

(1997) 12 AHC CK 0013
In the Allahabad High Court
Case No : C.M.W.P. No. 34557 of 1991

Sri Digambar Jain Panchayat and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 23-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 3, 3(2), 3B

Citation : (1997) AWC 885 Supp

Hon'ble Judges : D.P. Mohapatra, C.J.; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Raj Kumar Jain, for the Appellant; Prakash Krishna and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, C.J.—In this petition, counter and rejoinder-affidavits have been exchanged between the parties. Learned Counsel for the parties have agreed that this petition may be decided finally at this stage.

2. The facts giving rise to this petition, as disclosed in the writ petition, are that Lal Kishore Lal and Jadav Rai on 3.4.1935 purchased land measuring 65" x 35" consisting of plot No. 1702, in Kasba Chauharpur (now known as Vikas Nagar) in district Dehradun. On this land, a temple known as Digambar Jain Temple was constructed and also some shops. The Management of the temple and its properties is looked after by Society. In 1987 the Society, Petitioner No. 1. Shri Digambar Jain Panchayat, Vikas Nagar (hereinafter referred to as Panchayat) applied for registration of the Society before Assistant Registrar (Firms, Societies and Chits), Dehradun, Respondent No. 2. Petitioner No. 2 claimed himself to be President of the Committee of Management of the Panchayat with one Vijai Kumar as its Secretary. On 7.11.1987 objection was filed by Respondent No. 3 Society known as Shri Digambar Jain Samaj, Jain Dharmartha Aushadhalaya, Chakrata Road, Dehradun (hereinafter referred to as Samaj) through Secretary

Prem Chand Jain. Respondent No. 3 also applied for registration of the Samaj with different Committee of Management before Respondent No. 2.

3. By letter dated 23/25.4.1988, Annexure 2 to the writ petition, Respondent No. 2 requested Sub-Divisional Officer, Pachhwa, to conduct an inquiry as to which of the two societies is in control of the management of the temple and its properties and is thus entitled for registration. The Sub-Divisional Officer in his turn summoned both the parties and also obtained a report from the police and on the basis of the material before him. gave his opinion on 23.8.1988 that Respondent No. 3 is real society and Shri Digambar Jain Samaj may be registered. Respondent No. 2 by order dated 1.9.1988 registered Respondent No. 3 and issued a registration certificate, which is Annexure 6 to the writ petition. Aggrieved by the aforesaid order, Petitioners filed a reference u/s 3B of Societies Registration Act, 1860 (hereinafter referred to as the Act) before the State Government. The State Government by order dated 8.10.1991, Annexure 10 to the writ petition rejected the reference on the ground that it is not maintainable u/s 3B of the Act. Challenging the certificate, Annexure-6, and the order date 8.10.1991 passed by the State Government, Petitioners have filed the present writ petition under Article 226 of the Constitution for quashing the aforesaid two orders and also for a direction to the Assistant Registrar to register Petitioner No. 1 as society under the provisions of the Act and also for a direction in the nature of mandamus commanding the opposite parties not to interfere in the working of the Petitioner and the management and control of Digambar Jain Temple, Vikas Nagar and its properties.

4. On 22.11.1997, this petition was listed for admission hearing before us. Shri Prakash Krishna, learned Counsel appearing for Respondent No. 3, raised a preliminary objection against entertaining this writ petition on the ground that the Petitioners have already filed Original Suit No. 646 of 1991 in the Court of Civil Judge, Dehradun relating to the same controversy which is still pending. Learned Counsel for Petitioners was granted time to ascertain the true position and to file an affidavit stating the present stage of the suit.

5. On 5.12.1997 when the writ petition was again listed before us, Shri R. K. Jain filed a supplementary affidavit in para 2 whereof filing of Original Suit No. 646 of 1991 Bhagwan Paras Nath Digambar Jain Mandir Vikas Nagar, Dehradun, Digambar Jain Panchayat, Vikas Nagar, Dehradun and Ors. v. Digambar Jain Samaj Vikas Nagar, Dehradun and Ors. has been accepted. It has also been stated in this paragraph that the relief sought in the suit is for declaration and grant of permanent injunction against Defendant Nos. 1 to 12 in the suit. A copy of the plaint has been filed as Annexure 1 to the supplementary counter-affidavit, a perusal of which shows that Digambar Jain Samaj, Respondent No. 3, is Defendant No. 1 in the suit. Learned Counsel for the Petitioners also filed an application for permission to delete relief No. 3 from the writ petition.

