

(1992) 08 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11747 of 1990

Sheo Shakti Mandir Samity and Another

APPELLANT

Vs

Commissioner, Meerut Division and Others

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Societies Registration Act, 1860 — Section 1, 12D, 12D(1), 12D(2), 20

Citation : (1993) 2 AWC 760

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; Ram Vijai, Pradeep Kumar and Murlidhar, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Bhat, J.—Respondent No. 2 is said to have cancelled the registration certificate of the Petitioner Society by its order dated 31-1-90. This order is impugned in this writ petition. The Petitioners seem to have filed an appeal before Respondent No. 1 against the order of Respondent No. 2. The said appeal was dismissed on 7-4-80. The order of Respondent No. 1 dated 7-4-90 on appeal is also impugned in this writ petition. The facts which emerge from the pleadings of the parties are as under:

2. The Petitioners submit that the Society was registered with Registration No. 712 of 1989 dated 26-9-1989 for a term of live years upto 28-9-94 for propagating, protecting and enhancing the Indian culture, Yogabhyas and to run educational Institutions etc. The Respondent No. 3 is said to have filed an application for cancellation of the aforesaid registration of the Petitioner Society u/s 12-D of the Societies Registration Act, hereinafter referred to as the Act. The Petitioners are said to have filed their reply to the application of Respondent No. 1 dated 5-10-89. The reply was filed on 25-11-89 denying the allegation levelled by Respondent No. 3 against the Petitioner Society. Respondent No. 3 was directed to file rejoinder affidavit to the Petitioners' reply. Thereafter,

Respondent No. 2 cancelled the registration. The cancellation of the registration is termed by the Petitioners as unjust, illegal, arbitrary and without jurisdiction. The Petitioner's appeal was dismissed on 7-4-90 by Respondent No. 1, Respondent No. 2 is said to have decided on the following questions which was beyond his jurisdiction.

(1) Whether Petitioner No. 2 was authorised to obtain registration certification in respect of Sheo Shakti Mandir Samity, Sibhanpura?

(2) Whether any prior dispute was pending in respect of Sheo Shakti Mandir?

(3) Who was the person managing the affairs of the property of the temple prior to the registration under the Societies Registration Act?

3. It is contended by the Petitioners that u/s 12-D of the Societies Registration Act the Registrar has no power to decide the aforesaid questions. If any dispute had arisen about the aforesaid questions, that was to be referred u/s 25 of the Societies Registration Act. Respondent No. 3 is said to have never challenged the election of the Petitioner's managing committee. Respondent No. 2's findings that Respondent No. 3 was owner in possession of the property prior to the registration of the Society, is said to be incorrect, illegal and without jurisdiction. Such a finding is beyond the scope of the provisions of Section 12-D of the Act. The Respondent No. 2 has wrongly observed that on the date of registration of the Society, i.e. 29-9-89, the dispute was pending in the Civil Court. It is stated that the civil suit was filed on 19-10-89, that is after the registration of the Society was completed. The Petitioner's temple is said to be situated in Khasra plot No. 525 of village Bonjha, District Ghaziabad. Respondent No. 3 has not claimed any interest, title or possession over the said plot. An ad-interim injunction is said to have been granted by the Civil Judge on 25-10-89, restraining Respondent No. 3 from transferring the property in dispute and from letting out any shop attached with the temple. Against the order of the Civil Judge an appeal was filed in the High Court which was dismissed on 14-3-90 and thereafter restored to its original number. The interim order issued in the appeal was also restored. It is contended that between 14-3-90 to 22-5-90 there was no interim order which could be taken by the Commissioner into consideration on 7-4-90 for deciding the appeal.

4. It is stated that there is neither any allegation nor any evidence that any fraud was committed by the Petitioners in obtaining the registration certificate and provisions of Section 12-D of Registration Act could not be attracted. The impugned orders suffer from manifest error of law. It is submitted that registration of the Society was affected u/s 3 of the Act. That provision did not require to mention that any dispute in respect of property of the Society was going on. The registration was perfectly valid. Section 12-D (1)(c) is attracted only when the facts which ought to have been mentioned in Section 3, have been concealed or misrepresented. The Petitioners submit that they had never concealed any fact or misrepresented any fact at the time of registration of the

Society. The question regarding the title of the property is also beyond the jurisdiction of Respondent No. 2. Respondent No. 3 has never challenged the election of the office bearers of the committee of management. Therefore, Respondent No. 2 could not deal with the matter. Respondent No. 2 was bound to refer the matter to the prescribed Authority u/s 25 of the Act.

