

(1991) 10 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27911/91

Arvind Shukla

APPELLANT

Vs

Commissioner, Kanpur Division and Others

RESPONDENT

Date of Decision : 22-10-1991

Acts Referred:

Societies Registration Act, 1860 — Section 12D

Citation : (1991) 2 AWC 257

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Suresh Chandra Verma, for the Appellant;

Final Decision : Allowed

Judgement

R.R. Misra, J.—Since the counter and rejoinder affidavits have been exchanged between the parties at the admission stage, this writ petition is being disposed of finally in accordance with the Rules of the court. There is a registered society known as M.L.S. Management Committee, Reewan (Sandalpur) Kanpur. The same is a society registered under the Societies Registration Act and was formed in the year 1965. Various renewals were granted to the society from time to time. Last renewal made by it was vide a renewal certificate dated 21-5-86 for 5 years w.e.f. 10-10-85. The term of the office bearers of the society was renewed for 5 years w.e.f. 10-10-85 and was due to expire on 9-10-90. Therefore, one Shri Mani Lal Shukla, Founder of the society, circulated an Agenda dated 9-7-90 for holding a meeting of the Central Body of election of the office bearers on 12-8-90. The said election did take place on 12-8-90. Thereafter in a later meeting held on 6-8-90 the Management Committee, it is urged, authorized Sri Arvind Shukla to take necessary steps to obtain 6th renewal of the society. Consequently the Petitioner after depositing the renewal fee applied for renewal vide his application dated 30-8-90. Since no objection was filed, the Assistant Registrar after satisfying himself that the documents filed before him by the Petitioner accepted the Committee of Management headed by the Petitioner as

its manager and issued a renewal certificate dated 12th October 1990, a copy of which has been filed as Annexure 9 to the writ petition. Thereafter one Sri Ram Gopal Srivastava Ex Secretary of the society made an application dated 30th October, 1990 before the Assistant Registrar alleged himself to be the manager of the society and prayed for the renewal of the society treating himself to be as manager of the society. There upon the Assistant Registrar, Kanpur, issued a letter dated 15-12-90 to the Petitioner Sri Arvind Shukla as Sri Ram Autar Shukla Respondent No. 3 directing them to deposit the renewal certificate issued on 12-10-90 and to file their respective affidavits. On a contest made by the aforesaid rival claimants the Assistant Registrar as well as the Appellate Authority vide their orders dated 23-2-91 and 16-9-91 respectively, copies of which have been filed as Annexures 18 and 25 to the writ petition, have on appraisal of evidence, recorded findings to the effect that the renewal of the said society obtained by Sri Arvind Shukla is for the reasons stated in the said orders illegal and. had been obtained by misrepresentation. Therefore the said two authorities have in purported exercise of their powers u/s 12-D(c) of the Societies Registration Act 1860 held that the certificate of renewal has been obtained by misrepresentation. Relevant provisions in this regard read as follows:

12-D. Registrar's power to cancel registration in certain circumstances--(I) 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;

(c) That the registration or the certificate of renewal has been obtained by misrepresentation or fraud.

The Petitioner has felt aggrieved against the said impugned orders passed by both the authorities below. The crux of the submission made by the learned Counsel for the Petitioner is that it was not open under the law for the two authorities below to have passed the impugned orders in purported exercise of their powers u/s 12-D(c) of the said Act as reproduced above because a bare reading of the said orders shows that the said authorities have by their orders not cancelled the certificate of renewal of the society. (Emphasis supplied). The submission is that all that has been done by the authorities below is fat the renewal certificate of the Society as obtained by the Petitioner has. intact, been cancelled but at the same time the said renewal certificate of the society has been maintained as obtained by Sri Ram Autar Shukla Respondent No. 3, declaring him to be the manager of the society.

2. Learned Counsel for Sri Ram Autar Shukla has during the course of the submission relied upon the facts and reasons given by the two authorities below to support the impugned orders He has further submitted that since the Petitioner had not taken this ground before the authorities below, therefore, this Court will in exercise of its writ jurisdiction not allowed the Petitioner to raise the said ground.

3. Having gone through the record and after giving my anxious consideration to

the arguments advanced by the learned Counsel for both the parties, I find force in the submissions made by the learned Counsel for the Petitioner. As regards the second objection taken by the learned Counsel for the Respondent No. 3, I overrule the same because I find that the said argument advanced on behalf of the Petitioner goes to the root of the jurisdiction of the opposite parties to pass the impugned orders in the terms that they have passed. A bare perusal of the impugned orders passed by the authorities below reaffirms that in the impugned orders the said authorities have cancelled the renewal certificate as obtained by Sri Arvind Shukla the Petitioner but at the same time they have upheld the renewal certificate as obtained by Sri Ram Autar Shukla Respondent No. 3. Learned Counsel for the Petitioner has in support of his said submission also relied upon two decisions of this Court in the cases of Managing Committee, Shree Sanathan Dharm Sanaskrit Pathshala and Another Vs. State of U.P. and Others, and the case of Krishak Pracharni Sabha v. Commissioner Agra Division, Agra 1991 ALT 724 It has been held in these cases that Section 12D of the Societies Registration Act 1860 (is amended in UP.) only confers powers for cancellation of registration in the circumstances given in the Act. The section does not confer any power for recognizing any body either as manager or renewing the registration of the society with a particular name. In view of the said state of law declared by this Court and having regard to the facts of the case stated above, I find that the impugned orders are in the teeth of the aforesaid decisions and accordingly the said impugned orders hereby quashed. The writ petition is accordingly allowed with costs. It shall, however, be open to the respective parties to take appropriate steps for resolving their disputes in the appropriate forum.