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**(2007) 10 AHC CK 0037**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 14542 of 2004**

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|--------------------------------------------|------------|
| Madarsa Arabia Darus Salam and Another     | APPELLANT  |
| Vs                                         |            |
| Commissioner, Azamgarh Division and Others | RESPONDENT |

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**Date of Decision :** 23-10-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Societies Registration Act, 1860 — Section 12(2), 12D

**Citation :** (2008) 6 AWC 6115

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** M.A. Qadeer and S.A. Lari, for the Appellant; R.G. Padia and Prakash Padia and S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. Madarsa Arabia Darus Salam situated in village Bichlapur, Bhelu Pakar, post Sarwan, District Mau which was established by Petitioner No. 2 in the year 1970. On 12.4.1986, the general body of society resolved to form a society and got it registered under the Societies Registration Act. One Abdul Sattar was elected as President and Mohammad Mustafa was elected its Secretary.

3. It is stated that Mohammad Mustafa applied for registration of the society. On 1.4.1987, Respondent No. 2, the Assistant Registrar, Firms Societies and Chits, Azamgarh had sought certain clarifications and pointed out certain defects. Instead of removing the defects, Respondent No. 3 fraudulently submitted Anr. set of papers for registration in which he altogether changed the office bearers behind the back of real office bearers and members. He in the second set of papers showed the names of the persons were submitted who were never members or office bearers of the society and were against the resolution of the society dated 12.4.1986. The society obtained Registration No. 925/1989-90 on 10.8.89.

4. It is submitted that on coming to know about the above fraud committed by Mohd. Mustafa the Petitioners approached the office of Assistant Registrar and were told that the registration dated 4.2.1987 was not further pursued and they filed their application for registration accordingly. On 17.7.1995, a meeting was held in which by resolution of even date Respondent No. 3 was removed and Petitioner was appointed as Secretary of the Institution. The Petitioners' society was also registered vide Registration No. 937/95-96.

5. It is further stated that the Petitioners and other office bearers filed an application u/s 12D for cancellation of Registration No. 925/89-90 of the society registered fraudulently by Respondent No. 3 Mohd. Mustafa and its renewal dated 2.12.1995.

6. Respondent No. 2 issued show cause notice to Respondent No. 3 on 8.7.1996. Petitioner No. 2 filed an affidavit in support of the case on 2.1.1997. After hearing the parties Respondent No. 2 cancelled the registration of the society registered by Mohd. Mustafa of 17.8.1989 and 2.12.1995 vide order dated 26.5.1997.

7. Aggrieved by the order dated 26.5.1997 Respondent No. 3 preferred an appeal u/s 12 (d) (2) of the Societies Registration Act before the Commissioner which was dismissed vide order dated 12.9.2000. Respondent No. 3 then filed Civil Misc. Writ Petition No. 44986 of 2000, before the High Court challenging the orders dated 26.5.97 and 12.9.2000 which was disposed of vide order dated 10.1.2003 remanding the matter back to Respondent No. 2 for deciding the matter afresh.

8. Thereafter Respondent No. 2 by order dated 4.7.2003 instead of recording finding of fraud against the Petitioner cancelled the Petitioners' registration dated 6.10.1995.

9. Aggrieved by the order the Petitioners filed appeal against the order dated 4.7.2003 before the Commissioner, Azamgarh, Division, Azamgarh which was also dismissed vide order dated 18.3.2004 which is impugned in this writ petition.

10. From the record as well as from the arguments of the counsel for the parties it appears that the point on which the case was remanded by the Commissioner has not been decided by him. The question whether the society by Mohd. Mustafa was registered by playing fraud upon the real office bearers of the society and is "farji" society is a disputed question of fact, which can be decided only on the basis of oral and documentary evidence by the civil court. This is not feasible for this Court under Article 226 of the Constitution of India.

11. For the reasons stated above, the writ petition is dismissed with liberty to the Petitioners to file suit before the civil court. No order as to costs.