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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28049 of 2023

Soumen Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Kallol Basu,
Mr. Samik Sarkar,
Ms. Deboleena Ghosh
...for the petitioners

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
...for the State

Mr. Pratik Dhar,
Mr. Samir Halder,
Mr. Arkadeb Bhattacharya
...for the respondent nos. 3 to 7

Mr. Raja Saha,
Mr. Anujit Mukherjee,
Mr. Sanjay Mukherjee
...for the respondent no. 8

1. In view of all the material documents being annexed to the writ petition and arguments having been advanced on all issues, affidavits are not being directed in the matter. It is, however, deemed that none of the allegations made in the writ petition are admitted by any of the respondents.
2. The gamut of the present dispute is the order dated September 08, 2023 passed by the Registrar of Firms, Societies and Non-trading Corporations, West Bengal, whereby the Annual General Meeting

(AGM) of the concerned Society, that is, the Future Gems School, was declared to be null and void and consequentially any and/or all decisions said to have been taken thereto were also declared null and void. Consequentially, it was directed that an AGM for the year 2021-22 be conducted in respect of the said society immediately without any further delay positively within a period of four weeks following the Regulations of the Society among the eight members which formed the Governing Body for the year 2021-22.

3. Learned counsel for the petitioners contends that the said order was passed pursuant to a purported show-cause notice dated June 15, 2023, annexed at page-161 of the writ petition, which was admittedly issued under Section 22(1) of the West Bengal Societies Registration Act, 1961.

4. By placing reliance on the said provision, it is argued that it was *de hors* the powers of the Registrar to hold an AGM null and void and direct fresh AGM to be held. The sole scope of the powers vested on the Registrar under Section 22, it is argued, is calling for information or explanation pertaining to the affairs of the society. Under sub-section (3) of Section 22, a failure to comply with an order under sub-section (1) of Section 22 would at the worst be attended by a punishment with fine

which may extend to Twenty rupees for everyday during which the failure continues and no further.

5. Simultaneously placing Section 23 of the said Act, learned counsel argues that the appropriate provision for investigation into the affairs of a society are provided under the said Section, which is to be done by the State Government and not the Registrar under the said Act.

6. As such, the petitioners challenge the impugned order and the show-cause notice, which was the genesis of the same, on the ground of lack of jurisdiction on the part of the Registrar.

7. It is further argued that from the concerned minutes of the meetings of the Society, the particulars of all the members were very much available. As such, the finding of the Registrar in the impugned order that there were only eight members was palpably bad in law and in fact.

8. It is argued that the show-cause notice ought to have clearly indicated the penal action contemplated for non-compliance of the same as well as the exact offences committed by the petitioners, which were not disclosed in the said notice. In support of such contention, learned counsel places reliance on *UMC Technologies Private Limited vs. Food Corporation of India & Anr.*, reported at (2021) 2 SCC 551.

9. Learned senior counsel appearing for the respondent nos. 3 to 7, who were the complainants before the Registrar, argues that in terms of Form-6, it was consistently maintained by the Society that the number of members were eight, as rightly held by the Registrar. There is nothing on record, it is argued, to show as to what prompted the petitioners from showing the number of members to be fourteen. No proof of induction of additional members has been placed before this court, it is argued. In support of his contention, learned senior counsel places reliance on the filing of annual and other returns by the Society under Form-6 of the extant Regulations, which are annexed to the present writ petition.

10. Learned senior counsel then contends that a suit has been filed by the respondent nos.3 to 7, where the petitioners are also defendants. In view of the specific allegations made, in particular in paragraph no. 35, of the plaint thereof, an injunction order was passed in favour of the plaintiffs whereby the defendants, including the petitioners and their men and agents, were restrained from causing any disturbance or obstruction in the operation of Future Gems School and Future Gems Academy and also from

alienating or otherwise creating any third party interest over the scheduled property.

11. It is argued that the present endeavour of the petitioners is to frustrate the order of the civil court, which cannot be prayed before a writ court.

