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**(2013) 12 AHC CK 0137**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 42213 of 2013

Committee of Management

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 06-12-2013

**Acts Referred:**

**Citation :** (2014) 1 ADJ 125

**Hon'ble Judges :** Dilip Gupta, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Dilip Gupta, J.—The Committee of Management of Lallu Singh Adarsh Janta Vidyalyaya Kurawali, Mainpuri and Preetam Singh Verma, claiming himself to be the Manager, have filed this petition for quashing the order dated 12th July, 2013 passed by the Assistant Registrar, Firms, Societies and Chits, Jhansi (hereinafter referred to as the "Assistant Registrar") by which the election held on 10th December, 2009 for constituting the Committee of Management of the Society in which petitioner No. 2-Preetam Singh Verma was elected as the Manager has not been approved and a direction has been issued to the Committee elected in the year 1987 to hold fresh election for constituting the Committee of Management of the Society within a period of one month in accordance with the Bye-laws of the Society. Lallu Singh Adarsh Janta Vidyalyaya Kurawali, Mainpuri is a Society registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as the "Act"). It is stated that this Society was registered on 31st March, 1987 and its registration has been renewed from time to time. The petitioners claim that the election for constituting the Committee of Management of the Society was held on 10th December, 2009 from amongst 31 valid members of the General Body, while respondent No. 5-Madan Lal Verma claims that the election was held on 13th December, 2009 from amongst 205 valid members of the General Body.

2. The Deputy Registrar, Firms Societies and Chits, Agra (hereinafter referred to

as the "Deputy Registrar") had earlier accepted the claim of the petitioners regarding the election held on 10th December, 2009 and rejected the claim of respondent No. 5-Madan Lal Verma regarding the election held on 13th December, 2009 by the order dated 21st January, 2012 and, accordingly, a direction was issued for registration of the list of office bearers of the Society u/s 4 of the Act. This order dated 21st January, 2012 passed by the Deputy Registrar was assailed by the Committee of Management with Madan Lal Verma as the Manager in Writ Petition No. 5638 of 2012 in which an interim order was passed on 21st February, 2012 but it was left open to Madan Lal Verma to raise objections before the Assistant Registrar with regard to the validity of the election held on 10th December, 2009 in which Preetam Singh Verma was elected as the Manager and the Assistant Registrar was directed to dispose of the same by a speaking order after giving opportunity of hearing to the concerned parties.

3. The Deputy Registrar then found as a fact that there were 31 members in the General Body (11 patrons and 20 ordinary members) and it was from amongst these 31 members that the election for constituting the Committee of Management was held on 10th December, 2009. The Deputy Registrar further found that the list of members of the General Body submitted by Madan Lal Verma was not in accordance with the Bye-laws of the Society and, therefore, rejected the objections filed by him.

4. The aforesaid order dated 2nd April, 2012 passed by the Deputy Registrar was again assailed by the Committee of Management of the Society with Madan Lal Verma as the Manager in Writ Petition No. 19217 of 2012. This petition and the earlier Writ Petition No. 5638 of 2012 filed by the Committee of Management with Madan Lal Verma as the Manager were allowed by a common judgment and order dated 24th September, 2012 and the observations are :

Accordingly, both the writ petitions have to succeed and are hereby allowed. The orders dated 21.1.2012 and 2.4.2012 are both set aside. The Deputy Registrar, Firms, Societies & Chits, Agra-Respondent No. 3 is directed to decide the validity or otherwise of the 28 out of 31 Members against whom objections have been raised by the petitioner and also to determine the correct electoral College in accordance with the by-laws of the society that was then existing. The Deputy Registrar shall not be influenced or governed by the Scheme of Administration of the institution and shall confine himself to the inquiry under the then existing by-laws. The Deputy Registrar shall decide the matter as expeditiously as possible preferably within 3 months from the date of production of a certified copy of this order before him. All consequential actions taken shall be governed by the outcome of such a decision to be taken by the Deputy Registrar,

5. The Deputy Registrar at Agra was in the process of deciding the matter pursuant to the directions issued by the Court when respondent No. 5-Madan Lal Verma filed an application before the Registrar, Firms Societies and Chits, Lucknow that the dispute may be transferred to some other Deputy Registrar as

he did not expect justice from the Deputy Registrar at Agra and when no order was passed on the said application, Madan Lal Verma filed Writ Petition No. 13150 of 2013 which was disposed of on 8th March, 2013 with a direction to the Registrar to decide the application within four weeks. The Registrar, Firms Societies and Chits, Lucknow, then, by the order dated 8th May, 2013, transferred the matter to the Assistant Registrar at Jhansi. It is for this reason that the Assistant Registrar at Jhansi passed the order dated 12th July, 2013 which has been impugned in this petition.

