
(2016) 01 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 614 of 2015

Satyaveer Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Citation : (2016) 3 AllWC 3081 : (2016) 34 LCD 558

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : G.C. Verma, for the Appellant; C.S.C. and M.B. Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

1. This appeal has been filed by twenty persons claiming themselves to be the members of the General Body of a society registered under the Societies Registration Act 1860 that runs a Junior High School, namely Raju Laghu Uchchatar Madhyamik Vidyalaya, Tikri, Agaganj, Faizabad.
2. They are aggrieved as the respondent No. 3 - Deputy Registrar, Firms, Societies and Chits, Faizabad Region, Faizabad has held that their enrollment as members of the society as invalid being not through a validly existing committee of office-bearers, and further that since no valid elections of the Committee of Management survived as the tenure had come to an end long back in the year 2005, therefore, in exercise of powers under sub-section (2) of Section 25 of the 1860 Act, it was imperative to hold fresh elections. The Dy. Registrar has treated the Committee to have become defunct since 2005-06 as such all subsequent actions including the alleged enrollment of the petitioners to be void.
3. The dispute between the parties has a chequered history.
4. The first fact which deserves to be clarified is with regard to the status of the registration of the Society and its bye-laws. The learned Single Judge, whose decision is impugned herein, categorically records that the society was initially

registered on 11th August, 1976 with Registration No. 805 of 1971-72 at File No. I-24994. The bye-laws of this society provide the tenure of a committee of management to be elected to manage the society as one year with a rider that in case of necessity the same can be extended further.

5. The enlistment of members under the said bye-laws is provided under Clause 3(kha) which makes a provision that the society will have such general members who donate a sum of Rs. 501/- to be deposited within the time prescribed. Thus the enrollment of member is subject to payment of Rs. 501/- and the period for such deposit is to be provided for accordingly.

6. From the record it appears that a registration of the same society was attempted in the year 1983 and was got registered on 9.3.1983 bearing Registration Certificate No. 3711 of 1982-83 on File No. I-74599. This gave rise to a dispute which ultimately came to be decided with the renewal of the previously registered society vide order dated 3rd February, 1997 and cancellation of the subsequent registration vide order dated 5.2.1997. This renewal was granted on the papers submitted by Sri Chinta Mani Singh as the then Secretary of the society w.e.f. 10.10.1995 for a further period of five years. This was again renewed for a further period of five years w.e.f. 10.10.2000 vide order dated 13.3.2003. The next renewal of the society was through Sri Krishna Singh as Manager vide order dated 24.7.2006 w.e.f. 10.10.2005 for five years onwards. Thus this fact that the first registration of the society and its bye-laws still holds the field, now remains uncontested between the parties and the bye-laws that were registered then are the admitted bye-laws that govern the management and affairs of the society.

7. This was followed by a further request of renewal on 10.2.2011 by Sri Krishna Singh on behalf of the society. The past renewal that was valid had indicated the existence of 23 members of the General Body in the list of 2006-2007. The renewal of the society that was sought came to be granted by the Deputy Registrar on 24th April, 2011 for a period of five years w.e.f. 10.10.2010. The dispute appears to have arisen thereafter when the list of members in its modified form was presented for being validated through Mr. Krishna Singh as Manager and Sri Chinta Mani Singh as Secretary. This attempt was made on 7th May, 2013 followed by another application filed by the said persons on 2nd July, 2013 submitting a list of 41 members of the General Body for the year 2013-14. Thus the previous membership that was existing in 2006-07 with the addition of new members which includes the petitioners was presented on 2nd July, 2013. This was based on the resolution dated 21st April, 2013 whereby the petitioners claim their enrollment. A copy of this resolution is Annexure 20 to the Stay Application of this appeal. The resolution indicates that the Manager of the Society had proposed the name of the 20 new members that was resolved to be incorporated in the Register of Members. The meeting is said to have been convened under the chairmanship of the respondent - Prahlad Singh who was admittedly the then President of the Society. The resolution apart from

enrollment of the appellants also registers the action against one Sri Raj Kumar Singh, Assistant Teacher and an order produced by one Sri Anil Kumar Singh from the High Court. These are recorded as Resolution Nos. 2 & 3. After recording of the said resolutions, there is no item number mentioned but after resolution No. 3, the aforesaid resolution of inclusion of 20 members is recorded.

