrar an annual report and the other particulars as stipulated therein.

12. It is pointed out that under Section 25(1)(a) of the Act, for contravention of any of the provisions of the Act, the society may even be dissolved by court.

13. Thus, the non-acceptance by the Registrar of the returns sought to be deposited by the petitioner might prove fatal to the society itself.

14. As such, learned senior counsel rests his case by arguing that in view of the status-quo order and in the light of the developments as indicated above, the petitioner is entitled to deposit return as Secretary of the society.

15. Learned counsel appearing for the private respondent points out that in view of the pendency

of the suit, the issue as to entitlement as Secretary is sub judice before the civil court.

16. Learned counsel for the private respondent seeks to interpret the order of the civil court in a different context than that pleaded by the petitioner.

17. It is argued that in view of status quo having been directed to be maintained regarding the nature and character of the suit property and since the subject-matter of challenge in the suit is the removal of the private respondent, the petitioner's hands have been stayed by the status-quo order from acting as Secretary of the society.

18. In any event, it is pointed out that the communication relied on by the petitioner, made by the Joint Registrar to the Registrar of Societies, sought guidance on the next mode of action in view of the complaint made by the petitioner as well as a report filed by the private respondent regarding irregularities in the society.

19. It is further argued that the petitioner does not have any legal right to stake the claim as made in the present writ petition.

20. A perusal of Sections 22 and 23 of the 1961 Act conjointly shows that the power of Registrar to call for information or explanation under Section 22 leads to an investigation, if the Registrar is

dissatisfied with such information, as contemplated under Section 23 of the said Act.

21. The issue raised in the present writ petition is otherwise.

22. The petitioner claims exclusive rights to file the returns, in exclusion of the private respondent.

23. The petitioner also apprehends purportedly that penal action may be taken against the society in the event no return is filed either by the petitioner or the private respondent.

24. Thus, as a consequential prayer, the petitioner also seeks an order restraining the Registrar from taking penal action under Section 17, 25 or otherwise of the said Act, in the case of non-submission of return by either of the two – the petitioner and the private respondent.

25. The entire question which is the cardinal premise of the legal right to file return is who among the petitioner and the private respondent is legitimately entitled to be the Secretary of the Society.

26. Such question, in turn, depends on the outcome of the pending civil suit of the private respondent, where the removal of the private respondent itself has been challenged.

27. It cannot be said in the same breath that both the petitioner and the private respondent are permitted

to file annual return, since their rights would be mutually exclusive.

28. In the event the removal of the private respondent is upheld by dismissal of the suit, it will be the petitioner who will be solely entitled to act as Secretary and file the return in exclusion of the private respondent.

29. The situation would be diametrically opposite in the event the suit is decreed and the removal of the private respondent is set aside, in which case it would be the private respondent who would be entitled to file the returns in exclusion of the petitioner.

30. Hence, we cannot envisage a scenario where both the petitioner and the private respondent have juxtaposed and simultaneous rights to file returns on behalf of the society.

31. The hidden agenda of the petitioner is to seek a confirmation of a legal right to file returns as Secretary which, since the subject matter of the suit, cannot be decided by the writ court at this juncture.

32. If such issue is decided in the present forum, it would be a travesty of justice, since the civil court is in seisin of the matter and is more equipped for taking evidence to decide the merits of the said issue on facts.

33. Unless the said issue is decided, the right of the petitioner, even if ultimately decided in his favour, is at best an inchoate right which has not yet attained fruition.

34. Since the civil court has already passed a status quo order regarding the nature and character of the suit property, albeit there being no “property” as such which is the subject matter of the suit, it is for the parties to seek appropriate clarification of the said order or obtain an order to ascertain from the civil court as to who among the warring parties is entitled to file the returns on behalf of the society for the present.

35. The question entirely depends upon the proper interpretation of the status quo order granted by the civil court, which can only be interpreted by the civil court itself and not by this court.

36. Accordingly, the remedy of the parties lies before the civil court.

37. Hence, WPA 20648 of 2022 is disposed of by granting liberty to the petitioner as well as the private respondent to approach the civil court, where the suit filed by the private respondent against his removal is now pending, seeking a clarification of the status quo order passed by the civil court and/or appropriate orders as to the

present entitlement among the parties to file the returns on behalf of the society.

38. If so approached, the civil court shall decide the issue on an *ad hoc* basis during the pendency of the suit subject, of course, to the final decision of the suit, without being influenced in any manner by any of the observations made herein.

39. CAN 2 of 2023 is accordingly disposed of as well.

40. There will be no order as to costs.

41. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)