6. Shri R. K. Jain, learned Counsel for the Petitioners, has submitted that in the facts and circumstances of the case, Respondent No. 2 was not competent to

grant registration in favour of Respondent No. 3 and it ought to have made reference u/s 3B of the Act to the State Government. Precisely the submission of the learned Counsel is that in view of the dispute between the Petitioners and Respondent No. 3 and as the Assistant Registrar was not competent to resolve the dispute, grant of registration by him was without authority. It has also been submitted that the State Government taking an erroneous view of law has illegally rejected the reference on the ground that it does not come within the purview of Section 3B of the Act. Learned Counsel has submitted that reference filed by the Petitioners before the State Government was competent and ought to have been heard and decided in accordance with law. It has been submitted that the reference could be made even if the two rival candidates claimed registration in respect of the society. For his submissions learned Counsel for Petitioners has placed reliance in case of *Muzaffar Husain and Ors. v. Assistant Registrar (Firms, Societies and Chits)*, U.P., Meerut Region, Meerut and Ors. 1987 (2) UPLBEC 1011. Shri Prakash Krishna, learned Counsel for Respondent No. 3 and learned standing counsel for Respondent Nos. 1 and 2 submitted that as the Petitioners have already availed alternative remedy of suit, the present writ petition is not legally maintainable and is liable to be rejected. It has also been submitted that the relief sought in the writ petition and the suit are identical and Petitioners cannot be allowed to delete the relief No. 3 at this stage to meet the preliminary objection raised by Respondents against maintainability of the writ petition. It has also been submitted that the substantial dispute between the Petitioners and Respondent No. 3 is about title over the temple and its properties which can be adequately decided only in a suit and not in the writ petition. Justifying the orders of Respondent Nos. 1 and 2 learned Counsel for the Respondents have submitted that the Assistant Registrar on the basis of the material before him and the report submitted by the Sub-Divisional Officer prima facie felt satisfied about the genuineness of the claim of Respondent No. 3 and thus granted registration. Such a course adopted by him was legal and justified. It has been further submitted that the State Government has rightly taken the view that the reference made by Petitioners was not maintainable u/s 3B of the Act as the scope of the reference u/s 3B is not to resolve the competing titles to two independent and different societies claiming title in respect of the temple and its properties. In the reference before the State Government u/s 3B of the Act the only question as to whether the Society is entitled to get itself registered in accordance with Section 3 could be looked into. As Respondent No. 3 society has already been registered on the basis of the prima facie satisfaction about its control and management over the temple and its properties, nothing was left to be decided in the reference. The order passed by the State Government thus does not suffer from any error of law.

7. We have carefully considered the rival submissions of the learned Counsel for the parties. In the present case, it cannot be disputed that Petitioner No. 1 and Respondent No. 3 are entirely different and independent societies and both claim to have title and right to have control and management of the temple and its

properties. Both the societies have entirely different committees of management and both applied for registration. In such circumstances, the courses open to the Assistant Registrar u/s 3 of the Act were either to register one of the societies on the basis of the prima facie satisfaction of the genuineness of the claim or to reject the claims of both the parties and ask them to get their dispute resolved through civil court. The Assistant Registrar, in the present case, opted for the first course and for forming a prima facie opinion in favour of Respondent No. 3, he obtained report from the Sub-Divisional Officer. Division Bench of this Court in Muzaffar Hussain's case relied on by learned Counsel for the Petitioners, in para 13, held that the objection against registration could be discarded if it was prima facie meaningless or untenable. It would be useful to quote para 13 which reads as under:

Shri Gupta urged that the words "entitled to get itself registered" appearing in Section 3B should be confined in their application to a case where the objection raised is as to the competence of certain individuals to seek the registration of a society. There is, in our opinion, no warrant to narrow down in this manner the language of Section 3B which is plain and unambiguous. The apprehension that the provision contained in Section 3(2)(c) might be rendered redundant otherwise seems unfounded. As we explained above, the Registrar is under duty no doubt to consider the implications in the light of the criteria laid down in Section 3(2) before acceding to registration, but if there is specific objection raised including by some one not mere stranger and the objection is not such as might be discarded prima facie as meaningless or untenable, the Registrar must follow the directive laid in Section 3B...