8. The real dispute commenced in relation to this resolution, when the respondent - Prahlad Singh who was admittedly the then President of the Society denied his signatures and alleged vide his representation dated 16.6.2014, that this was a fake document that was prepared with his forged signatures and presented before the Deputy Registrar.

9. There is yet another dimension to the dispute that one Dharendra Kumar Singh and Manoj Singh who were claiming themselves to be the members and office-bearers had set up their claim. It transpires that when the new list of members and office-bearers was presented on 2nd July, 2013 as noted above the Deputy Registrar passed an order on 8th July, 2013 that the information should be published in the newspapers inviting objections to the said list of 41 members for the year 2013-14. According to the petitioners the notice was published on 18th July, 2013 in two Hindi daily newspapers, namely Swatantra Bharat and Shanti Morcha pursuant to the direction of the Deputy Registrar dated 8th July, 2013 granting fifteen days time inviting objections. When no objections were filed the Deputy Registrar passed orders on 17th August, 2013 registering and accepting the list of 41 members by the General Body presumably under the provisions of Section 4-B of the Societies Registration Act, 1860.

10. This was followed by the passing of a resolution on 17.11.2013 alleged to be the basis for the acceptance of the resignation of Sri Krishna as Manager and the election of Dharendra Kumar Singh as Manager. These proceedings are also alleged to have been signed by Mr. Prahlad Singh, the respondent. The Deputy Registrar thereafter upon being apprised of this claim appears to have proceeded with the matter on the application moved by Dharendra Kumar Singh claiming himself to be the Manager on the strength of the aforesaid proceedings and issued notices on 3.12.2013 to Sri Krishna Singh on the said presentation. Mr. Krishna Singh submitted his reply accepting the fact of his resignation and on 17th December, 2013 the Deputy Registrar passed an order accepting the list of office-bearers for the year 2013-14 with a rider that in the event if any fact has been concealed or withheld then in that event the aforesaid acceptance of the list of office-bearers would be treated to be invalid.

11. It is almost after six months that the respondent Prahlad Singh filed his complaint on 16th of June, 2014 alleging that all such documents which have been submitted after April 2013 including the list of 41 members, the proceedings thereafter about Dharendra Kumar Singh himself to be the Manager and the registration of the list of office-bearers by the Deputy Registrar on 17.12.2013 are all invalid. In this objection Sri Prahlad Singh contended that the last valid elections were held on 10.8.2010 whereafter no elections were held

and that the only valid list of members of the General Body is that of 2006-2007, and rest of the documents were described to be fake bearing forged signatures of respondent Prahlad Singh.

12. On this objection a counter reply was submitted stating therein that the signatures of Prahlad Singh were genuine and that a handwriting expert should be called upon to compare the said signatures in order to ascertain the said allegation of Prahlad Singh. The matter proceeded before the Deputy Registrar and the same was finally heard on 27.2.2015 fixing 11th March, 2015 for presentation of written arguments. It was again heard and entertained with the written arguments on 19.3.2015 and on 20th March, 2015 on which date Sri Dharendra Kumar Singh submitted his written arguments.

13. The Deputy Registrar vide order dated 26th March, 2015 came to the conclusion that elections were held from 1977 to 2005 whereafter elections were stated by Prahlad Singh to have been held on 10.8.2010, but no elections were held thereafter. The list of 23 members of the General Body was submitted on 2nd June, 2006 and these proceedings were treated to be valid. He however came to the conclusion that since according to the correct bye-laws the tenure of the committee is only one year and since no elections were held in 2006, then all proceedings thereafter were invalid as they were performed after the expiry of the earlier tenure of the Committee of Management. He accordingly declared all proceedings set up in 2013-14 to be invalid, and since there were no valid elections, he proceeded to assume authority under sub-section (2) of Section 25 for holding fresh elections on the basis of the list of 23 members. He however posed a rider therein that the said list of 23 members shall be published as a tentative list and after verifying any deaths which may have occurred or the deletion of names of any members or wrong entry of members, the objections to that effect will be considered by him within 10 days, whereafter the final list shall be issued and fresh elections shall be held.

