

(1997) 07 AHC CK 0185

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 22657 of 1991 and 37023 of 1994

Shri Ram Chandra Mission and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25

Citation : (1997) 3 UPLBEC 1695

Hon'ble Judges : A.K. Banerji, J

Bench : Single Bench

Advocate : B.B. Paul, for the Appellant; Ajit Kumar and Manu Saxena, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerji, J.—The above noted writ petition No. 22657 of 1991 has been filed by Shri Ram Chandra Mission, Shahjahanpur, through its Secretary Shri B.D. Mahajan under Article 226 of the Constitution of India, challenging the validity and legality of the action of the respondent Nos. 2 and 3 namely, the Registrar of Firms, Societies and Chits U.P. Lucknow and the Assistant Registrar of Firms, Societies and Chits, Bareilly Region, Bareilly, refusing to recognise the Working Committee of the petitioner Shri Ram Chandra Mission (hereinafter referred to as the Petitioner) headed by Dr. S.P. Srivastava, President and Shri B.D. Mahajan, as Secretary. A writ of mandamus has been sought directing the respondents No. 2 and 3 to recognise the Working Committee of the petitioner Mission as per the order passed u/s 25 of the Societies Registration Act, 1860, by the Prescribed Authority and, further to grant a fresh certificate of renewal for registration to the petitioner. Writ Petition No. 37023 of 1994 has been filed on behalf of the said Mission through its President Umesh Chandra Saxena and others including B.D. Mahajan against the State of U.P. and others including the Registrar and the Assistant Registrar, Firms, Societies and Chits as well as P. Rajgopalachari and others praying for a writ of certiorari for quashing the order dated 29-9-1994

passed by the Assistant Registrar-Firms, Societies and Chits, Bareilly Region, Bareilly, and a writ of mandamus for declaring Umesh Chandra Saxena as successor President of the petitioner Mission. Further declaring that the deed dated 16-4-1982 relied by Umesh Chandra Saxena as valid and the nomination deed dated 23-3-1994 relied by the respondent No. 4 as forged and invalid, Both these writ petitions had been connected along with the Testamentary. Suit No. 1 of 1994 and ordered to be listed before this Court. Subsequently, after the Testamentary Suit No. 1 of 1994 was decided, it was ordered that the aforesaid writ petitions be listed alongwith the Original Suit No. 200 of 1983 and Original Suit No. 127 of 1994. The said suits have been decided by separate orders of date.

2. I have heard Shri B.B. Paul, learned counsel for the petitioners in both the above noted writ petitions and Shri Ajit Kumar, learned counsel appearing for the contesting respondents.

3. At the very outset, a statement has been made by Shri Paul that the writ petition No 22657 of 1991 is not being pressed by the petitioners and the same may be dismissed as withdrawn. It has been stated that because of some subsequent developments and subsequent orders passed by the respondent No. 3, the said writ petition has become infructuous. This prayer has been opposed by the learned counsel for the contesting respondents, who has submitted that some material admissions have been made in the said writ petition and to a large extent some of the allegations made in this writ petition are contradicted in the connected writ petition No. 37023 of 1994. Consequently, the petitioner have reasons which are not bona fide and to avoid embarrassment is seeking to withdraw this writ petition and the same could not be permitted. Learned counsel has invited the attention of the Court to Paragraphs No. 1 to 3, 8, 9 and other paragraphs of the said writ petition No. 22657 of 1991 in which the President of the Mission has been shown as Shri S.P. Srivastava and Shri B. D. Mahajan as Secretary and Shri Sarvesh Chandra as Joint Secretary. However, in writ petition No. 37023 of 1994, Umesh Chandra Saxena has been shown to be the President of the Mission and Sarvesh Chandra as Secretary.

4. Having considered the submissions made by the parties, I am of the view that if the petitioner wants to withdraw the writ petition it is not open to this Court to comp I the said petitioner to continue to press his writ petition. In the case of Shaik Hussain and Sons Vs. M.G. Kannaiah and Another, , where the petitioner has made a request to withdraw the writ petition in order to avoid inconvenience but the High Court did not allow the application and dismissed the petition on merits, the Supreme Court held that the High Court was not justified in not considering withdrawal application or passing orders thereon. It was observed that when the petitioner himself did not want to invoke writ jurisdiction of the High Court or having invoked the same did not want to presses his writ petition, it was not necessary to go into the merits of the case and to reject the said application. Therefore, it would not be proper for this Court not to permit the

petitioner to withdraw his writ petition as not pressed.

5. So far as the submission of the learned counsel for the respondents that the request made on behalf of the petitioner is not bona fide as he wants to avoid the contradictory statements which arise in the two writ petitions is concerned, it shall be open to the said respondents to press the same while the said petition No. 37023 of 1994 is being considered. Consequently, I permit the petitioner of the writ petition No. 22657 of 1991 to withdraw the said writ petition as not pressed.

