
(2009) 05 AHC CK 0538
In the Allahabad High Court

C/M Sri Shanker Shiksha Prasar Samiti and Another	APPELLANT
Vs	
State of U.P.and Others	RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0538

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Allowed

Judgement

S.P.Mehrotra,J.

Counter Affidavit on behalf of the respondent no.3 and Rejoinder Affidavit on behalf of the petitioners have been filed today.

It appears that a list of officebearers of the Committee of Management of the Society in question for the year 20082009 submitted by the petitioner no. 2 (Annexure No. 10 the Writ Petition) was registered by the Deputy Registrar Firms, Societies and Chits, Kanpur on 1.1.2009.

Subsequently,by the order dated 5.3.2009, the registration of the said list of the officebearers of the Society in question was cancelled.

It is submitted by Sri Yogish Kumar Saxena, learned counsel for the petitioners that in passing the impugned order dated 5.3.2009, reliance has been placed on an alleged affidavit of Shiv Kuamr (peon).

It is further submitted by Sri Saxena that there was no reference to the said affidavit of Shiv Kumar in the complaint dated 22.1.2009 submitted by the respondent no.3, copy whereof has been filed as part of Annexure no. 11 to the Writ Petition. No copy of the said affidavit was served on the petitioners. Sri Saxena refers to the averments made in paragraph nos. 19 and 20 of the Writ Petition in this regard.

It is further submitted that the Deputy Registrar had no jurisdiction to pass the

impugned order dated 5.3.2009 because in case any objection was raised, the matter ought to have been referred to the Prescribed Authority under subsection (1) of Section 25 of the Societies Registration Act, 1860, as applicable in the State of U.P.

Reliance in this regard is placed on the following decisions:

(1)All India Council through Bharat Dharam Maha Mandal, Lahura Bir, Varanasi and another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, 1988 AWC 1154 (DB).

(2) Abhay Grasth Gramin Jan Sangathan Kusmikhalan and another Vs. Assistant Registrar, Firms, Societies & Chits, Varanasi Region, Varanasi and another, (1990) 1 U.P.L.B.C. 480 (D.B.)

It is further submitted by Sri Saxena that none of the four members, who were removed in the meeting held on 15.6.2008, filed any representation/objection before the Deputy Registrar in this regard.

Sri S.K.Mishra, learned counsel for the respondent no.3 submits that copy of the affidavit of Shiv Kumar was received by the petitioner no. 2. In this regard, Sri Mishra refers to the averments made in paragraph nos. 21 and 22 of the Counter Affidavit. He further submits that the petitioner no. 2, who was the Manager of the Society in question, was suspended on 24.1.2008, and subsequently, the petitioner no.2 was removed from the post of Manager on 18.5.2008. In the circumstances, the petitioner no. 2 was not authorised to issue any agenda for holding the meeting on 15.6.2008.

It is further submitted by Sri Mishra that the Deputy Registrar was authorized to pass the impugned order dated 5.3.2009, as the registration on 1.1.2009 had been obtained by committing fraud.

In rejoinder, Sri Saxena submits that the suspension of the petitioner no. 2 in the meeting held on 24.1.2008 and the appointment of the respondent no. 3, as the Officiating Manager were held to be invalid by the Deputy Registrar by the order dated 24/27.6.2008(Annexure no. 4 to the Writ Petition).

Against the said order dated 24/27.6.2008, a Writ Petition being Civil Misc Writ Petition no. 34442 of 2008 was filed by the respondent no. 3, wherein Counter and Rejoinder Affidavits have been exchanged. However, no stay order has been passed in the said Writ Petition.

In view of the submissions made by the learned counsel for the parties, the matter requires consideration.

Counter Affidavit on behalf of the respondent no. 3, as noted above, has been filed.

Learned Standing Counsel appearing for the respondent nos. 1 and 2 may file Counter Affidavit within three weeks.

Rejoinder Affidavit may be filed by the next date fixed in the matter.

Heard on the question of grant of interim relief.

Having regard to the facts and circumstances of the case, and having considered the submissions made by the learned counsel for the parties, it is provided that till the next date of listing, the operation of the impugned order dated 5.3.2009 (Annexure no. 13 to the Writ Petition) will remain stayed.

List this case on 15.7.2009 alongwith the record of Civil Misc. Writ Petition no. 34442 of 2008

The case is released from assignment. It will not be treated as tiedup or partheard with me, and will be listed before the appropriate Bench.