5. In his counter-affidavit, Respondent No. 3 has stated that the temple in question is maintained by him and he is looking-after its management. Shops and rooms around the temple are the property of Respondent No. 3. There is another temple near the disputed property which is known as phuleshwar Nath Temple in plot Nos. 517 to 520 with attached land around St. This temple is being looked after by one Narain Singh Original Sarbarakar of the temple Baba Hari Ram is said to have been murdered for which Respondent No. 3 and some others were tried in the sessions court and were acquitted by the said Court. Petitioner No. 2 is said to have obtained registration of the Society on false and fraudulent ground. The interim order obtained by the Petitioner No. 2 in the Civil suit is said to have been stayed by the High Court. The Petitioner is said to have falsely stated that the disputed property was situated in plot No. 525. The impugned order of Respondent No. 2 is said to be valid. The order passed by Respondent No. 1 on appeal is also said to be perfectly legal. Respondent No. 3 has placed on record site plan as also certified copy of the judgment of Sessions Court, whereby Respondent No. 3 was acquitted of the murder charge.

6. The Petitioner have filed rejoinder-affidavit also. The assertion made in the counter-affidavit are denied. Respondent No. 3's contention that the temple was managed and owned by him is vehemently denied.

7. Section 3 of the Act, deals with the Registration of a Society, Upon submission of the memorandum and other documents mentioned in the said section, the Registrar has power to certify under his hand that the Society is registered under the Act, A fee is chargeable for registration. There is proviso to the said section which empowers the Registrar to issue public notice in his discretion to such persons as he thinks fit inviting their objections, if any, against the proposed registration and consider such objections before registering the Society, Registrar has a power to refuse the registration of Society, if after giving an opportunity of showing cause against such refusal, he is satisfied that the name of the Society is identical with that of any other society previously registered under this. Act, or, name of the said Society sought to be registered uses any of the words, mentioned in Section 3(2)(b), or any one or more of the objects of the society sought to be registered is not an object mentioned in Sections 1 and 20, or its objects are contrary to any other law for the time being in force.

8. Section 3-A deals with the renewal of certificate of Registration, Section 4 of the Act provides that annual list of the members of managing body to be filed once in every year. Section 4 has a proviso which says that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall as far as possible be obtained on the list. If the old office bearers

do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

9. Section 12-D of the Act gives authority to the Registrar to cancel registration in certain circumstances. It also provides an appeal to the Commissioner. For the sake of convenience the provisions of Section 12-D are reproduced hereunder:

(1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds:

(a) that the registration of the society or of its name or change of name, is contrary to the provisions of this Act or of any other law for the time being in force;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy;

(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud.

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.

(2) An appeal against an order made under Sub-section (1) may be preferred to the Commissioner of the Division In whose jurisdiction the Head quarter of the Society lies, within one month from the date of communication of such order.

(3) The decision of the Commissioner under Sub-section (2) shall be final and shall not be called in question in any court.

10. It is a common ground that the impugned order passed by Respondent No. 2 has been passed u/s 12-D(1)(c) of the Act, Respondent No. 2 has held that the registration certificate has been obtained by misrepresentation or fraud by the Petitioner. In the opinion of Respondent No. 2 there is dispute regarding ownership of the temple and the ownership vests In Respondent No. 3. It is also stated by Respondent No. 2 that there was suppression of fact by the Petitioner in respect of pendency of civil suit in the Civil Court.

11. From the perusal of the record, it appears that Civil suit was instituted on 19-10-89 and it was a suit for perpetual injunction restraining Respondent No. 3 and his associates from transferring the property of temple or from letting out the shops. Determination of title was not involved in the suit.

12. Though the suit is instituted after the registration certificate was obtained u/s 3 of the Act, but the cause of action which led to the institution of the civil suit had arisen before the grant of registration certificate. There was a dispute about the ownership and management of the temple between the Petitioner and

Respondent No. 3 much before the registration of the Society u/s 3 of the Act was applied for. This fact is amply borne out from the copy of the plaint which is on the record. In the plaint, it is said that Respondent No. 3 was asked not to collect the rent of the shops which are the property of the temple, but the Respondent No. 3 did not pay any heed to the suggestion of the Petitioner and a notice is said to have been served on Respondent No. 3 by the Petitioner through his Advocate on 20-9-89. Respondent No. 3 has placed some documents on the record to show that there was a dispute about the title of the land on which the temple in question stands and this dispute is pending for some time. At the revenue level also the Petitioner is said to have attempted to get some certificate but he ultimately did not succeed to achieve his objective because of the timely intervention of Respondent No. 3. On the basis of the material available on the record, it is urged by learned Counsel for Respondent No. 3 that the Petitioner had deliberately misrepresented his case and obtained registration certificate which could be cancelled by the Registrar subsequently on discovery of his-representation.