6. It is stated that the Assistant Registrar issued notice to the parties to appear on 27th June, 2013 but, another notice was issued fixing 8th July, 2013 on which date the petitioners filed written statement and documents through their counsel Ajit Kumar. On behalf of respondent No. 5-Madan Lal Verma his representative Rajiv Kumar appeared and, after submitting his authority letter, made a request for fixing another date for submitting written statement and documents. The petitioners also assert that on 8th July, 2013 the Assistant Registrar fixed the next hearing on 12th July, 2013 at 3:00 p.m. and, directed Rajiv Kumar-representative of Madan Lal Verma to produce the original documents including the membership register, pass book for membership fee, agenda of the election proceedings and minutes of the election proceedings. However, subsequently, without notice to the petitioners, the time mentioned in the original order was changed from 3.00 p.m. to 11:00 a.m. It is also asserted that this time was changed by the Assistant Registrar, Kamendra Kumar later on as he was under transfer and was required to handover charge of his office on 12th July, 2013. It is further asserted by the petitioners that when they reached the office of the Assistant Registrar they were informed at about 4:00 p.m. that the Assistant Registrar was under transfer and information of the next date of hearing would be conveyed to the parties. The petitioners have stated that subsequently they learnt that the Assistant Registrar had passed an order on 12th July, 2013 whereafter they filed a representation to the Secretary (Institutions, Finance & Registration) on 20th July, 2013 with a copy to the Assistant Registrar at Jhansi to preserve the files relating to the petitioners Society.

7. When the matter was taken up by the Court on 2nd August, 2013, a supplementary-affidavit was also filed on behalf of the petitioners enclosing a certified copy of the order-sheet and it was pointed out by Sri Ashok Khare, learned Senior Counsel for the petitioners that the order dated 8th July, 2013 had been tampered as the time fixed for hearing at 3:00 p.m. in the order had been crossed out and it was separately noted in the order-sheet that the hearing will take place on 12th July, 2013 at 11:00 a.m. It was also pointed out from the order-sheet that there are two orders of 12th July, 2013. The first order mentions that when the matter was taken up, a request was made by the representative of Madan Lal Verma for granting some time to produce the original documents and so one hour was provided. The second order records that the documents were produced by the representative of Madan Lal Verma and the hearing stood concluded.

8. The Court on 2nd August, 2012, after noticing the submissions advanced by learned Senior Counsel for the parties, passed the following order :

What is sought to be impressed by learned Senior Counsel for the petitioners is that the matter was transferred to the Assistant Registrar at Jhansi at the instance of the respondents and even though the Assistant Registrar, Jhansi was under transfer on 12th July, 2013, but in a mala fide manner and in his anxiety to decide the matter, he first caused interpolation in the order dated 8th July, 2013 by changing the time of hearing from 3:00 p.m. to 11:00 a.m. because he was required to hand over charge in the afternoon and secondly on the alleged asking of the respondents to give some time to produce the document, he fixed the time after one hour without any intimation to the petitioners and then passed the order which runs into as many as 17 typed pages before his transfer in the afternoon on the same date. In support of his contention, learned Senior Counsel for the petitioners has placed before the Court the photostat copy of the order-sheet annexed with the Supplementary-affidavit.

Sri R.K. Ojha, learned counsel appearing for respondent No. 5 does not deny that the Assistant Registrar, Jhansi who passed the order on 12th July, 2013 was under transfer and the new incumbent joined in the afternoon on 12th July, 2013 but what he states is that the order has to be examined on merits and if there is no illegality in the order, then the Court should refrain from interfering with the order under Article 226 of the Constitution. In this connection, learned counsel for the respondents has submitted that the material findings recorded in the impugned order have not been assailed by the petitioners.

The conduct of the Assistant Registrar Jhansi in taking unusual interest in the matter and then deciding it in such haste has to be examined.

From the photo-stat copy of the order-sheet dated 8th July, 2013, which has been annexed with the supplementary-affidavit, it does appear that the Assistant Registrar, Jhansi had initially fixed the matter on 12th July, 2013 at 3:00 p.m. because this time has been deleted and it is mentioned separately that the hearing will take place on 12th July, 2013 at 11:00 a.m.