14. The aforesaid order dated 26th March, 2015 passed by the Deputy Registrar was challenged in Writ Petition No. 2181 of 2015 through the Committee of Management of Dharendra Kumar Singh. The said writ petition was disposed of observing that the impugned order did not call for any interference but it was open to the petitioner to file objections with regard to membership and the Deputy Registrar shall proceed to finalize the said objections and hold elections under sub-section (2) of Section 25 within a period of one month thereafter. The said judgment dated 28th April, 2015 is extracted herein under:-

"Hon"ble Attau Rahman Masoodi, J.—Sri M.B. Singh, learned Counsel has filed Vakalatnama on behalf of respondent No. 3, same is taken on record.

Heard Sri H.G.S. Parihar, learned Senior Counsel assisted by Sri Shobh Nath Pandey, learned Counsel for the petitioner. Learned Chief Standing Counsel has appeared on behalf of respondent Nos. 1 and 2 whereas Sri M.B. Singh, learned Counsel represented on behalf of respondent No. 3.

At the outset an objection against the maintainability of writ petition was raised pointing out that the Deputy Registrar while passing the impugned order dated 26.03.2015 has merely invited objections from the members of the society in order to finalized the list of members of general body before invoking the powers under Section 25(2) of the Societies Registration Act, 1860.

The petitioners do not have any objection against invoking the powers under Section 25(2) by the Registrar for the reason that elections have not been held since last many years, therefore, to that extent there is no dispute between the parties.

The dispute is raised against finalization of the membership specifically on the ground that the list of general body was previously finalized by publication on 18.07.2013 which list ought not to have been disturbed by the Deputy Registrar while passing the impugned order.

Learned Counsel appearing for the respondents in reply to this argument have submitted that such an objection is still open to be raised in response to the impugned order and the same can be dealt with by the Deputy Registrar for which 15 days time was already granted to the members of the society.

Restricting the membership up to the year 2006 does not appear to be faulty, but in any case, if an objection is filed before the Deputy Registrar in this regard the same deserves to be dealt with, in accordance with law.

In the totality of circumstances, the impugned order does not call for any interference, and it is open to the petitioners to file objections within a period of one week from today and the objections filed, if any, shall be decided by the Deputy Registrar expeditiously in accordance with law within a period of two weeks from the date of receiving objection.

It is made clear that on deciding the objections as aforesaid, the Registrar/ Deputy Registrar shall proceed to finalize the election under Section 25(2) of the Societies Registration Act expeditiously and preferably within a period of one month thereafter.

In view of the above, the writ petition is finally disposed of.

Order Date:- 28.4.2015"

15. Against the aforesaid judgment of the learned Single Judge, Special Appeal No. 209 of 2015 was filed.

16. In between the objection with regard to membership as directed by the learned Single Judge came to be decided by the Deputy Registrar vide order dated 25th May, 2015. This order dated 25th May, 2015 was on a contest put forth by Dharendra Kumar Singh and Manoj Singh who had filed the aforesaid writ petition. The Deputy Registrar rejected the objections of Dharendra Kumar Singh and Manoj Singh and reiterated the same list with 18 valid members existing and entitled to participate in the elections.

17. The aforesaid order dated 25th May, 2015 was also brought to the notice of the division bench in Special Appeal No. 209 of 2015 and the same was dismissed as infructuous on 27th May, 2015. The said judgment dated 27th May, 2015 is extracted hereinunder:-

"Hon"ble Dinesh Maheshwari, J.—Hon"ble Ritu Raj Awasthi, J.—In this intra court appeal by the petitioners of Misc. Single No. 2181/2015, the submission on behalf of the petitioners-appellants, that the term of the committee has not expired, does not appear to be compatible with the specific submissions made before the learned Single Judge where they stated no objection against invoking of the power under Section 25(2) by the Registrar for the reason that elections had not been held since last many years. Learned Single Judge has noticed that to this extent, there was no dispute between the parties.