6. As already noticed above, the writ petition No. 37023 of 1994 has been filed on behalf of the said Mission through Umesh Chandra Saxena, who claims to be the President of the Mission as well as three other petitioners, inter alia praying for a writ of certiorari for quashing the impugned order dated 29-9-1994 passed by the respondent No. 3 u/s 25 of the Societies Registration Act, 1860, by which the said respondent had held that till the matter regarding the will/ nomination is pending before the High Court, Shri P. Rajgopalachari shall continue to work as the President of the said Mission.

7. The relevant facts in brief are that in the year 1945 a Mission was founded by Shri Ram Chandraji of Shahjahanpur called Shri Ram Chandra Mission. The said Mission was duly registered under the Societies Registration Act as Shri Ram Chandra Mission, Shahjahanpur, with its Head Quarter at Shahjahanpur. For the smooth running of the Mission the founder got its constitution and the bye-laws drafted and registered. The founder Shri Ram Chandraji Maharaj died on April 19, 1983. After his death dispute regarding succession arose. Shri Parthasarathy Rajgopalachari (hereinafter referred to as the respondent No. 4) claimed to have been duly nominated under a deed dated 23-3-1974 by the founder of the Mission as his representative and successor to act as the head and the President of the Mission. He further claims that the Working Committee of the Mission at its meeting held at Hyderabad on December 21, 1983, recognised his appointment as the President of the Mission in accordance with the wishes of the founder as expressed in his declaration embodied in the aforesaid deed dated 23-3-1974. A Suit No. 200 of 1983 was filed by three persons namely, Uma Shanker, Basdeo Singh claiming to be preceptors in the Mission and by Bhagwan Dayal claiming to be an Abhayasi or follower of the Mission. The relief claimed in the Suit was that the defendant No. 1 namely, P. Rajgopalachari be restrained from acting as the President of the Mission or from declaring himself as President or otherwise interfering in the affairs of the Mission. It is note worthy that the plaint of the said Suit was silent regarding the person who has been nominated by the founder Master as President, The trial Court passed an ex parte order of injunction dated 4-1-1984 restraining the defendants from interfering in the working of the Mission and the defendant No. 1 from acting or declaring himself as President of the Mission. However, on contest the ex parte interim order dated 4-1-1984 was confirmed by the trial Court. The defendants preferred FAFO No. 439 of 1984 before this Court in which an ad interim order was passed on

31-7-1984 to the following effect:-

"During the pendency of this appeal the operation of the order dated 9-5-1984 passed by the Civil Judge, Shahjahanpur, shall remain stayed. Sri Parthasarathy applicant No. 1 will act as President subject to the condition that he will not be allowed to alienate any property movable or immovable without approval of the Working Committee. He will also not remove any principle of the Working Committee and will deposit all donation received for Mission directly or indirectly in the bank account of the Mission. Since this case relates to spiritual society, therefore, the parties may move to the Hon''ble Chief Justice to expedite the final hearing of this case."

8. The aforesaid FAFO was finally decided on 25-2-1983. While deciding the said appeal, this Court concluded as follows :-

"My conclusion, therefore, is that, prima facie, the defendant No. 1 was duly appointed as the spiritual representative of the founder and was validly, authorised by him to perform the duties and functions of the President of the Mission. My further conclusion is that, prima facie, the defendant No. 1 has also been recognised as President of the Mission by the Working Committee at its meeting held on December 27, 1983 and, prima facie the said meeting appears to have been validly convened and conducted. In the face of the authorisation/nomination made in favour of the defendant No. 1 both by the founder as well as by the Working Committee it is apparent that the plaintiffs have no prima facie case to merit the grant of interim injunction".

9. This Court therefore allowed the appeal of the defendants and set aside the order passed by the Court below, and dismissed the plaintiff's injunction application with the observation that the findings recorded by the Court was prima facie in the context of the matter of injunction and the Court below shall be free to arrive at its own conclusion disposing of the main suit wholly uninfluenced by the observations made in the appeal.

10. The plaintiffs of the said suit challenged the aforesaid order by means of a SLP No. 7773 of 1985 before the Supreme Court which was dismissed with the following observations :

"Special Leave Petition is dismissed but the respondents undertakes to this Court that they will not alienate or dispose of any part of the property belonging to the Mission nor shift the Head Quarters of the Mission from Shahjahanpur to any ether place. Civil Judge, Shahjahanpur, is directed to take up the suits at an early date and as far as possible dispose it of within six months from today."

