
(2016) 02 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 7549 of 2016

Satya Kumar Singh

APPELLANT

Vs

State of U.P. & 3 Others

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Societies Registration Act, 1860 — Section 25, 4

Citation : (2016) 5 ADJ 238 : (2016) 3 AllWC 2469 : (2016) 116 ALR 226

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : C.S.C, Gautam Baghel, Govind Kumar Saxena, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J. - Heard Sri Ashok Khare, learned senior counsel assisted by Sri Sanjay Vikram Singh for the petitioner, learned standing counsel for respondents 1 and 3, Sri Ajit Kumar Singh for respondent 2 and Sri A.S. Rai and Sri G.K. Saxena for respondent 4.

2. Counter affidavit filed on behalf of the respondent 4 is taken on record. Counsel for the petitioner states that he does not wish to file any rejoinder affidavit and therefore with consent of learned counsel for the parties, the matter is heard finally.

3. Sukhmai Sansthan, Behda Kerakat, Jaunpur is a registered society under the provisions of Societies Registration Act, 1860. The last renewal of the registration certificate was made on 19.4.2012 on an application submitted under the joint signatures of the petitioner as Manager of the Committee of Management of the Society and one Sankatha Prasad Singh as President. The renewal certificate became operative from 21.12.2011 for a period of five years. According to the petitioner, a meeting of the general body was held on 10.1.2010 in which the vacancy that had occurred on account of death of Dr. L.M. Dixit (Vice-President)

was filled up by co-option of Abhimanyu Singh. In yet another proceeding dated 19.2.2011, the vacancy caused on account of death of Smt. Prabhawati Devi, a member of the Committee, was filled by co-option of Smt. Ekta Singh. The other proceeding set up by the petitioner is dated 23.6.2013, in which the vacancy on account of death of the President Sankatha Prasad Singh on 8.6.2013 was sought to be filled up by co-option of one Smt. Geeta Singh. These proceedings were submitted by the petitioner in his capacity as Manager of the Committee of Management before the Assistant Registrar with a request to register the list of office bearers of the year 2015-16. On the basis thereof, the Assistant Registrar registered the list of office bearers under Section 4 of the Act.

4. The fourth respondent made a representation on 10.9.2015 alleging that the documents submitted by the petitioner are forged and manipulated. It was contended that the Abhimanyu Singh never came to be co-opted on the post of Vice President, nor Smt. Geeta Singh on the post of President. On the other hand, according to the fourth respondent, who is the widow of the deceased President, she was co-opted on the post of President and one Rameshwar Singh on the post of Vice President in a meeting of the general body held on 24.11.2013.

5. On the representation aforesaid made by the fourth respondent, the Assistant Registrar issued notice to the petitioner and after granting opportunity of leading evidence and hearing the parties passed the impugned order dated 2.2.2016, whereby the list of office bearers of the year 2015-16, registered on the documents submitted by the petitioner has been cancelled and the list of office bearers submitted by the fourth respondent has been directed to be registered. Aggrieved thereby, the petitioner has approached this Court by way of instant writ petition.

6. The submission of the learned counsel for the petitioner is that the petitioner had been the founder member and was admittedly the Manager of the Committee of Management at the time the application for renewal was made in the year 2012. In such circumstances, even if there was a rival claim made by the fourth respondent, the dispute that came into existence was a bona fide dispute relating to continuance in office of the office bearers on the post of Vice President and President. Consequently, such a dispute should have been referred to the Prescribed Authority under Section 25(1) of the Act. It is submitted that even if the claim of the petitioner was to be repelled, the direction for registration of the list of office bearers submitted by the fourth respondent is wholly without jurisdiction. It is urged that the petitioner contested the claim set up by the fourth respondent by specifically contending that she had never been a member of the general body. The petitioner has further tried to demonstrate before this Court the inherent defect in the proceedings set up by the fourth respondent by pointing out that the fourth respondent claims to have been co-opted as President on 24.11.2013, whereas even in a previous proceeding dated 26.3.2013, she had presided over the meeting as the President. It is urged that

similarly the meeting dated 24.11.2013 was also presided over by the fourth respondent as President whereas according to her own case, she was co-opted on the post of President, for the first time, in the said meeting. It is urged that the dispute as to whether the fourth respondent was validly co-opted in the meeting held on 24.11.2013 or not was a dispute which ought to have been referred to the Prescribed Authority. It is lastly contended that in the impugned order, there is no finding recorded as regards the validity of the proceeding dated 24.11.2013, in which the fourth respondent claim to have been co-opted and a direction for registration of the list of office bearers submitted by the fourth respondent is wholly illegal.

7. Sri A.S. Rai, learned counsel appearing on behalf of the fourth respondent refuted the submissions made by learned counsel for the petitioner and submitted that the petitioner had never raised the plea relating to jurisdiction of the Assistant Registrar and thus such plea could not be raised for the first time before this Court. It is urged that while submitting the documents for registration of the list of office bearers the petitioner had filed an affidavit that in case any fact mentioned therein is found to be false, then list could be cancelled under Section 12-D of the Act and he will have no objection. It is urged that in view of the said undertaking, the impugned order is referable to an order passed under Section 12-D of the Act against which the petitioner has the remedy of filing an appeal and thus, the instant writ petition is liable to be dismissed on the ground of availability of alternative remedy. It is further urged that the petitioner has not disputed the documents and the proceedings submitted by the fourth respondent.