A suggestion is also made that the observations made by the learned Single Judge, as regards correctness of the list of the members may operate prejudicial to the petitioners-appellants in raising objections.

In regard to these submissions, upon our expressing reservations in entertaining this intra court appeal, the counsel for the appellants submits that the appellants may be permitted to take recourse of filing review application before the learned Single Judge for consideration.

At this juncture, the learned counsel Mr. M.B. Singh appearing for the respondent No. 3 submits that on 25.05.2015, the Deputy Registrar concerned has finalized the list of the members of the general body and has also declared the election program, whereby the elections are to be held on 18.06.2015. The counsel has shown a copy of the order so passed by the Deputy Registrar on 25.05.2015.

Though the learned counsel for the appellants has attempted to submit that the proceedings may be ordered to be conducted by some other Deputy Registrar, but we are afraid, such part of prayer cannot be considered in this appeal, because no such issue was for consideration before the learned Single Judge.

Suffice it to notice for the present purpose that in view of the subsequent events, so far this appeal is concerned, it could only be treated as infructuous. However, in the interest of justice, the option of taking recourse to the appropriate proceedings in accordance with law, in case of any grievance remaining yet, is left open for the appellants.

The appeal stands dismissed as infructuous subject to observations foregoing.

Order Date:- 27.5.2015"

18. The order dated 25th May, 2015 was challenged in Writ Petition No. 3317 of 2015 by the Committee of Management of Dharendra Kumar Singh and the same was disposed of again with liberty to the petitioner to file a representation before the Deputy Registrar to consider the grievances and pass appropriate orders. This order was passed on the concession made by the counsel for Prahlad Singh

that he had no objection to the request made by the learned counsel for the petitioner. The judgment dated 12.6.2015 in the aforesaid writ petition is extracted hereinunder:-

"Hon"ble Rakesh Srivastava, J.—Shri Jashwant Singh, Deputy Registrar, Firms, Societies and Chits, Faizabad Region, Faizabad is present in Court.

Heard Indu Prakash Singh, learned counsel for the petitioner and Shri M.B. Singh, learned counsel, who has put in appearance on behalf of respondent No. 4.

The petitioner has challenged the order dated 25.5.2015 passed by the Deputy Registrar, Firms, Societies and Chits, Faizabad Region, Faizabad in which the petitioner was not found to be the valid member of the General Body of the Society.

After arguing the matter at some length, learned counsel for the petitioner states that he may be permitted to move representation before the Deputy Registrar, Firms, Societies and Chits, Faizabad Region, Faizabad. Shri M.B. Singh, learned counsel appearing for respondent No. 4 has no objection to the request made by the learned counsel for the petitioner.

In the circumstances, the writ petition is disposed of with the liberty to the petitioner to move representation before respondent No. 3 by tomorrow along with certified copy of this order. In case such representation is made by tomorrow, the same shall be considered and disposed of by the authority concerned by 15.6.2015 strictly in accordance with law after hearing the parties.

Order Date:- 12.6.2015"

19. It is thus clear from the facts narrated above that the issue of membership was again reopened by the judgment of the learned Single Judge dated 12.6.2015.

20. The present petitioners for the first time challenged the order dated 26.3.2015 and 25.5.2015 by filing their own writ petition being Writ Petition No. 3395 (MS) of 2015. This writ petition was dismissed by a learned Single Judge on 17.6.2015.

21. Aggrieved the appellants preferred special appeal No. 279 of 2015 which appeal was allowed on 21.8.2015 setting aside the judgment of the learned Single Judge dated 17.6.2015 with a direction to rehear the matter and decide the same afresh. Accordingly, the writ petition was heard and again dismissed by the impugned judgment dated 6.11.2015.

22. There is yet another development which deserves to be noticed that as per directions on the writ petition of Dhirendra Kumar Singh dated 12.6.2015 in Writ Petition No. 3317 of 2015, the objections were rejected on 16.6.2015. The elections pursuant to the earlier directions dated 25.5.2015 of the Deputy Registrar were held on 18.6.2015. The aforesaid elections are under challenge in Writ Petition No. 3574 (MS) of 2015 where no interim orders have been passed.