11. It is note worthy that the petitioner No. 2 Umesh Chandra Saxena, who claims to be the President of the Mission did not come forward to press his claim. It was only in 1993 that for the first time he tiled a Testamentary Suit in this Court claiming to be the President by virtue of a dead of nomination dated 16-4-1982 by which it was alleged that he was nominated by the Master as his

spiritual representative. The said Testamentary case was into Testamentary Suit No. 1 of 1994 which suit was dismissed by this Court on 16-10-1995.

12. During the pendency of these proceedings and after the death of the founder, the period for which the Society was registered expired and applications for renewal of registration was filed by one S.P. Srivastava claiming himself to be the President and another by S.A. Sarnad claiming himself to be the Secretary of the Mission seeking registration in the name of P. Rajgopalachari as President and himself as Secretary. However in view of the interim order passed by this Court in the aforesaid FAFO No. 439 of 1984, the respondent No. 3 renewed the registration for the period 10-10-1990 to 10-9-1995 in the name of the Society headed by P. Rajgopalachari as President and S. A. Sarnad as Secretary. However, a writ petition No. 23657 of 1991 which has been noted above was filed by Shri B.D. Mahajan claiming to be the Secretary of Sri Ram Chandra Mission, Shahjahanpur, for a writ of mandamus directing the respondent Nos. 2 and 3 to recognise the Working Committee of the Mission of which B.D. Mahajan was the Secretary and to grant a fresh certificate of renewal of registration for a period of 5 years in favour of the petitioner and, further restraining the respondent Nos. 2 and 3 from recognising the respondent No. 4 in any manner whatsoever as a person entitled to represent the Mission. It appears that no interim order was passed in this writ petition and the same was ordered to be connected with the Testamentary Case No. 1 of 1994. Subsequently, another writ petition was filed by three petitioners namely, B.P. Singh Chawdhary, Ram Saran Giri and Sushil Kumar against the respondent Nos. 1 to 3 by which the said persons projected Umesh Chandra Saxena as the President and prayed that the registration of the Mission be made in the name of Umesh Chandra Saxena as President. The said writ petition was dismissed in limine by this Court as not a fit case for interference under Article 226 of the Constitution. However, it was observed that in case the petitioners have made any application before the respondent Nos. 2 and 3, the same may be considered and disposed of in accordance with the law at an early date. After this Court order, the respondent No 3 gave notices to the petitioners as well as to Sri S. A. Sarnad to appear and produce all the necessary evidence before the said authority so that the matter regarding the registration could be decided. In pursuance of the said notices both the parties produced their evidence before the respondent No. 3 who after considering the same and hearing the parties concerned, passed the impugned order dated 29-9-1984 as mentioned above. Aggrieved against the said order, the present writ petition has been filed by Umesh Chandra Saxena as President of the Mission alongwith three others including B.D. Mahajan who was the petitioner in the writ petition No. 22657 of 1991. On notice being issued counter-affidavit has been filed on behalf of the respondent No. 3. No counter-affidavit has been filed on behalf of the respondent No. 4 but Shri Ajit Kumar learned counsel for the respondents has prayed that the counter-affidavit filed in the connected writ petition No. 22657 of 1991 may be read on behalf of the respondent No. 4 and has also opposed the prayer made in the present writ petition.

13. Shri Paul, learned counsel appearing for the petitioners has mainly submitted that while passing the impugned order, the respondent No. 3 did not give any notice to the petitioner Umesh Chandra Saxena, who was the President of the Mission and, therefore an interested party. By not giving an opportunity of hearing to the petitioner, the entire proceedings are vitiated and are violative of the principles of natural justice besides resulting in failure and miscarriage of justice to the petitioner. It has also been contended that the material facts and evidence has not been considered and the provisions of Rule 3 (b) and 4 (h) of the registered rules and the Constitution of the Society/Mission has been overlooked. On the other hand Shri Ajit Kumar, learned counsel for the respondent No. 4 has contended that the present writ petition has been filed malafidely with ulterior motive and is an abuse of the process of Court. He has further contended that successive writ petitions are being filed by different persons as every time the petitioner No. 2 has failed to get an interim order in his favour. He has contended that Original Suit No. 200 of 1983 was a proxy suit instituted by Prakash Chandra Saxena, who is the brother of Umesh Chandra Saxena through the three plaintiffs of the said suit and the real intention was to project his son Sharad Saxena as the President. This has not been accepted by the Working Committee. Subsequently, S.P. Srivastava and B.D. Mahajan were set up as President and Secretary. When these persons also failed to get the registration of the Society in their favour and were also restrained by the Calcutta High Court from claiming to be the office bearers. Umesh Chandra Saxena, who during all these years was in the back ground is now claiming on the basis of some nomination dated 16-4-1982. He has been waiting for 13 years before claiming his rights and the only explanation for the delay given by him was that he was waiting for wisdom to draw on the contesting parties. The learned counsel has also contended that in the connected writ petition No. 22657 of 1991 which was filed by B.D. Mahajan as Secretary of the Mission, it was being said repeatedly through out the petition that S. P. Srivastava was the President, B.D. Mahajan was Secretary and Sarvesh Chandra Saxena (nephew of Umesh Chandra Saxena) was the Joint Secretary. Now in the present writ petition in which the same B.D. Mahajan is one of the petitioners, it is being said that Umesh Chandra Saxena was the President by virtue of a deed of nomination dated 16-4-1982 made by the founder in his favour. Learned counsel has further contended that with a view to get over the contradictory stand the writ petition No. 22657 of 1991 has been got dismissed as withdrawn

