

(2009) 06 KAR CK 0098

In the Karnataka High Court

Case No : Writ Appeal No's. 625 and 2041 of 2009

K.P. Devaiah and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Karnataka Societies Registration Act, 1960 — Section 22, 23

Citation : (2009) 5 KarLJ 660 : (2010) 1 KCCR 81

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Udaya Holla for G.S. Bhat and Associates, for Common, for the Appellant; Basavaraj Kareddy, Government Advocate for Common Respondents-1 and 2 and M.S. Subramani, for Common Respondent-3, for the Respondent

Judgement

V.G. Sabhahit, J.—These two appeals are filed by the petitioners in W.P. No. 24870 of 2005 being aggrieved by the order dated 2-9-2008 wherein the learned Single Judge of this Court has dismissed the writ petition without prejudice to other options open to the petitioners in law.

2. The appellants herein filed W.P. No. 24870 of 2005 seeking for quashing of the order dated 29-10-2004 passed by the Registrar of Cooperative Societies and to restrain respondents 3 to 8 from in any manner interfere with the functioning of the said Cambridge Education School, Mathikere and permit the petitioners to manage the affairs of the school.

3. It is averred in the writ petition that petitioners and the respondents 4 to 8 formed a society under the name and style of Mathikere Cambridge Education Society and registered the same with the Registrar of Societies under the Karnataka Societies Registration Act, 1960 on 16-8-1979. The said society was running a school under the name and style of Cambridge English School at Mathikere. On 20-9-1990 all the members of the society passed an unanimous resolution resolving to dissolve the said society and in the very meeting it was resolved that the assets and liabilities of the society be handed over to Mathikere

Cambridge Education Trust. The said meeting also noted that the affairs of the society were taken over by the petitioners and respondents 4 and 5 therein as members of the Mathikere Cambridge Education Trust. The said resolution made was intimated to the Registrar of Societies on 1-10-1990 which has been acknowledged by the Registrar of Societies. On 30-11-1990 a trust deed was registered with the concerned Sub-Registrar under the name and style of Mathikere Cambridge Education Trust was constituted. The authors of the trust are petitioners and respondents 5 and 8 as per the trust deed, they were to be the trustees. The trust was constituted to educate boys and girls by establishing schools, training institutions, etc. The trust took over the Cambridge English School, Mathikere, run by the society. A resolution was passed in this regard by the trustees of the Mathikere Cambridge Education Trust at the meeting held on 16-1-1991. The said meeting was attended by the petitioners and respondents 5 and 8 and presided over the fifth respondent and the minutes have been signed by him. In the said meeting, it was resolved to open a Bank account and further resolved that the first petitioner herein and the 5th respondent shall be the Managing Trustees to attend to all the day-to-day affairs of the trust and accordingly, the affairs of the institution is being carried out. The fifth respondent seems to have written a letter to the Registrar of Societies seeking permission to convert the society into a trust. This was a totally fraudulent and motivated letter calculated to take control of the school and Registrar of Societies wrote a letter dated 5-7-1993 stating that, it is not permissible to convert a society into a trust and the said endorsement was obtained by the fifth respondent in collusion with the Registrar of Societies and was calculated to facilitate the fifth respondent to take over the school. There was no question of conversion of the society into a trust and that apart, the letter which was written after three years after the school was taken over by the trust, was totally a mischievous and motivated letter. The petitioners wrote a letter to the Registrar of Societies informing him about the dissolution of the society and take over of the school by the trust and running of the school for the last three years by the trust and calling upon the Registrar of Societies not to take on his record any bogus balance sheets or papers that may be filed by the fifth respondent. However, the fifth respondent has been contending that the society continues to exist and that the school must be run by the society and the fabricated documents to indicate that the society which had already been dissolved, held a general meeting and elected him and his own henchmen as office-bearers and therefore W.P. No. 17642 of 1994 was filed seeking for a mandamus directing the Registrar of Societies not to receive any communication from the society which stands dissolved and to issue a writ of certiorari to quash the endorsement dated 5-7-1993 and for a declaration that the society was not in existence and for other reliefs. The said writ petition came to be dismissed on wholly erroneous grounds. Being aggrieved by the same, W.A. No. 7878 of 2000 was filed. The Division Bench of this Court allowed the appeal and quashed the impugned endorsement dated 5-7-1993 issued by the Registrar of Societies and having regard to the fact that the finding was required to be carried out, framed three questions and remitted the matter to the Registrar of

