
(2004) 10 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 42272 of 2004

Shiv Ram Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Societies Registration Act, 1860 — Section 5A

Citation : (2005) 1 AWC 113

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : R.N. Singh and A.K. Upadhyaya, for the Appellant; R.N. Yadav, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri R.N. Singh, senior advocate, assisted by Sri A.K. Upadhyaya, on behalf of the petitioner and Sri R.N. Yadav on behalf of respondent No. 4. It is not necessary to issue notice to respondent Nos. 5 to 7 in view of the order proposed to be passed by this Court today.

2. Petitioner Shiv Ram Yadav has earlier approached this Court by means of Writ Petition No. 14683 of 2003, whereby the order dated 13/17.3.2003, passed by the Registrar Firms, Societies and Chits u/s 5A of the Societies Registration Act was challenged. The said order was challenged amongst other on the ground that the order has been passed without notice and opportunity of hearing to the petitioner. The writ petition was allowed by this Court by means of judgment and order dated 14th October, 2003, with the finding that the order dated 13/17.3.2003, has been passed without notice and opportunity of hearing to the petitioner, hence the order is in violation of the principles of natural justice. The matter was remanded to be decided by the Deputy Registrar, Head Quarter, Lucknow, afresh after affording opportunity of hearing to the parties concerned. The petitioner, not being satisfied with the aforesaid order, filed special appeal, being Special Appeal No. 1121 of 2003. The Division Bench by means of

judgment and order dated 13th January, 2004, affirmed the order of the Hon''ble single Judge. However, the direction issued by the Hon''ble single Judge was modified to the extent that the enquiry regarding the disputed sale-deed shall be conducted by the Registrar Societies U. P., Lucknow and shall also be decided by him. The Registrar, in pursuance of the aforesaid directions of the Division Bench of this Court, passed an order dated 27th March, 2004, whereby he maintained that the sale-deed has been executed in violation of the Section 5A of the Societies Registration Act and, therefore, declared the same to be void. The Registrar also cancelled the membership of the petitioner. Against the aforesaid order of the Registrar dated 27th March, 2004, the petitioner filed Writ Petition No. 15057 of 2004. The said writ petition was allowed by this Court by means of the judgment and order dated 12th April, 2004, on the ground that there has been no objective consideration with regards to the resolution dated 9th March, 2003. Therefore, this Court again remanded the matter for decision afresh before the Registrar, Firms, Societies and Chits, Lucknow and for the said purpose parties gave an undertaking before the Hon''ble single Judge to appear before the Registrar on 9th April, 2004. The operative portion of the order of the Hon''ble single Judge dated 12th April, 2004, reads as follows:

"There being no objective consideration in respect to resolution dated 9.3.2003 and no finding being returned that aforementioned sale deed has been executed, contrary to the interest of the society, order dated 27.3.2004 is thus, quashed and matter is remitted back to be decided afresh by the Registrar, Firms, Societies and Chits, Lucknow, by means of reasoned speaking order after affording opportunity of hearing to Sri Shiv Ram Yadav and Mushafir Singh. Aforementioned exercise be concluded within two months from the date of presentation of certified copy of this order. Parties to the dispute have agreed to appear before Registrar, Firms, Societies and Chits, at Lucknow on 19.4.2004 and thereafter Registrar, Firms, Societies and Chits, Lucknow, shall hear and decide the same in accordance with law."

3. The petitioner, not being satisfied with the order of the Hon''ble single Judge, preferred a special appeal, being Special Appeal No. 518 of 2004. In the said appeal, the petitioner was granted an interim order on 7th May, 2004. From the date of the interim order, it is apparently clear that it is subsequent to the date fixed for appearance before the Registrar with the consent of the parties before the Hon''ble single Judge. However, no reason has been furnished as to why petitioner did not appear before the Registrar on 9th April, 2004. However, because of the interim order passed in special appeal, the Registrar could not decide the dispute.

4. The special appeal filed by the petitioner, being Special Appeal No. 518 of 2004 was finally dismissed by the Division Bench of this Court by means of judgment and order dated 17th September, 2004, copy whereof has been enclosed as Annexure-8 to the writ petition. The Division Bench has specifically noticed that the petitioner himself had agreed to appear before the Registrar of

the Societies on 9th April, 2004 before the Hon''ble single Judge.