23. Thus the position that emerges is that all the 20 appellants are aggrieved on account of annulment of their membership and also the orders passed by the Deputy Registrar dated 26.3.2015 and 25.5.2015.

24. Learned counsel for the appellant Sri Verma contends that the Deputy Registrar has acted without jurisdiction in proceeding to entertain a doubt or dispute with regard to the constitution of a committee of management on the strength of a wrong electoral college. This jurisdiction lies with the Prescribed Authority under Section 25(1) even if it relates to deciding about the tenure of the committee of management and which aspect even though noticed by the learned Single Judge has not been answered. He therefore submits that the order of the Deputy Registrar that was under challenge before the learned Single Judge deserves to be set aside and for the same reason the judgment of the learned Single Judge also deserves to be quashed.

25. The second issue of membership of the present 20 appellants was not decided inspite of the fact that there was ample evidence to demonstrate that the appellants were validly enrolled members who had deposited their membership fee and were entitled to participate in all the proceedings.

26. As a corollary to this argument, he also contends that the defence set up by the respondent Prahlad Singh that all proceedings in which the appellants were enrolled as members were forged and fake and subsequent elections were also fake was without any substance, inasmuch as, the resolution dated 21st April, 2013 whereby the appellants had been enrolled contained several resolutions. He submits that Sri Prahlad Singh has not denied the issuance of the notice published in the newspapers under the order of the Deputy Registrar and the order dated 17.8.2013 accepting the said list except for the fact that subsequently on 16.6.2014 he raises an objection of the resolution and the documents being fake and his signatures being forged. This according to the petitioners was therefore an afterthought generated by Prahlad Singh at a very belated stage. The Deputy Registrar in such circumstances had no jurisdiction or authority to review his own orders nor annul the membership of the appellants vide resolution dated 21.4.2013 without even adjudicating the controversy of the manner of enrollment, the deposit of membership fee by the appellants and its acceptance by the Deputy Registrar himself on 17.8.2013. He therefore submits that the order of the Deputy Registrar for such reasons was unlawful which aspect has been not decided in correct perspective by the learned Single Judge.

27. He submits that the subsequent order of the Deputy Registrar dated 17.12.2013 accepting the list of office-bearers was in relation to the elections set up by Dharendra Kumar Singh and it is in this order that there was an indication that if any fact has been withheld or concealed the same would be annulled. This did not give any authority to the Deputy Registrar to annul the membership of the appellants and their right and freedom to associate themselves stood intact by virtue of the acceptance of their membership by the Deputy Registrar himself on 17.8.2013 under the resolution dated 21.4.2013 that was much prior to the

dispute raised by Dhirendra Kumar Singh.

28. He further submits that Prahlad Singh for the first time after almost a year on 16.6.2014 raked up this issue of membership. The appellants had deposited their membership fee not only at the rate of Rs. 21/- but also subsequently by depositing Rs. 1,000/- which is also recorded in the subsequent resolutions. This aspect has been overlooked and not decided by the Deputy Registrar in terms of the bye-laws that are admittedly applicable and the aforesaid aspect has also been not considered by the learned Single Judge who has simply recorded the version of the contesting respondent as noted by the Deputy Registrar. The learned Single Judge according to him has treated everything to have become final on the intervening judgments referred to hereinabove which do not bind the appellants, as any observation made in the writ petition filed by Dhirendra Kumar Singh would not take away the rights of the appellants to assert their membership.

29. He then submits that Prahlad Singh was admittedly continuing as the President and the annual list of office-bearers was being submitted from time to time. The committee which was continuing and was chaired by Sri Prahlad Singh itself had accepted the appellants as members on 21.4.2015 and therefore the finding recorded by the Deputy Registrar that the Committee had become defunct and therefore all proceedings were invalid was beyond the nature of the controversy between the parties.