Societies with a direction to him to answer the said questions after holding an enquiry. The Registrar of Societies, by his order dated 29-10-2004 held that dissolution of the society is not valid. The Registrar further held that question 2 does not arise for consideration and further answered question 3 by holding that in view of the answer to question 1, the assets and liabilities of the societies has not been transferred to any other registered society in terms of Section 22 and 23 of the Karnataka Societies Registration Act and further held that the transfer of assets and the institutions to the trust is not in accordance with Sections 22 and 23 of the Karnataka Societies Registration Act and bye-law 17 of the bye-laws of the society and that the rules have been violated and being aggrieved by the same, W.P. No. 24870 of 2005 was filed for the above referred reliefs.

4. The learned Single Judge after hearing the learned Counsel appearing for the petitioner, the learned High Court Government Pleader, appearing for respondents 1 and 2 and the learned Counsel appearing for respondents 3 and 6 to 8 by order dated 2-9-2008 held that the finding of the Registrar that there was an embargo to distribute any assets or profits of the society to its members in terms of Section 23 of the Act is irrelevant as the Registrar has wrongly applied the provisions of Section 23 of the Act when there was no distribution of the assets of the society to its members but it had been transferred to the trust and not to any of the members; that the Registrar should have noticed that the trust is also on part with a society and it is open to the petitioners to claim as members or part of the management committee of the society to raise such a dispute and seek for recovery before a Civil Court if it is so permitted in law and the finding recorded by the Registrar is justified and do not call for interference in the writ petition and accordingly, dismissed the writ petition. Being aggrieved by the dismissal of the writ petition, petitioners have preferred these appeals.

5. We have heard the learned Senior Counsel appearing for the appellants, learned Counsel appearing for respondent 3 and the learned Government Advocate, appearing or respondents 1 and 2.

6. Learned Counsel appearing for the appellants submitted that the decision of the proceedings wherein the assets were transferred to the trust is unanimous and therefore, the finding of the Registrar was erroneous and writ petitioners are entitled to the relief sought for in the writ petition.

7. On the other hand, learned Counsel appearing for respondent 3 argued in support of the order passed by the learned Single Judge.

8. We have considered the contentions of the learned Counsel appearing for the parties and scrutinised the material on record.

9. The material on record would clearly show that the resolution dated 16-1-1991 is unanimous and it was unanimously resolved to take over the Cambridge Education Society at Mathikere as a running concern with all its assets and liabilities as on 30-11-1990/1-12-1990 and therefore, the order of the Registrar stating that the said resolution has not been passed in accordance with

law cannot be sustained as the Registrar has failed to note that the said resolution was an unanimous resolution and to that extent, the order passed by the learned Single Judge not interfering with the order passed by the Registrar of Societies is liable to be set aside. However, the writ petitioners would not be entitled to a mandamus to restrain respondents 3 to 8 to interfere with the functioning of the Cambridge Education Society by the petitioners cannot be granted in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India as it is disputed question of fact in the present case and disputed question of fact has to be worked out in accordance with law and disputed question of fact can be gone into only after holding an enquiry which cannot be done in exercise of the writ jurisdiction of this Court. Accordingly, we hold that petitioner is not entitled to mandamus restraining respondents 3 to 8 from in any manner interfering with the functioning of the Cambridge Education Society and to permit the petitioner to manage the affairs of the school. However, the order of the Registrar of Societies impugned in the writ petition insofar as it relates to the resolution dated 16-1-1991 is liable to be set aside as it is an unanimous resolution passed by the petitioners and respondents 4 to 8 and to that extent, the order passed by the learned Single Judge is liable to be set aside and accordingly, we pass the following order:

The prayer of the petitioner for grant of mandamus to restrain respondents 3 to 8 from in any manner interfering with the functioning of the said Cambridge Education Society, Mathikere is rejected. However, in view of the fact that the resolution dated 16-1-1991 is an unanimous resolution passed by petitioners and respondents 4 to 8, the order passed by the Registrar dated 29-10-2004 is set aside as the transfer of assets and liabilities of the Cambridge Education Society in favour of Mathikere Cambridge Education Trust has been done in accordance with law.

The writ appeals are disposed of, accordingly.