5. In such circumstances, Deputy Registrar issued a notice to the petitioner dated 22nd September, 2004, on behalf of the Registrar, Firms, Societies and Chits, Lucknow, to appear on 29th September, 2004 so that the matter could be decided in light of the directions of this Court. It is admitted to the petitioner that he did not appear before the Registrar on the date fixed and sought adjournment only on the ground that he was ill. Reference paragraph 26 of the writ petition. Thereafter, present notice dated 30th September, 2004, has been issued on behalf of the Registrar calling upon the petitioner to appear for hearing along with the all original records on 8th October, 2004.

6. Since the petitioner had published an agenda fixing 17th October, 2004, as the date for constituting the office bearers of the Prabandhkarini, the Deputy Registrar under the impugned order has restrained the petitioner from holding such elections till the matter is decided by the Registrar in compliance of the order of this Court, referred to above. It is the letter of the Deputy Registrar dated 30th September, 2004, which is under challenge in the present writ petition.

7. On behalf of the petitioner it is contended that the aforesaid letter issued by the Deputy Registrar dated 30th September, 2004 is wholly without jurisdiction on two grounds : (a) under order of Division Bench of this Court the dispute is required to be decided by the Registrar, Firms, Societies and Chits, Lucknow only, (b) The Deputy Registrar has no authority of law to interfere in the elections of the Committee of Management of the Intermediate College established by the society inasmuch as elections are to take place in accordance with the approved scheme of administration.

8. In the opinion of the Court, both the contentions raised on behalf of the petitioner are not justified. So far as the issuance of the notice dated 30th September, 2004, is concerned, it is nowhere provided that the hearing shall be done by the Deputy Registrar. Any competent officer in the office of Registrar can always issue notice requiring the person concerned to appear on particular date and at particular time. From the address, as mentioned in the letter, it is apparently clear that the said letter has been issued on behalf of the Registrar, Firms, Societies and Chits, Lucknow. In such circumstances, this Court has no reasons to believe that the hearing in the matter shall be done by the Registrar, not by the Deputy Registrar as has been directed by this Court.

9. In any view of the matter to avoid any complication, it is provided that "the Registrar, Firms, Societies and Chits, Lucknow, alone shall hear the parties and decide the dispute as has been remanded to him under order of this Court dated 12.4.2004, which has been affirmed in special appeal by the Division Bench vide judgment and order dated 17th September, 2004. It is further made clear that the petitioner shall appear before the Registrar on the date fixed, i.e., 8th October, 2004, with all relevant documents for the said purpose.

10. So far as the second contention, raised on behalf of the petitioner is concerned, as has been noticed herein above, it is apparently clear that the petitioner even after giving an undertaking before the Hon"ble single Judge, as has been noticed in the order of the Hon"ble single Judge dated 12.4.2004, has deliberately not appeared before the Registrar on 19th April, 2004. Thereafter, in the month of May he was granted an interim order by this Court in the special appeal and as a result whereof the Registrar could not complete the proceedings despite order of this Court dated 12.4.2004. Now, when his special appeal has been dismissed, the Registrar required the petitioner to appear on 29th September, 2004, a request for adjournment was made by the petitioner on the ground of illness. The request has been granted and the matter is now fixed on 8th October, 2004.

11. In such circumstances, any effort made by the petitioner to hold any election of the office bearers of the society would only create complication and shall prolong the decision of the dispute as referred under order of this Court.

12. In the opinion of the Court in such circumstances the order of the Deputy Registrar restraining the petitioner from holding any election of the office bearers of the society cannot be interfered with as the same has been passed in the interest of justice and for substantial compliance of the order which has been passed by this Court, referred to above.

13. From the agenda which has been enclosed by the petitioner as Annexure-11 to the writ petition, it is apparently clear that the petitioner is proceeding to hold fresh elections of the office bearers of the society and not of the members of the Committee of Management and, therefore, at this stage no interference is required against the order of the Deputy Registrar on the plea that he has restrained the holding of the fresh election of the Committee of Management of the institution. This Court is not adjudicating upon the merit of the contention that the Deputy Registrar is not authorized to interfere with the elections of a recognized inter college, elections whereof are to be held in accordance with the approved scheme of administration.

14. In view of the aforesaid, writ petition is dismissed.

15. However, having regard to the fact that the dispute as remanded by this Court under order dated 12th April, 2004, could not be decided although initially two months period alone was granted for the said purpose, it would be appropriate that the Registrar, Firms, Societies and Chits, Lucknow, may decide the dispute within a period of one month from the date a certified copy of this order is filed before him.

16. Certified copy of this order may be issued to the counsel for the parties today itself on payment of usual charges.