8. I have considered the submissions made by learned counsel for the parties and perused the record.

9. Indisputably, the renewal certificate that was issued on 19.4.2012 was on the basis of documents submitted by the petitioner in his capacity as Manager and Sankatha Prasad Singh as President. According to the petitioner, the vacant post of Vice President was filled up by co-option of Abhimanyu Singh in the meeting of the general body dated 10.1.2010. The further case of the petitioner is that the post of President was filled up by co-option of Smt. Geeta Singh in the meeting of the general body held on 23.6.2013. On the basis of these proceedings, the petitioner succeeded in getting the list of office bearers registered for the year 2015-16 under Section 4 of the Act. On the other hand, the fourth respondent had disputed the validity of these proceedings and had contended that these proceedings are a result of fraud and manipulation. The fourth respondent, who is the widow of the deceased President had shown herself to have been co-opted in a meeting held on 24.11.2013 apart from co-option of Rameshwar Singh on the post of Vice President and Neerja Singh as member of the Committee.

10. It is not disputed before this Court by counsel for the petitioner that in case the registration of the list of office bearers is obtained by a party by concealment of any fact or by misrepresentation or fraud, the Assistant Registrar has inherent power to cancel the same. The case of the petitioner was that the original

documents and record were lost and a first information report was also lodged in that regard on 24.1.2015. For the said reason, the petitioner had expressed inability to produce the original documents. However, the material on record indicates that the original records were in the custody of the fourth respondent, by virtue of fact that she is the widow of the deceased President. Thus, the plea taken by the petitioner regarding loss of original records was found to be false. The proceedings dated 10.1.2010 and 19.2.2011 set up by the petitioner were allegedly presided over by Sankatha Prasad Singh as President. However, in the original records produced before the Assistant Registrar, no such proceedings were found recorded. In view of these findings, which have not been challenged before this Court, the Assistant Registrar was fully justified in concluding that the registration of the list under Section 4 was obtained by fraud and misrepresentation. Once, such findings have been recorded no exception can be taken to the cancellation of the list got registered by the petitioner under Section 4.

11. The mere fact that the petitioner while obtaining registration of the list under Section 4 had submitted an affidavit extending undertaking that in case of concealment of fact, the list that was to be registered could be cancelled under Section 12-D would not make the order of the Assistant Registrar an order passed under the said provision. Section 12-D operates in different field. It empowers the Registrar to cancel registration of a society on the grounds enumerated therein. Whereas, in the instant case, the list was registered under Section 4 of the Act and on the Registrar being satisfied that the registration was obtained by fraud and concealment of correct facts, it had been cancelled. It is the exercise of inherent power, which is vested in a statutory authority to undo fraud and misrepresentation that was exercised and not the power under Section 12-D.

12. Concededly, the registration certificate was granted on 19.4.2012 and was valid for a period of five years since 21.1.2011. There is no direction in the impugned order for cancellation of the renewal of registration. Thus, this Court is unable to accept submission of learned counsel for the fourth respondent that the impugned order is referable to power under Section 12-D and thus, the petitioner has an alternative remedy of filing appeal.

13. However, the issue which still survives for consideration is whether in the facts and circumstances of the case, the Assistant Registrar was justified in registering the list of office bearers submitted by the fourth respondent. The fourth respondent, as noted above, had set up a specific plea that she was co-opted on the vacant post of President in a proceedings of the general body held on 24.11.2013. These proceedings have been brought on record as annexure 14 and a perusal thereof reveals that in the said meeting, the fourth respondent had presided as President. There is on record another proceeding dated 23.6.2013, which also was presided by Smt. Usha Singh, the fourth respondent in her capacity as alleged President. The specific plea of the petitioner is that in case

the fourth respondent was co-opted as President in the meeting held on 24.11.2013 she could not have presided over the meeting dated 23.6.2013 and 24.11.2013 as President. The aforesaid aspect has not at all been adverted to by the Assistant Registrar. The petitioner in his objection filed before the Assistant Registrar had also raised a specific plea that the fourth respondent had never been a member of the general body. In such circumstances, one of the issue for consideration was whether she had been a member of the general body or not. Again, the said issue has not been adverted to by Assistant Registrar. A perusal of the impugned order shows that only general observations have been made that the fourth respondent had produced original documents, which reflects that the fourth respondent is empowered to Act as President. In the opinion of the Court, this was not sufficient to uphold the claim set up by the fourth respondent in view of the challenge laid to her alleged co-option on the post of President.

14. The issue relating to alleged co-option of the fourth respondent on the post of President in the meeting dated 24.11.2013 and filling up the post of Vice President in the same meeting are disputes relating to the election of office bearers and would thus come within the purview of Section 25(1) of the Act. Such a dispute raised by the petitioner, who is admittedly the Manager, is definitely a bona fide dispute and could only be adjudicated by the Prescribed Authority under Section 25(1) of the Act. Once, a genuine dispute relating to the election of the fourth respondent on the post of President had come into existence, it was incumbent upon the Assistant Registrar to have referred the dispute to the Prescribed Authority for determination under Section 25(1) of the Act. For such purpose, it was not at all necessary that a specific plea should have been raised by the petitioner before the Assistant Registrar. Consequently, the part of the impugned order whereby the Assistant Registrar had directed for registering the list of office bearers submitted by respondent no. 4 is not sustainable in law.

15. In view of the discussion made above, the impugned order dated 2nd February, 2016 cannot be sustained and is hereby quashed. The writ petition is allowed. The third respondent is directed to refer the dispute between the parties to the Prescribed Authority within a period of two weeks from the date a certified copy of this order is filed before him. The Prescribed Authority shall thereafter enter upon the reference and after giving due opportunity of hearing to both the parties decide the same in accordance with law. The Assistant Registrar shall thereafter proceed to register the list under Section 4 as per the determination made by the Prescribed Authority.

16. The writ petition is allowed with the aforesaid observations and directions.