
(2011) 03 AHC CK 0144
In the Allahabad High Court
Case No : Special Appeal No.404 of 2011

Sudama Devi and Another

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, Order 6 Rule 17
Constitution of India, 1950 — Article 226

Citation : (2011) 03 AHC CK 0144

Hon'ble Judges : R.K.Agrawal, J and Bharati Sapru, J

Judgement

1. The present appeal has been filed against the judgment and order dated 23rd February, 2011 passed by the learned Single Judge whereby the writ petition preferred by the respondent nos.4 and 5 herein has been allowed and a direction has been issued to the Assistant Registrar, Firms, Societies and Chits, Varanasi, to decide the objections filed by them by a reasoned order so as to reflect his application of mind.

2. We have heard Sri K.S. Tiwari, learned counsel for the appellant, learned Standing Counsel, who represents respondent nos. 1, 2 and 3 and Sri P.S. Baghel, learned Senior Advocate assisted by Sri P.C. Pandey, learned counsel on behalf of respondent nos. 4 and 5 and have perused the impugned judgment and order dated 23rd February, 2011 passed by the learned Single Judge giving rise to the present appeal, the grounds taken in the memo of appeal and the documents filed along with it.

3. It appears from the order that two sets of persons applied for registration of a society in relation to Shri Shanker Parwati Hanuman Ji Mandir, situate at Village Saipur, Post Birawn Baragaon, District Varanasi. The Assistant Registrar asked the Sub Divisional Magistrate to submit a report to which respondent nos. 4 and 5 filed their objections. The Assistant Registrar again asked for a report from the Sub Divisional Magistrate and after the report was submitted, without deciding the objections filed by the respondent nos. 4 and 5 on the basis of the report of

the Sub Divisional Magistrate granted registration to the appellant's society. The order granting registration to the appellantsociety was challenged by the respondent nos. 4 and 5 herein by means of a writ petition which as already mentioned hereinabove has been allowed with certain directions.

4. Sri Tiwari, learned counsel for the appellant submitted that while granting registration under Section 3(1) of the Societies Registration Act, 1860, hereinafter referred to as "the Act", as applicable in the State of Uttar Pradesh, the Registrar/Assistant Registrar is not required to pass any orders. It is a ministerial job and, therefore, the objections filed by the respondent nos. 4 and 5 herein would be treated to have been impliedly decided. He further submitted that after the registration has been granted the only course available to the respondent nos. 4 and 5 is to move an application for cancellation of registration under Section 12D of the Act or to challenge the same by filing a civil suit. In support of the aforesaid plea he has relied upon a Division Bench decision of this Court in the case of Digambar Jain Panchayat v. State of U.P., 1998 LBESR (1) 1096.

5. Sri Tiwari learned counsel for the appellant further submitted that the respondent nos. 4 and 5 herein has concealed the material fact from this Court that they have already filed an application under Section 12D of the Act for cancellation of the registration certificate issued in favour of the appellant and, therefore, on this ground alone the writ petition ought to have been dismissed.

6. Sri Baghel, learned Senior Counsel, on the other hand supported the order passed by the learned Single Judge and submitted that by the impugned order the Assistant Registrar had been directed to consider the objections in accordance with law and no prejudice has been caused to the appellants as they would also have an opportunity to present their case.

7. We have given our thoughtful consideration to the various plea raised by the learned counsel for the parties. Taking up the plea of there being concealment of material fact by the petitioner in not disclosing the filing of application under Section 12D of the Act, we are of the view that this fact was not brought to the notice of the learned Single Judge at the time of hearing of the writ petition by the present appellant even though the appellant was represented and he had been heard also. In an intra Court appeal the jurisdiction and power of the Division Bench is confined to test the validity of the order passed by the learned Single Judge on the basis of material and evidence which was available on the record at the time of deciding writ petition. This fact having not been brought before the learned Single Judge we are not inclined to permit the appellant to raise it before us for the first time in the present intra court appeal. Even otherwise, no effort has been made by the appellant to bring this fact on record by filing an application under Order 6 Rule 17 read with Order 41 Rule 27 of Code of Civil Procedure, 1908 which principles are also applicable in writ proceedings.

8. Coming to the merit of the matter we are of considered opinion that admittedly in the present case respondent nos. 4 and 5 have filed their objections to the report submitted by the Sub Divisional Magistrate. The report of the Sub Divisional Magistrate was called for by the Assistant Registrar while considering the question of granting registration to the society and on that basis registration was granted ignoring the objections filed by the respondent nos. 4 and 5 whereas it was incumbent upon the registering authority to decide the said objections by giving some reasons, may be brief reasons, to make out as to why the objections are not sustainable. In the present case, we find that the Assistant Registrar has abdicated his power of deciding objections only by giving preference to the report submitted by the Sub Divisional Magistrate which is contrary to the statutory provisions and the scheme of the Act. The submission of Sri Tiwari that the Registering authority is not required to give any reasons while registering a society is also misconceived inasmuch as where objections have been filed in the matter relating to the grant of registration, it is incumbent upon the registering authority to decide the said objection and he cannot simply ignore the same by saying that he is not required to give any reason while registering a society. The Division Bench decision relied upon by the learned counsel for the appellant in the case of Digambar Jain(supra) is also not attracted to the facts of the present case. In that case the writ petition preferred by the objector was dismissed on the ground of availability of alternative remedy as he had already filed a civil suit. No such situation exists in the present case.

9. In view of the aforesaid discussions, we find that the order impugned in the appeal does not call for any interference. The appeal fails and is dismissed.

(Appeal dismissed)