The first order dated 12th July, 2013 shows that respondent No. 5-Madan Lal Verma did not file the objections or produce the original documents and sought one hour time for this purpose but the subsequent order also dated 12th July, 2013 shows that Rajeev Kumar, on behalf of respondent No. 5, filed his statement and produced the documents and the matter was heard. The order-sheet further shows that the Clerk concerned thereafter placed the order before the Assistant Registrar, Jhansi for signatures.

It, therefore, transpires that the respondent filed the objections and original documents after taking one hour time from the Assistant Registrar and also made submissions on merits. The Assistant Registrar not only considered the submissions and examined the documents during this very short interval but also dictated the order and the typed copy of the order of seventeen pages was also

placed before the Assistant Registrar for his signatures before he gave charge to the new incumbent in the afternoon on the same date i.e. 12th July, 2013.

It has, therefore, become necessary for the Court to summon the original records from the office of the Assistant Registrar, Jhansi. Learned Standing Counsel shall immediately inform the District Magistrate, Agra by FAX that the entire records relating to the dispute should be sealed and the Clerk in the office of the District Magistrate, Jhansi should bring these records before the Court on the next date fixed.

What has also to be noticed that the Assistant Registrar after receiving the objections and the original documents did not give any time to the petitioners to file reply and prima facie the note at the end of the order that the parties did not want an adjournment has been inserted to overcome this difficulty. All this has also to be considered in the light of the submissions advanced on behalf of the petitioners that they were totally unaware of the proceedings contained in the order-sheet of 12th July, 2013 as they had been told at 4:00 p.m. that a date shall be fixed by the Assistant Registrar as he was under transfer.

The prayer made by learned Senior Counsel for the petitioners for impleading Kamendra Kumar, Assistant Registrar, Jhansi by name as respondent No. 6 to the writ petition is allowed. Let the impleadment be carried out during the course of the day.

Learned Standing Counsel appears for respondent Nos. 1 to 4. Sri R.K. Ojha, appears for respondent No. 5. Learned Standing Counsel shall inform the newly added respondent No. 6 that he has to file his personal affidavit with regard to the averments made in the writ petition and the supplementary-affidavit so that he has an opportunity to explain his conduct. Learned Standing Counsel shall also inform the Clerk concerned to file his personal affidavit to explain the entire matter. Learned Standing Counsel on behalf of respondent Nos. 1 to 4 and Sri R.K. Ojha, on behalf of respondent No. 5 may file counter-affidavits in three weeks. Rejoinder-affidavit, if any, may be filed within a week thereafter.

List this petition for admission/hearing on 10th September, 2013 on which date the learned Standing Counsel shall also produce the entire records in a sealed cover.

In view of the submissions advanced by learned Senior Counsel for the petitioners, the operation of the order dated 12th July, 2013 passed by the Assistant Registrar, Jhansi shall remain stayed till the next date of listing.

9. This order dated 2nd August, 2013 passed by the Court was assailed by Madan Lal Verma in Special Appeal No. 1233 of 2013 which was dismissed on 3rd September, 2013 and the order is quoted below:

Heard Shri Radha Kant Ojha, learned senior counsel appearing for the appellant, learned standing counsel and Shri Ashok Khare, learned senior counsel assisted by Shri Pradeep Upadhyay, learned counsel appearing for respondent Nos. 6 and

7.

This special appeal has been filed challenging the interim order dated 2.8.2013 passed by the learned Single Judge in writ application No. 42213 of 2013. The case is now posted by the learned Single Judge on 10.9.2013 and it has further been directed that the learned standing counsel shall produce the entire record in a sealed cover.

From the impugned order we find that the order of the Assistant Registrar dated 12.7.2013, which is the subject-matter of challenge in the writ application. The learned Single Judge has recorded a finding that the case was posted for hearing on 12.7.2013 at 3 p.m. but it was preponed to 11 a.m. and 17 pages judgment was delivered on the same day by the Assistant Registrar, who was required to handover the charge on transfer at p.m. on the same day. An officer who was under transfer and was to handover the charge at 4 p.m. is not expected to hear a case by proponing the time and taking note of the same, the learned Single Judge has passed the interim order.

Since the case is now posted for 10.9.2013 before the learned Single Judge, we find no justification to interfere in the impugned order.