8. Thus, it cannot be said that the Assistant Registrar had no authority to have a prima facie satisfaction about the correctness and genuineness of the claim of one of the parties. On the basis of the material before him, he found a prima facie case in favour of Respondent No. 3 and granted registration to it. Thus, the course adopted was well within his competence.

9. Learned Counsel for the Petitioners has placed strong reliance on the Division Bench judgment in Muzaffar Husain's case (supra) to support his submissions with regard to the scope and ambit of Section 3B of the Act. For correctly appreciating the observations of the Division Bench in Muzaffar Husain's case, it is necessary to know about the controversy which was before the Division Bench. The dispute before the Division Bench was with regard to Madarsa Mazahir Uloom, Saharanpur. The head of the institution was known as Nazim. The governing body was the Mazlise Soora. There were various properties under Waqf, dedicated to the Almighty and attached to the Madarsa. The Nazim was also the Mutwalli under the Waqf which were registered under the U.P. Sunni Central Board of Waqfs. Respondent Nos. 2 to 8 in the said writ petition applied for registration u/s 3 of the Act. The application seeking registration was objected by Petitioners of the writ petition on the ground that the society is religious in character and could not be registered and also that there being

dedication to God, there could be no intermeddling with the same in its management or otherwise. It was also stated that the properties are waqf properties which are registered with the U.P. Sunni Central Board of Waqfs and are under the management of the Mutwalli. There could not be another management as claimed by the alleged society. The aforesaid objections were rejected by the Assistant Registrar and he registered the society. The Division Bench disapproved the course adopted by the Assistant Registrar, quashed his order and held that the appropriate course was to refer the matter to the State Government as the question involved was as to whether the society was entitled to get itself registered. From the narration of the aforesaid facts, it is clear that the ratio of the Division Bench judgment cannot be applied to the facts of the present case where two entirely independent and different societies claim registration in respect of the same temple and its properties. In the present case, entitlement to get the society registered depended purely on determination of the question of right and title. The Assistant Registrar on the basis of the material on record formed opinion in respect of Respondent No. 3 on purely prima facie basis. Such a view also appears necessary as there cannot be allowed to be a void and out of the two societies, one could be registered to look after the management and control of the temple and its properties though on the basis of prima facie satisfaction. Such a view also appears in consonance with the object and purpose of the Act. Thus, in our opinion, in the facts and circumstances of the case registration was rightly granted in favour of Respondent No. 3. However, it goes without saying that the prima facie satisfaction of the Assistant Registrar in favour of Respondent No. 3 shall be subject to the result of the suit.

10. As already noted above, Petitioners have already filed Original Suit No. 646 of 1997 which is pending in the civil court. It has already been held earlier that to resolve the dispute between the Petitioners and Respondent No. 3 serious and complicated questions of title and right to possess and control the management of the temple and its properties are involved. Such disputed questions of fact, where appreciation of evidence oral and documentary is necessary, cannot be resolved in the writ petition.

11. This petition is thus rejected on the ground of alternative remedy which has already been availed by the Petitioners. If advised, it shall be open to the Petitioners to challenge the registration granted in favour of Respondent No. 3 in the aforesaid suit. As the dispute between the parties is very old, we further direct that the learned Civil Judge, before whom Suit No. 646 of 1991 is pending, shall decide the same expeditiously in the light of the judgment of Division Bench of this Court in the case of *Ayodhya Sahai v. District Judge, Jaunpur and Anr.* 1997 (31) ALR 285. There will be no order as to costs. The interim order dated 29.11.1991 is vacated.