13. Learned Counsel for the Petitioner on the other hand has submitted that the dispute is covered by Section 25 of the Act and the Registrar was bound to refer the matter to the prescribed Authority for its decision. He has placed reliance on Managing Committee Shree Sanathan Dharam Sanaskrit Pathshala v. State of U.P. AIR 1984 All. 310. It is held in this authority that where the dispute raised was that the renewal of a society was done on the application of a person not competent to apply for it as the objector continued to be the Manager of the Society, there were two persons who claimed to be the Manager of the Society competent to apply for registration. It was held that the dispute would fall u/s 25 of the Act and not u/s 12-D, because Section 12-D operates in different situation. Learned Counsel for the Petitioner also relied on Committee of Management, Gramothan Shiksha Parishad, Gramothan Jr. High School Barwala v. Zila Basic Shiksha Adhikari, Muzaffarnagar 1987 ALJ 926. The dispute was regarding election of office bearers. It related to validity of election which was held on two dates by two rival factions for the post of Manager. Such a dispute was held to be covered by Section 25 of the Act.

14. Section 25 of the Act provides as under:

Disputes regarding election of office bearers--(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit;

Provided that the election of an office-bearer shall be set aside where prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

15. From the perusal of the provisions of Section 12-D and Section 25 of the Act it appears that area of operation of the two provisions in the Statute is demarcated. These two provisions do not overlap each other but they operate in different fact situations. Section 12-D of the Act deals with cancellation of registration if certain conditions mentioned in the said section appear to have come to the notice of the Registrar after registration of the Society is granted and if any of the grounds mentioned in that section is proved by the objector, the Registrar may cancel registration of the society. Section 12-D can come into play on the complaint of any objector or Registrar may suo-moto take action under the said section if he is satisfied that the circumstances, mentioned in the said section on which cancellation can be ordered, do exist. Section 25 of the Act comes into play only when a reference is made by the Registrar to the prescribed Authority or atleast by one fourth of the members of the society and it deals with the settlement of dispute with regard to elections. Under this section, the prescribed Authority, on a reference made to it can decide validity of the election of a group and can also decide which of the rival group constitutes valid managing committee. The dispute which is to be considered u/s 25 by the prescribed Authority is not a ground for cancellation of the registration u/s 12-D of the Act and the ground on which registration of a society can be cancelled in any circumstances mentioned in the said section cannot be considered by the prescribed Authority u/s 25 of the Act.

16. In the present case cancellation of registration has been ordered on the ground of the misrepresentation made by the Petitioner at the time he applied for the registration of the Society. The Petitioner No. 2 seems to have misrepresented the facts when he applied for registration. There was a dispute with regard to the title of the land on which the temple stands and with regard to the right to collect rent of the shops belonging to the temple, between Petitioner No. 2 and Respondent No. 3. This dispute had assumed alarming proportion when Respondent No. 3 was tried for the murder of Baba Hari Ram who was looking after the temple. Petitioner No. 2 is said to have produced before the Additional Registrar Tahsildar's certificate to prove that the registration certificate was in respect of the society which would manage one Sheo Shakti temple. Copies of two applications dated 5-9-89 filed by Petitioner No. 2 before the Tahsildar are placed with the counter-affidavit. It is contended that there are two temples and the Petitioner has tried to mislead the Registrar by identifying one of these two temples so as to obtain registration certificate by misrepresentation. The impugned order has discussed all these aspects of the

matter and pointed out in what manner, the Petitioner has obtained registration certificate. He is said to have obtained the registration certificate by misrepresentation of facts. The impugned order is not challenged as being incorrect on facts but it is challenged on the ground that the Registrar had no Jurisdiction to cancel the registration of the society because in the opinion of the Petitioner, the dispute raised by Respondent No. 3 was to be considered u/s 25 of the Act by the prescribed Authority.

17. The appellate authority also seems to have considered the matter objectively and thereafter passed the impugned order dated 7-4-90.

18. The matter was to be considered by the Registrar u/s 12-D of the Act and not u/s 25 of the Act, The Registrar has granted certificate of registration which was discovered to have been granted on misrepresentation of fact. Therefore, the Registrar was competent to cancel the registration and he could invoke his powers u/s 12-D(i)(c) of the Act. That dispute could not fall within the ambit of Section 25 of the Act was not to be referred to the prescribed Authority. The dispute related to the cancellation of the registration certificate on the ground that it was obtained by misrepresentation. The misrepresentation committed by the Petitioner in obtaining the certificate was held to be proved by the Registrar, With the finding on facts, on which the Registrar has relied for arriving at the conclusion, this Court cannot interfere. The order of the appellate authority also does not suffer from any infirmity.

19. The result is that there is no merit in this writ petition which fails and is dismissed. However, there will be no order as to costs.