The special appeal is dismissed.

10. The District Magistrate, Agra, despite the order passed by the Court on 2nd August, 2013, neither sealed the records nor did he send the records to the Court, even though counter-affidavit and supplementary counter-affidavit with stay vacation application was filed by Kamendra Kumar, the Assistant Registrar who had passed the impugned order. An affidavit was also filed by the Stenographer in the office of the Assistant Registrar at Jhansi.

11. The Court, accordingly, fixed 17th September, 2013 with a direction to the District Magistrate, Agra to seal the records and ensure that they are sent to the Court on the next date of hearing. The Court also made it clear that in case the records were not sent, the Court would consider passing an order requiring the District Magistrate to bring these records so that the petition could be decided.

12. Even on 17th September, 2013 the records were not produced and so the Court directed the District Magistrate, Agra to place the records of the case before the Court on 24th September, 2013 and also explain why the earlier two orders passed by the Court had not been complied with. The District Magistrate, Agra then appeared before the Court on 24th September, 2013 with the records and also filed an explanation and compliance affidavit.

13. The petitioners have also filed rejoinder-affidavit and supplementary rejoinder-affidavit to the counter-affidavit and supplementary counter-affidavit filed by Kamendra Kumar and have also filed reply to the affidavit filed by the Stenographer-Sita Ram.

14. In order to understand the version of the Assistant Registrar and the

Stenographer regarding the manipulation alleged by the petitioners in the order-sheet dated 8th July, 2013 and to appreciate how an order of seventeen pages was dictated and typed after conclusion of the hearing, which could have started earliest at 12:00 noon since the representative of Madan Lal Verma had been granted one hour time to produce the original documents in the hearing scheduled for 11:00 a.m., it is necessary to reproduce the relevant paragraphs of their affidavits.

Counter-affidavit and Supplementary counter-affidavit of the then Assistant Registrar, Kamlendra Kumar Counter-affidavit:

11. That the contents of paragraph No. 25 of the writ petition are not admitted as stated. In reply thereof it is submitted that on the date of hearing i.e. 12.7.2013, neither Preetam Singh Verma was present nor his authorized representative came on the aforesaid date. It is wrong to say that Manoj Singh is representative of Sri Preetam Singh Sri Parma Lal Verma himself was not present on the date of hearing i.e. 12.7.2013 while Sri Manoj Singh authorized representative of Sri Panna Lal and Sri Rajeev Kumar authorized representative of respondent No. 5 were present on the date of hearing i.e. 12.7.2013 and hearing was done in presence of both the parties and Sri Manoj Singh and Sri Rajeev Kumar have made the signatures for their presence. It is further submitted that when the hearing was completed before 12.00 noon and the parties have made the signatures of their presence, therefore, it is incorrect to say that the office had sent letter for the date of hearing. & is true that after issuance of order dated 12.7.2013, Sri Arvind Kumar Singh joined the office of Assistant Registrar and the charge has been handed over to him.

22. That the contents of paragraph Nos. 38 to 41 of the writ petition are not admitted as stated. In reply thereof it is submitted that in compliance of the order dated 24.9.2012 passed by this Hon'ble Court, the respondent No. 6 passed the order dated 12.7.2013 on merits after considering and examining the facts mentioned in written statement submitted by the petitioner on 8.7.2013. It is further submitted that on 12.7.2013, neither the petitioner himself nor his authorised representative was present nor they have demanded any documents for examination on 12.7.2013, therefore, the order dated 12.7.2013 was passed on the basis of available records.

27. That the contents of paragraph Nos. 46 to 48 of the writ petition are not admitted as stated. In reply thereof it is submitted that the notices were issued to Sri Madan Lal Verma, Sri Preetam Singh, Sri Panna Lal and Sri Jagan Lal Verma for hearing. On the date of hearing i.e. 8.7.2013, Sri Ajeet Kumar Advocate representative of petitioner and the authorised representatives of Sri Madan Lal Verma and Panna Lal Verma himself were appeared but Sri Jagan Lal Verma did not appear. On the next date of hearing i.e. 12.7.2013, Sri Manoj Kumar Singh authorized representative of Sri Panna Lal Verma has given "Adhikar Patra" and has not got recorded his statement oral or in writing. Sri Rajeev Kumar authorised representative of Sri Madan Lal Verma appeared and

has given written statement alongwith affidavits of other persons and got examined the original records. On 12.7.2013, neither the petitioner himself was present nor his authorized representative came during the course of hearing. Sri Jagan Lal Verma also did not appear on the date of hearing i.e. 12.7.2013. Since neither the petitioner nor his representative was present at the time of hearing, therefore, the statement of the petitioner is wrong about demanding the original documents.