12. The apprehension of the respondent nos. 3 to 7 is primarily that the smooth functioning of the school, which is going on in due adherence to law, would be hampered in the event the order of the Registrar is disturbed.

13. Learned counsel appearing for the respondent no. 8 also submits that the order passed by the Registrar was passed in accordance with law and keeping in view the actual factual scenario in the said Society. It is reiterated that the number of members is eight. In the event any order disturbing the order of the Registrar is passed, it is apprehended by the respondent no. 8 also that the functioning of the school may be adversely affected.

14. Upon hearing learned counsel for the parties, it is evident that the injunction order obtained in connection with the civil suit by the respondent nos. 3 to 7 has no direct connection with the dispute involved in the present matter. The limited conspectus of the present writ petition is the legality and jurisdiction of the Registrar under the 1961 Act to pass the impugned order in terms of

the impugned show-cause notice dated June 15, 2023.

15. *Ex facie*, the petitioners are justified in arguing that the limited powers vested on the Registrar under Section 22 of the 1961 Act can at best be visited with imposition of a penalty up to Rs.20/- for each day of infraction.

16. Sub-section (1) of Section 22 provides that the Registrar may by written order call on a Society to furnish in writing such information or explanation within a particular time as he may specify in connection with the affairs of the Society or any documents filed by the Society under the 1961 Act.

17. However, there is nothing in the four corners of the statute which provides any sanction or measure in case of non-compliance of such direction, apart from the imposition of fine in sub-section (3) thereof.

18. Hence, since the genesis of the impugned order passed by the Registrar on September 08, 2023 was the show-cause notice dated June 15, 2023 which was mentioned to have been issued under Section 22 of the 1961 Act, the consequence which flowed from the issuance of the notice is disproportionate with the power vested in the Registrar under Section 22. Since Section 22 itself does not contemplate to confer any power on the Registrar to

intrude into the affairs of the functioning of the society, let alone hold that the an AGM held in the society is null and void and direct fresh AGM to be held, the consequential order dated September 08, 2023 is bad in law.

19. Learned counsel for the petitioners is also justified in relying upon the *UMC Technologies (supra)*, since it is well-settled law that a show-cause notice, to be valid, has to clearly disclose two components - first, the exact offences/breaches which are alleged to have been committed by the accused person and secondly, the exact measures or sanction which will be taken against the addressee of the show-cause notice in the event the show-cause is not satisfactorily replied to. None of such ingredients are present in the impugned show-cause dated June 15, 2023, which vitiates the same and the consequential order dated September 08, 2023 as well.

20. Insofar as the apprehension of the respondents that any order passed in the present writ petition might affect the functioning of the society and/or have a material bearing on the suit or the order passed therein, such apprehension is baseless, since the limited gamut of the present writ petition, as indicated above, is the veracity of the show-

cause notice issued by the Registrar and the consequential order passed by the Registrar.

21. In the event this court either affirms the order of the Registrar or sets it aside, the said act itself would not either validate or invalidate the actions which were set aside by the Registrar. Such consideration will be independently taken care of in the civil suit pending between the parties. In fact, all parties herein may approach the appropriate forum/court for taking action against each other in the event there is perceived contravention of any provision of the 1961 Act or any irregularity or illegality in the functioning of any of the parties with regard to the affairs of the Society. This court does not touch upon the merits of the allegations and counter-allegations made by the parties against each other or which the issues which are *sub judice* before the civil court and/or which were dealt with by the Registrar.

22. Since in the opinion of this court, as held above, the Registrar did not have jurisdiction at all to go into the issues which he did or pass the impugned order, the findings rendered by the Registrar on all the issues before him automatically go and are neither validated nor invalidated hereby.

23. In view of the above discussions, WPA No. 28049 of 2023 is allowed on contest, thereby

setting aside the show cause notice dated June 15, 2023, annexed at page-161 of the writ petition, as well as quashing the order dated September 08, 2023, annexed at pages-180 to 182 of the writ petition, passed by the Registrar on the ground that the Registrar did not have jurisdiction or authority in law to pass the said order.

24. There will be no order as to costs.

25. 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.)