14. Having considered the submissions made by the learned counsel for the parties, I am of the view that for the purpose of deciding the present writ petition it may not be necessary to give any finding with regards to the question of mala fides on the part of the petitioners. However, it would be necessary to point out that before the respondent No. 3 Sushil Kumar and two others had canvassed the case of Umesh Chandra Saxena for being recognised as President and the registration of the Society/Mission be got done in the name of the said President. The said parties namely Sushil Kumar and others have not filed the

present writ petition before this Court though their contention was not accepted by the respondent No. 3. It is Umesh Chandra Saxena and the other petitioners who were not parties before the respondent No. 3 have filed the present writ petition. Prima facie these facts support the contention of the learned counsel for the respondent No. 4 that the petitioner No. 2, namely, Umesh Chandra Saxena had full knowledge about the present proceedings and he was purposely keeping himself in the background and setting up other parties with ulterior motive.

15. So far as the contention of the learned counsel for the petitioner that no notice was served on him by the respondent No. 3 and he was not given an opportunity of hearing, is belied by the fact though Umesh Chandra Saxena was claiming on the basis of a nomination dated 16-4-1982, yet he himself had made no efforts to file any application for renewal of the registration of the Society in his name. Earlier S.P. Srivastava and B.D. Mahajan had made applications for getting the registration done in their name. At that time also no effort was made by Umesh Chandra Saxena to apply for renewal of the registration in his name. He had already filed the Testamentary Case in the year 1993 and was fully aware of the suit filed by Uma Shankar and others in the Court of Civil Judge, Shahjahanpur, which was transferred to this Court and connected with his Testamentary Case No. 1 of 1994. It is surprising that Sushil Kumar and others had filed an application for renewal of the Society in the name of Umesh Chandra Saxena as President and the matter was being pursued by them before the respondent No. 3 and before this Court in two writ petitions, yet Umesh Chandra Saxena was not aware that the matter is pending consideration before the respondent No. 3. As a matter of fact, it appears that Sushil Kumar and others were acting on behalf of Umesh Chandra Saxena who remained in the background for obvious reasons. Consequently, it cannot be said that any notice was required to be given to Umesh Chandra Saxena when he himself had not come forward and some other party who was canvassing his case had been given an opportunity to produce evidence and to make their submissions in support of their case regarding Umesh Chandra Saxena. I am therefore of the view that in the facts and the circumstances of the case as the interest of Umesh Chandra Saxena was being represented by some parties who had been given full opportunity to produce and make their submissions no prejudice has been caused to Umesh Chandra Saxena and therefore there is no question of violation of any principle of natural justice as contended by the learned counsel for the petitioners.

16. So far as the submission that the respondent No. 3 had not considered material evidence or the relevant provisions of the bye-laws, I do not find any substance in the said submission either. The respondent No. 3 had given full opportunity to both the parties to produce evidence in support of their respective stand. The said evidence has been noticed in the impugned order and on appreciation thereon, the said order has been passed by the respondent No. 3. If some other material was available but the same was not filed, the respondent

No. 3 cannot be blamed. So far as the question of the relevant provisions of the regulations/bye-laws of the Mission is concerned, it is not correct to say that the same has not been taken notice of by the respondent No. 3. However, as the matter, whether the nomination in favour of the respondent No. 1 dated 23-3-1974 was valid or whether there was deed of nomination in favour of the petitioner No. 2 was subjudiced before this Court and the respondent No. 3 has so far in my opinion rightly held that the decision has to be awaited. As by the interim order dated 31-7-1984 passed in the FAFO No. 439 of 1984, this Court had directed P. Rajagopalachari shall act as the President, subject to certain conditions regarding the disposal of the property and as the same had been confirmed by the Supreme Court despite contest, the respondent No. 3 was in my opinion fully justified in passing the order that till the dispute regarding the nomination being claimed by the respondent No. 4 and the petitioner No. 2 are being decided by this Court, P. Rajagopalachari shall continue to be the President. I am, therefore, unable to agree with the submission made by the learned counsel for the petitioners.

17. As a result, writ petition No. 22657 of 1991 is dismissed as withdrawn with no order as to costs and the writ petition No. 37023 of 1994 is dismissed with costs.