Supplementary Counter-affidavit:

6. That the content of paragraph No. 4 of the supplementary-affidavit as stated are not admitted. In reply it is submitted that the fact is mentioned that on the date of hearing i.e. 8.7.2013, Sri Ajeet Kumar, authorized representative of Sri Preetam Singh has submitted his written statement and on 12.7.2013, Sri Rajeev Kumar, authorized representative of Sri Madan Lal Verma the respondent No. 5 has submitted his written statement. The other party Sri Panna Lal Verma or his authorized representative Sri Manoj Singh has not submitted any written statement on 8.7.2013 or 12.7.2013. It is submitted on the date of hearing i.e. 8.7.2013, on the basis of consent/demand of members who were present on that date, next date for hearing was fixed as 12.7.2013 at 11.00 a.m. in place of 3.00 p.m. It is relevant to stated here that on 8.7.2013 at 11.00 hearing was done. The dealing clerk wrote on the note sheet for giving time of hearing in the forenoon. Thereafter, one party has told for fixing the date of hearing in the afternoon but on the basis of consent of members who were present at that time, taking into account the fact that Kurawali is 300 km. away from Jhansi and if the time of hearing is fixed for 3.00 p.m. then they will reach Kurawali at late night and there is a danger for their life. Taking into account aforesaid facts, the time for hearing of the case was fixed in forenoon at 11.00 a.m. It is relevant to state here that the dealing clerk had made his signatures on the cutting and the respondent No. 6, in presence of parties, who were present during the course of hearing, had also written in his handwriting about fixing the next date and time of hearing of the case. Thereafter, the members have made the signatures of their presence.

(emphasis supplied)

Affidavit of Sita Ram, Stenographer in the office of Assistant Registrar, Firms Societies and Chits, Jhansi.

4. That it is submitted that in the aforesaid matter, the next date was fixed as 8.7.2013 at 11.00 a.m. and the notices were sent to the aforesaid four persons through registered post. On 8.7.2013, the date fixed the matter, Sri Rajeev Kumar, the authorized representative of Sri Madan Lal Verma, Sri Ajeet Kumar, Advocate authorised representative of Sri Preetam Singh and Sri Parma Lal himself appeared. On the date of hearing i.e. 8.7.2013, neither Sri Jagan Lal Verma nor his representative appeared nor any letter on his behalf was received. It is stated that on 8.7.2013, Sri Ajeet Kumar, the authorised representative of

Sri Preetam Singh has submitted written statement alongwith photostat copies of aforesaid receipts of membership of 27 members and the photostat copies of aforesaid receipts were made available to the authorised representative of Sri Panna Lal Verma on his demand. It is relevant to state that Sri Panna Lal Verma and Sri Rajeev Kumar have not given any written statement on the said date.

5. That on 8.7.2013, request was made for fixing next date of hearing in the matter. The deponent wrote on the note sheet for fixing the date in the forenoon but the other side told for fixing the date in the afternoon. Therefore, after taking permission from the then Assistant Registrar, cutting was made by the deponent in presence of all the parties and the deponent wrote 3.00 p.m. on the note sheet. The parties, who were present on the date, have also made objection on fixing the date in the afternoon 3.00 p.m. stating that since returning the home in the late night, there is danger, therefore, they told for fixing the date in the forenoon. The then Assistant Registrar, Firms Societies and Chits on the basis of consent from all the parties, directed for fixing the case in the forenoon, therefore, on making cutting on the note-sheet, the date was fixed for 12.7.2013 in the forenoon at 11.00 am. and the then Assistant Registrar, Firms Societies and Chits had made signature on the cutting in presence of all the parties. Lastly, the then Assistant Registrar, Firms Societies and Chits, also wrote the date and time of hearing by his handwriting in presence of all the parties, on which, no parties have made any objection at that time.

6. That on 12.7.2013, the date fixed in the matter, Sri Rajeev Kumar authorized representative of Sri Madan Lal Verma and Sri Manoj Singh authorized representative of Sri Panna Lal Verma appeared. On 12.7.2013, neither Sri Preetam Singh and Jagal Lal Verma themselves nor their representatives appeared nor any letter on their behalf was received. It is further stated that on the date of hearing, Sri Manoj Singh, the authorized representative of Sri Panna Lal Verma has not submitted any written statement. Sri Rajeev Kumar authorized representative of Sri Madan Lal Verma has submitted the written statement alongwith affidavits of other members and also examined the original documents.