30. He further submits that the Deputy Registrar or any other authority had not taken over the management or declared the then Committee functioning to have become defunct when the appellants were enrolled as members. In fact there was no dispute about the management when the appellants were enrolled on 21st April, 2013. The dispute of office-bearers arose after 10th August, 2013 whereas enrollment of the appellants was prior to that. In such circumstances, the conclusion drawn by the Deputy Registrar that the action of enrollment or any such resolution was by a defunct committee was not even the case of the respondent Prahlad Singh. To the contrary, Prahlad Singh maintained that the resolution on which reliance was being placed by the appellants was fake and his signatures were forged. He never disputed the existence of a Committee of Management in April 2013. In such circumstances, the Deputy Registrar travelled beyond his authority to record findings against the bye-laws which nowhere declares the committee to be defunct after one year. To the contrary the tenure of the committee of management under the bye-laws being one year is also subject to extension as is provided for in the note appended to Clause 4(kha) which prescribes the tenure of the officebearers clearly indicating that the tenure can be increased on any necessity arising. He therefore submits that the list of officebearers continued to be submitted annually and since there was no dispute about the existence of a committee on 21st April, 2013, the conclusion drawn by the Deputy Registrar that the action was by a defunct committee does not hold water.

31. Sri Verma then points out the relevant clauses of the bye-laws to contend that the issue of membership and any issue of qualification has to be decided finally by the General Body as per the note appended to Clause 7. He has also invited the attention of the court to the note appended to Clause 5 whereby the Committee of Management has also been authorized to terminate the membership or the right of vote of a member, if the member has not deposited the membership fee within the time prescribed.

32. Sri Verma then contends that none of these contingencies arose and neither the General Body has disassociated the appellants from membership nor has the committee of management ever resolved that the membership of the appellants stood terminated on account of non-deposit of membership fee. He therefore submits that this aspect has also not been taken into account either by the Deputy Registrar while passing the impugned orders or even by the learned Single Judge while dismissing the writ petition. He therefore submits that a total conspectus of the legal position and the factual aspect has not been appreciated in correct perspective by the learned Single Judge to non suit the appellants.

33. Responding to the aforesaid submissions, the learned Standing Counsel contends that the Deputy Registrar has rightly exercised his authority and if the appellants so choose to contest their position of membership they can always file a civil suit for any such declaration. The conclusions drawn by the learned Single Judge are based on the material on record and no interference is called for by this Court.

34. Sri M.B. Singh, learned counsel for the respondent No. 4 submits that the claim of membership of the appellants is a fresh renewed exercised of reopening the entire matter inspite of the fact that most of the appellants had filed their affidavits in support of the cause set up by Dhirendra Kumar Singh. Thus their issue has also been considered by the Deputy Registrar which aspect has also been noticed by the learned Single Judge. In such circumstances, the appellants cannot contend that their issue was not considered. Ten of the appellants had filed their pleadings and affidavits before the Deputy Registrar which aspect has also been noted by the learned Single Judge and as such it cannot be said that the Deputy Registrar has not taken into consideration the claim of the appellants.

35. The entire dispute therefore stood concluded with the judgment of the learned Single Judge on 28th April, 2015 and fresh elections having been held in compliance of the said judgment, on 18th June, 2015, there is no occasion for reopening of the issues that have been raised by the appellants in the present appeal. The objection raised by Prahlad Singh respondent No. 4 has found favour with the Deputy Registrar and the appellants cannot succeed on the basis of fake and forged documents. He further submits that the Deputy Registrar has recorded the fact of deposit of membership fee at the rate of Rs. 21/- by the appellants as claimed by them which is the membership fee under the bye-laws that were subsequently set up and have already been annulled. Thus the appellants have not even deposited the membership fee of Rs. 501/- as desired

under the admitted bye-laws and therefore on merits also they have no such claim. He further submits that the issue of membership of the appellants was an outcome of the fraudulent and fake documents set up before the Deputy Registrar and therefore the Deputy Registrar was well within his authority to pass the order on 26.3.2015 and 25.5.2015 which does not amount to a review without authority. He submits that fraud vitiates all solemn proceedings and even the Deputy Registrar was authorized to annul any such recognition given to the appellants previously which had been obtained on the basis of fake documents. He therefore submits that the learned Single Judge did not commit any error in relying upon the findings recorded by the Deputy Registrar. The contention therefore is that now fresh elections have been held on 18th June, 2015 and the tenure whereof will expire in June, 2016 as such there is no occasion to disturb the same when the said elections have been challenged in another writ petition No. 3574 of 2015 where no interim orders have been passed. He therefore submits that there was no occasion for any reference to the Prescribed Authority under Section 25 of the 1860 Act as the Deputy Registrar does not act as a mere post-office to refer any frivolous or fake dispute.

