
(2007) 04 AHC CK 0067
In the Allahabad High Court

Ramesh Chandra

APPELLANT

Vs

Shyam Ji Misra and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Societies Registration Act, 1860 — Section 5A

Citation : (2007) 5 ADJ 70 : (2007) 78 AWC 2215 : (2007) 3 UPLBEC 108

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—This writ petition has been preferred against order dated 20.4.2004 whereby application u/s 5A of the Societies Registration Act seeking permission to alienate property of the society was dismissed as having become infructuous.

2. Before coming to grips with the respective contentions advanced across the bar, I would like to have a brief resume of necessary facts. Sri Triveni Madhav Prayagwal Shiksha Sabha Allahabad is a society registered under the Societies Registration Act. Initially, an application was moved in April 1990 praying therein to accord permission to alienate property in dispute described in the application on certain grounds. This application protracted so much so that during pendency of the application, a sale deed was executed by Secretary of the society on 20.6.2001. Subsequently, by means of impugned order, the application was dismissed by the District Judge on the ground of having become infructuous regard being had to the fact that the sale deed had already been executed during pendency of the application and therefore, it was observed, the application for grant of permission was liable to be rejected as infructuous.

3. Learned Counsel for the petitioner urged that the right of parties shall be determined on the date on which action is instituted in the Court urging further that on that date application made for seeking permission from the District Judge

to execute sale deed contained requisite details which entailed transfer of certain property of the society. He further urged that application should have been decided on merits urging further that in case during pendency of the application any sale deed had been executed, the same was liable to be governed by the final orders passed by the District Judge on merits. He further urged that the order dismissing the application as Infructuous suffered from the error apparent on the face of the record. He also relied upon two decisions namely Rameshwar and Others Vs. Jot Ram and Another, Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc., , to reinforce his contention that right of parties is decided as regards the cause of action attended with further submission that procedural delay if any cannot affect the rights accruing from initial cause of action. In opposition, learned Counsel appearing for the opposite parties claiming themselves members of the society, urged that their impleadment was allowed by the District Judge in the application in which permission to execute sale deed was sought. Ultimately it was urged that order was rightly passed dismissing the application on the ground that in view of execution of sale deed application had become infructuous.

4. I have considered the arguments advanced across the bar and also perused the materials on record.

5. The restriction that sale deed cannot be executed without prior permission of the District Judge is envisaged in Section 5A of the Societies Registration Act the substance of which is that it shall not be lawful for the governing body of a society to transfer without the previous approval of the Court any immovable property belonging to such society. Coming to the facts of the present case, it would appear from a perusal of the application made in the case that the society had purchased the property in dispute through a sale deed dated 27.4.1931 and the same was let out by the then office bearers of the society to various tenants and therefore, it was urged, the property is not yielding any profit. It was further stated in the application that opposite party No. 1 namely, Hira Lal paid rent and thereafter his widow paid rent at the rate of Rs. 15 per month and some of the opposite parties paid Rs. 50 which was subsequently raised to Rs. 60 per month albeit the fact that the disputed property is situated in busy commercial centre. The next ground urged is that the society is not resourced with enough earning and due to paucity of funds it is not able to run the day-to-day affairs of the society. It was further mentioned that the society resolved on 22.4.1989 to transfer the part of the property at the highest price settled with opposite parties. It was further mentioned that application was moved way back in 1990, which was registered as Misc. Case No. 92 of 1990 but seemingly due to the fact that some members of the society applied for impleadment and thereafter the District Judge allowed the application for impleadment on 4.7.1992 and still, inspite of the fact that the application remained pending for a period spanning about 14 years, no orders were passed on merits. During pendency of the case, the proceedings seeking permission for transfer according to the learned Counsel for the petitioner, the sale deed was executed due to alleged exigencies coming

into existence and application thereafter was dismissed as infructuous by means of the impugned order.

6. Section 5A of the Societies Registration Act was added by U.P. Act No. 26 of 1979. This provision was inserted to enable the office bearers or managing body of the society to alienate the property otherwise in case it is not one militating against the interest of the society or against the object for which society was formed. The amendment, to all appearances, is intended to protect the property from illegal transfer without any valid ground made by the office bearers of the society so that charitable and religious society or any of other society may be saved and protected against illegal transfer. Section 5A further clarifies that mortgage, charge, sale, gift or exchange lease for a term exceeding five years or irrevocable licence shall be deemed to be transfer and in all such matters the office bearers of the society are required to approach the District Judge so that illegal transfer against the interest of the society may be checked. It is also settled in law that the right of a party is determined by the facts as they exist on the date of the action is instituted. It has been held in *Rameshwar and Others Vs. Jot Ram and Another*, that later developments cannot defeat his right because had the Court found his facts to be true the day he sued he would have got his decree. It was further held that the Court's procedural delays cannot deprive him of legal justice or rights crystallized in the Initial cause of action. Similar view has been expressed in *Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc.*, In that case suit for eviction was instituted and was pending. During this period, the building was exempted from the purview of the Act. The Apex Court held that the civil court could continue the suit and pass decree as to the rights on the date of the suit or the cause of action. Coming to the present case, the application was presented in the year. 1990 and after a long wait spanning about 11 years, sale deed was executed. In the light of ratio flowing from the aforesaid decisions cited and discussed above, it brooks no dispute that the District Judge should have decided the question of permission on merits. Even otherwise, if in ultimate analysis, the District Judge after considering the merits of the case held the view that the permission sought was in accordance with law, there could be no inhibition in granting permission for transfer. On the contrary, in case it was found after considering the merits that the permission sought was not liable to be granted being one militating against the interest of society, it may be fraught with the consequence of being declared as void. In this connection, it is also worthy of notice that Section 5A of the Societies Registration Act was introduced by the Amendment (as stated supra). The intention of the Legislature in inserting this Section in the Act appears to be that the Court must scrutinize on merits whether permission being sought by the office bearers of the society for transfer of land is in the interest of society and further that it is not in any way prejudicial to the interest of the society or also to ascertain whether there is any collusion or whether it affects the interest of the society. The intention further appears to be that such application should be decided as early as possible. In such situation this Court is of the firm view that

any such application has to be invariably decided not beyond one year from the date of its institution in a particular court. Before proceeding further in the case, I would not scruple to say that anything said about sale deed shall not be deemed to be expressive of opinion on merit of validity or invalidity of sale deed executed during pendency of application as the question shall be decided after hearing on merits by the District Judge.

7. The next question that has been put forth for consideration is that membership of the society as claimed by the opposite parties has been repudiated by the petitioners. This question being disputed questions of facts, this Court forbear from expressing any opinion on merits as in its considered view, this question requires to be considered and decided on merits in appropriate forum.

8. As a result of foregoing discussions and the also considering the ratio flowing from the decisions cited above, this Court is of the view that the impugned order passed by District Judge is liable to be quashed and the matter is apt to be remanded to the District Judge for being considered afresh on merits and decided within a reasonable time not exceeding three months from the date of production of a certified copy of this order. It needs hardly be said that the decision afresh shall be rendered after affording opportunity of hearing to the parties concerned.

9. In the result, the writ petition succeeds and is allowed and the impugned order dated 20.4.2004 passed by District Judge is quashed. As a consequence, the matter is remanded to the District Judge for decision afresh in the light of what has been stated in the body of this judgment.