7. That it is submitted that on 12.7.2013, neither Preetam Singh nor his representative was present. Sri Manoj Singh was not the representative of Sri Preetam Singh. Sri Manoj Singh, representative of Sri Panna Lal Verma had not demanded for any document or fixing further date in the matter. After hearing the case, on the basis of available records and in compliance of the order dated 24.9.2012 passed by this Hon"ble Court, the order dated 12.7.2013 was typed on computer by the deponent in presence of the then Assistant Registrar and after issuance of the said order, the charge of office of Assistant Registrar was handed over to Sri Arving Kumar Singh.

(emphasis supplied)

15. It is, therefore, clear from the affidavits submitted by the Assistant Registrar and the Stenographer that on 12th July, 2013 neither Preetam Singh Verma-

petitioner No. 2 nor his authorized representative was present when the matter was taken up at 11.00 a.m. or subsequently when the records were produced by the representative of Madan Lal Verma. It is also clear from the supplementary counter-affidavit of the Assistant Registrar and the affidavit of the Stenographer that initially the order dated 8th July, 2013 mentioned that the next hearing was fixed for 12th July, 2013 at 3.00 p.m. because it has been admitted that this time was crossed out and the Assistant Registrar himself, separately noted in the order sheet that the hearing would take place at 11.00 a.m. It is, however, stated in these affidavits that this change in the time of hearing was done in the presence of the parties including the petitioners to accommodate the respondents who would have had to travel about 300 Kilometres to reach Jhansi.

16. Sri Ashok Khare, learned Senior Counsel appearing for the petitioners submitted that the entire sequence of events would show that once the Assistant Registrar came to know that he was under transfer and was required to handover charge on 12th July, 2013, he manipulated the entire proceedings by causing interpolation in the order dated 8th July, 2013 by advancing the time of hearing from 3.00 p.m. to 11.00 a.m. and then showed undue haste in accepting the request of the representative of respondent No. 5 for submitting the original documents by granting just one hour time so that he could pass the order on the same date before giving the charge of the office in the afternoon. Learned Senior Counsel also raised doubts as to how such a lengthy order of seventeen pages could be dictated and then typed after the conclusion of the hearing, which could not have commenced earlier than 12.00 noon since one hour time was granted to the representative of respondent No. 5-Madan Lal Verma in the hearing scheduled to commence at 11.00 a.m. to produce the original documents. In this connection, learned Senior Counsel pointed out that the affidavit filed by both the Assistant Registrar and the Stenographer do not indicate the time when the hearing started on 12th July, 2013 and the affidavit of the Stenographer merely mentions that after hearing the matter on the basis of the available records, the order dated 12th July, 2013 was typed on computer by the deponent in the presence of the then Assistant Registrar and after issuance of the said order, the charge of office of the Assistant Registrar was handed over to Arvind Kumar Singh. It is, therefore, his submission that the order had been prepared in advance. Learned Senior Counsel for the petitioners further submitted that this behaviour of the Assistant Registrar has to be examined in the light of the application submitted by respondent No. 5-Madan Lal Verma before the Registrar at Lucknow for transferring the case from the Deputy Registrar at Agra to some other Registrar. Learned counsel, therefore, submitted that the order deserves to be set aside for the aforesaid reasons and also because neither an opportunity of hearing was provided to the petitioners by the Assistant Registrar on 12th July, 2013 before passing the order, nor the documents submitted on behalf of Madan Lal Verma were supplied to the petitioner so as to enable the petitioner to file documents in reply.

17. Learned Standing Counsel appearing for respondent Nos. 1, 2, 3 and 4 has

merely relied upon the averments made in the affidavits filed by the then Assistant Registrar and the Stenographer.

18. Sri R.K. Ojha, learned Senior Counsel appearing for respondent No. 5-Madan Lal Verma, however, vehemently urged that even if it is assumed that opportunity was not provided to the petitioners by the Assistant Registrar, then too, the order passed by the Assistant Registrar should be examined on merits and the said order should not be set aside merely because the petitioners had not been heard. It is also the contention of learned Senior Counsel for the respondents that the petitioners have not stated that they were not aware of the change of the time fixed for hearing on 12th July, 2013 from 3.00 p.m. to 11.00 a.m. and, therefore, they should now not be permitted to raise any grievance as to the same. Learned Senior Counsel for the respondents, therefore, submitted that the writ petition should be dismissed.