36. Having considered the aforesaid submissions the first issue is with regard to the point of jurisdiction raised by the learned counsel for the appellant. It is by now well settled that whenever there is a doubt or dispute about elections then the matter has to be referred to the Prescribed Authority for decision of such a dispute.

37. In the instant case, the elections of 2013 were being claimed by Dhirendra Kumar Singh as Manager and not the appellants. That claim stood decided with the disposal of Writ Petition No. 2181 of 2015 on 28.4.2015 and the disposal of the special appeal against the same on 27.5.2015. Not only this, the issue of membership was opened to a limited extent under the judgment dated 12.6.2015. Thus the claim of elections as set up by Sri Dhirendra Kumar Singh as Manager was a doubt or dispute with regard to the elections of office-bearers. The same having now become a matter of judicial intervention and decision becomes independent of the individual claims of membership by the appellants. Therefore there does not remain a dispute for the present appellants to call for a reference before the Prescribed Authority about the elections of 2013. This however is only in relation to the elections that were being claimed prior to 18th June, 2015. The challenge raised to the elections held on 18th June, 2015 is subject matter of Writ Petition No. 3574 (MS) of 2015 and, therefore, this issue of fresh elections would be dependent upon the outcome of the said writ petition. The present appeal is confined only to the dispute of membership for which no reference to the Prescribed Authority is required.

38. In view of the aforesaid facts, the appellants have no cause of action to raise a dispute with regard to the status of elections of 2013 in the light of what has been said above as such the issue of jurisdiction loses relevance.

39. Apart from this, the tenure of the Committee of Management is one year.

Admittedly, the previous tenures have come to an end and this Court would therefore not issue a futile writ to decide an infructuous dispute. Our view finds support from the judgment of the Apex Court in the case of Nagri Pracharini Sabha and another Vs. Vth Additional District & Sessions Judge, Varanasi and others reported in , 1991 Supp (2) SCC 36 (Para 5). Thus the issue of jurisdiction in the present appeal does not acquire any significance on the facts for any relief on that score.

40. The dispute however which appears to be is in reality the status of the membership of the present appellants. Ordinarily such a dispute of declaration cannot be decided in a writ jurisdiction as it would require sifting of evidence and facts which can be gone into by a court of competent jurisdiction which would be obviously a civil court and that too even through a suit. This is so because it involves the complicating factor of the genuineness and veracity of documents especially when forgery and fake attempts are alleged. The court has to grapple with one of the thorniest issues about the valid existence of democratically inclined delegates.

41. However, in the instant case, the judgment dated 12.6.2015 extracted hereinabove, left open the objections which could be raised in relation to membership. Apart from this, the writ petition giving rise to this appeal was essentially a dispute of status of a membership of the appellants. It is here that the orders passed by the Deputy Registrar and the judgment of the learned Single Judge impugned herein, have to be examined.

42. What we find is that the Deputy Registrar entertained the objections of Prahlad Singh on 16.6.2014 and on the premise that since no valid elections have been held after 2005 treated all proceedings including the enrollment of the appellants to be a nullity. The Deputy Registrar did not advert to the impact of the bye-laws, particularly to the effect that on 21st April, 2013 when the alleged resolution is said to have been passed, there was no dispute about the status of the committee of management then existing. Even otherwise, the General Body of the Society does not cease to exist and the society does not become defunct on account of non holding of periodical elections. The only consequence is that if it is found that no valid elections have been held then the Registrar can invoke his authority to hold fresh elections. No such exercise was done by the Registrar/ Deputy Registrar after 2005 till 2015. The society continued to manage the institution and also its own proceedings. The defacto functioning of the undisputed committee of management was therefore not examined by the Deputy Registrar before arriving at any such conclusion. Neither the Deputy Registrar nor the learned Single Judge probed into the bye-laws which do not contemplate any vacuum if periodical elections have not been held. There is no fact recorded either by the Deputy Registrar in any of the impugned orders or by the learned Single Judge on facts placed about the Committee having become functus officio or factually non functional. After all the institution was functioning and managed by a body in effective control then. Even Prahlad Singh does not

say that no committee was functional.

43. What is more revealing is that Mr. Prahlad Singh respondent was contesting the enrollment of the 20 members, who are the appellants, on the ground of fake documents and he never disputed the existence of a committee but took a plea that since no elections were held after 10th August, 2010, therefore, any election proceedings that have been set up by Dharendra Kumar Singh and others and were forged and manipulated. He is absolutely silent in his objection dated 16.6.2014 about the actual functioning of the Committee of Management in 2013, particularly as on 21st April, 2013. The Deputy Registrar, therefore, fell into an error in assuming that there was no Committee of Management in existence without recording any finding on that count. An assumption of a void by the Deputy Registrar without assessing the actual control of a Committee is the manner as recorded in the impugned orders is therefore not substantiated by any material to conclude that there was no Committee in existence. It is different that the Committee may not have passed a resolution or there was no agenda or there was no membership fee deposit evidence, but these facts have not been deliberated upon and no finding has been recorded by the Deputy Registrar. The learned Single Judge has also not adverted on this issue.

44. Further it is only after fresh elections are held that a new committee will take over. There is no provision under the bye-laws declaring any act by a committee beyond its tenure to be an act by a defunct committee. This aspect has also not been looked into by the Deputy Registrar or by the learned Single Judge. While proceeding to decide the issue in the order dated 26.3.2015 the Deputy Registrar has recorded facts but in his analysis and conclusion he does not record any finding with regard to the manner of enrollment of the appellants or their membership fee being defective and not in accordance with the bye-laws. As a matter of fact, the Deputy Registrar did not enter into this question and invalidated all proceedings on the ground of non holding of elections after 2005. In our opinion, the Deputy Registrar, therefore, was obliged to record a finding on the issue of membership of the present appellants on the basis of their contentions and the evidence on which reliance had been placed. This aspect of the matter also does not appear to have been correctly appreciated by the learned Single Judge.

45. At this stage of the submissions that were being advanced, Sri M.B. Singh, learned counsel for the respondent No. 4 contended that the issue of membership can be decided by the Deputy Registrar but the elections which have been held on 18th June, 2015 need not be disturbed even if such decision is required to be taken. He also submits that the fresh elections will have to be held after six months as the tenure is only one year and, therefore, any decision of the membership prior to that will obviously govern future elections.

46. Having considered the submissions raised and having recorded our conclusions hereinabove, we are of the opinion that the judgment of the learned Single Judge dated 6.11.2015 deserves to be modified to the aforesaid extent.

48. Consequently, we partly allow the appeal and set aside the judgment dated 6.11.2015 only to the extent it upholds the order dated 26.3.2015 and 25.5.2015 passed by the Deputy Registrar relating to the membership of the present 20 appellants. The orders of the Deputy Registrar impugned in the writ petition to that extent would stand set aside.

49. However, setting aside of the aforesaid orders would not in any way automatically amount to annulling the elections held on 18th June, 2015 which is subject matter of Writ Petition No. 3574 of 2015.

50. The issue of membership of the present 20 appellants shall be redetermined by the Deputy Registrar in the light of the observations made hereinabove and the objections to be taken by the appellants and the respondent No. 4. The Deputy Registrar shall on a consideration of the provisions of the bye-laws as also the evidence led in support of such claim of membership proceed to decide the same including the validity of the resolution dated 21.4.2013. It is made clear that the issue in the present appeal is confined only to the membership of the 20 appellants and this judgment shall not be available to Dhirendra Kumar Singh and Manoj Singh whose issues stand decided in terms of the judgments rendered in the writ petitions filed by them.

51. The appeal is therefore allowed to the aforesaid extent. The Deputy Registrar shall dispose of the matter preferably within a period of three months from the date of presentation of a certified copy of this order before him.