19. The Court has considered the submissions advanced by learned counsel for the parties.

20. What needs to be examined in this petition is the manner in which the Assistant Registrar proceeded to decide the dispute. It is not in dispute that the petitioners had appeared before the Assistant Registrar through their counsel Ajit Kumar on 8th July, 2013 and had filed written statement with supporting documents but on behalf of respondent No. 5-Madan Lal Verma, only his representative Rajeev Kumar appeared and after submitting the authority letter sought time to file documents. It is also not in dispute that on 8th July, 2013 the Assistant Registrar fixed 12th July, 2013 as the next date of hearing and that the Assistant Registrar had to handover charge of his office on 12th July, 2013 because of the transfer order. The dispute is with regard to the time fixed by the Assistant Registrar for hearing the matter on 12th July, 2013, According to the petitioners, the hearing was fixed in their presence for 12th July, 2013 at 3.00 p.m. but subsequently in their absence this time was crossed out in the order dated 8th July, 2013 and the Assistant Registrar made a separate note at the bottom right hand side of the order-sheet that the hearing would take place at 11.00 a.m. whereas, according to the Assistant Registrar and the private respondent, the time for hearing on 12th July, 2013 was changed from 3.00 p.m. to 11.00 a.m. in the presence of the parties to accommodate respondent No. 5-Madan Lal Verma as he had stated that it would not be safe to travel back to Jhansi after the conclusion of the hearing.

21. The order-sheet of 8th July, 2012 does show that initially 3.00 p.m. was written but this time has been crossed out and a note has been separately made by the Assistant Registrar in the order-sheet that the hearing would take place at 11.00 a.m. on 12th July, 2013. Though the order-sheet of 8th July, 2013 is signed by the counsel engaged by the petitioners but, according to the petitioners, this time was subsequently changed in the order-sheet in their absence and the petitioners were not made aware of the change in time from 3.00 p.m. to 11.00 a.m. If the time initially fixed for hearing was 3.00 p.m. and

the Assistant Registrar had made a separate note in the order-sheet that the hearing will take place at 11.00 a.m., then he should have also obtained an endorsement from the petitioners regarding the change of time on the said note made by him, but, this was not done. The endorsement made by the counsel for the petitioners on the left hand side of the order sheet cannot conclusively prove that the separate note on the right hand side of the order-sheet was written by the Assistant Registrar prior to the endorsement made by the counsel for the petitioners. The contention of learned Senior Counsel appearing for the private respondent that the petitioners have not stated that they had no knowledge that the hearing will take place on 12th July, 2013 at 11.00 a.m. instead of 3.00 p.m. cannot be accepted in view of the averments made in paragraphs 24, 25, 27 and 28 of the writ petition. It is very difficult for the Court to accept the version given by the Assistant Registrar as the Court is not convinced with the explanation offered by the Assistant Registrar and the Stenographer that the note was made by the Assistant Registrar in the order dated 8th July, 2013 that hearing will take place at 11.00 a.m. in the presence of the parties to accommodate the respondents so that they may not have to travel at night. Thus, in the absence of any conclusive evidence to show that the petitioners were made aware of the note made by the Assistant Registrar regarding the hearing at 11.00 a.m., it is not possible to accept the version of the respondents that the petitioners were aware that the hearing would take place at 11.00 a.m. on 12th July, 2013.

22. It is also not in dispute that the petitioners had not appeared before the Assistant Registrar at 11.00 a.m. because the affidavits filed by the Assistant Registrar and the Stenographer also mention that the petitioners or their representative had not appeared at the time of hearing.

23. It is also clear from the first order of 12th July, 2013 contained in the order-sheet that when the matter was taken up by the Assistant Registrar, a request was made by the representative of respondent No. 5-Madan Lal Verma for adjournment to enable him to produce the documents for which time had earlier been granted by the Assistant Registrar on 8th July, 2013 and that the Assistant Registrar granted only one hour to the representative of Madan Lal Verma to produce the documents. Normally, when a request is made for adjournment, the Authority gives a fresh date and does not adjourn the hearing by one hour, but in this case, the Assistant Registrar gave only one hour to the representative of respondent No. 5 to produce the documents and, that too when neither the petitioners nor their representatives were present and all this was done when he had to hand over charge of his office in the afternoon. What is more surprising is that the second order dated 12th July, 2013 mentions that the documents were produced by the representative of respondent No. 5-Madan Lal Verma and the matter was heard and, even though it is admitted that the petitioner or his representative was not present, the Assistant Registrar has noted that since the parties did not make any prayer for adjournment, the hearing was being concluded.

24. It also transpires from the two orders of 12th July, 2013 contained in the order-sheet and the affidavits filed by the then Assistant Registrar and the Stenographer that the hearing fixed for 11.00 a.m. on 12th July, 2013 was adjourned by one hour on the request made by the representative appearing for respondent No. 5 to grant some time to submit the original documents. Though the Assistant Registrar has stated in paragraph 11 of the counter-affidavit that the hearing was completed before 12.00 noon but, according to the first order contained in the order-sheet of 12th July, 2013, the hearing was adjourned by one hour and, therefore, it could not have commenced before 12.00 noon. Thus, even if it is admitted that the representative of respondent No. 5 submitted the original documents at about 12.00 noon then too, not only was the matter heard but thereafter the order which runs into seventeen-pages was dictated by the Assistant Registrar and then typed by the Stenographer. This has to be taken note of in the background that the Assistant Registrar was under transfer and had to handover charge in the afternoon. The affidavits filed by the Assistant Registrar and the Stenographer do not explain this position inspite of the specific direction of the Court and a general statement has been made that after the order was typed out and signed, the Assistant Registrar gave charge of the office to the new incumbent.

25. Thus, it is clear from the above discussion that the petitioners were not made aware of the fact that the hearing scheduled to take place at 3.00 p.m. on 12th July, 2013 would take place at 11.00 a.m. and the conduct of the Assistant Registrar, who was under transfer and was to handover charge in the afternoon on 12th July, 2013, does convey an impression to the Court that he subsequently advanced the time fixed for hearing in his anxiety to decide the matter before handing over charge of his office on 12th July, 2013. What also needs to be noticed is that it is at the behest of Madan Lal Verma-respondent No. 5 that the matter was transferred from the Deputy Registrar at Agra to Assistant Registrar at Jhansi by the Registrar.

26. It is for this reason that the Court intends to refer the matter to the Principal Secretary of the concerned department for conducting an enquiry against the Assistant Registrar who decided the dispute on 12th July, 2013 as also the Stenographer who typed the order.

27. In the backdrop of the facts stated above and in view of the fact that neither the documents filed by Madan Lai Verma before the Assistant Registrar on 12th July, 2013 were made available to the petitioners nor any opportunity was given to the petitioners to submit documents in reply, the Court does not find any substance in the submissions advanced by learned Senior Counsel for the respondents that the order passed by the Assistant Registrar should be tested on merits even if it is found that opportunity was not given to the petitioners by the Assistant Registrar on 12th July, 2013.

28. The order dated 12th July, 2013 passed by the Assistant Registrar, therefore, deserves to be set aside for the reason that the petitioners were not given any

opportunity of hearing before the Assistant Registrar on 12th July, 2013 as they were not informed that the hearing will take place at 11.00 a.m. and also because the documents submitted by the representative of Madan Lal Verma-respondent No. 5 on 12th July, 2013 were not supplied to the petitioners so as to enable them to file their objections/documents to rebut the same.

29. The order dated 12th July, 2013 passed by the Assistant Registrar is, accordingly, set aside. However, in the facts and circumstances of the case, when the jurisdiction to decide the matter is that of the Deputy Registrar at Agra, the Court is of the considered opinion that the Deputy Registrar at Agra, within whose jurisdiction the office of the Society is situated, should now decide the matter. The Deputy Registrar at Agra shall now decide the matter afresh after providing adequate opportunity of hearing to the parties concerned. The concerned Principal Secretary of the State Government shall also hold an enquiry against Kamendra Kumar, the Assistant Registrar who passed the impugned order and Sita Ram, the Stenographer who typed the order. Such enquiry should be concluded within three months and copy of the report should be submitted to the Court to be kept in the file of the writ petition.

The writ petition is, accordingly, allowed to the extent indicated above.

The original records which had been placed before the Court in a sealed cover by the District Magistrate, Agra shall be returned to the learned Standing Counsel to be directly sent to the Principal Secretary of the concerned department.