

**A.F.R****Reserved****Court No. - 2****Case :-** SPECIAL APPEAL No. - 212 of 2022**Appellant :-** Smt. Girja Singh (In Wric 1004847 Of 2012)**Respondent :-** Committee Of Management Intermediate College  
Amethi Thru.Manager Shiv Bahadur Singh And Others**Counsel for Appellant :-** Anupam Mehrotra, Diwakar Singh Kaushik**Counsel for Respondent :-** Mahendra Bahadur Singh, C.S.C., Ram  
Kumar Singh**Hon'ble Devendra Kumar Upadhyaya, J.****Hon'ble Subhash Vidyarthi, J.**

This intra-court appeal filed under Chapter VIII Rule 5 of the Rules of the Court lays a challenge to the judgment and order dated 28.04.2022 passed by the learned Single Judge in Writ-C No.1004847 of 2012 as corrected by means of the order dated 06.05.2022.

At this juncture itself, we may notice that in the aforesaid writ petition under challenge was an order dated 13.08.2012 passed by the Deputy Registrar Firms, Societies and Chits, Kanpur Region, Kanpur whereby a list of 112 members of General Body of the Society in question was declared to be valid for the purposes of holding the election of the Executive Body of the Society.

Shri Anupam Mehrotra, learned counsel representing the appellant-Smt. Girja Singh has argued that the learned Single Judge while passing the judgment and order under appeal has not considered the issue relating to maintainability of the writ petition at the instance of the petitioner-society and without, thus, deciding the question of maintainability, has allowed the writ petition thereby the learned Single Judge has erred in law. Elaborating this argument, it has been contended by Shri Mehrotra, learned counsel appearing for the appellant that the

last renewal of the registration of the Society was done on 26.09.2003 for a period of five years w.e.f. 10.10.2000 and thereafter its registration has not been renewed and accordingly the writ petition filed by the Society whose registration was not renewed, could not be entertained. It has also been argued that in terms of the provisions contained in section 6 of the Societies Registration Act (hereinafter referred to as 'the Act') it is only a registered society which may sue or be sued. In support of this submission, learned counsel for the appellant has relied upon the judgments in the following cases:

- (i) PBNC Committee vs. Govt. of A.P., AIR 1958 AP 773**
- (ii) Pattada Uthayya vs. Pattada Somayya, AIR 1955 Mysore 149**
- (iii) Mahabir Prasad vs. Satyanarain, AIR 1963 Patna 131**
- (iv) Arya Samaj vs. Manmohan Tewari, 1994 (12) LCD 205**
- (v) Adare Madarsa Ziaul-Ulum and others vs. Assistant Registrar, Firms, Societies and Chits and another, 2005 (23) LCD 1021**

It has further been argued on behalf of the appellant that the writ petition even at the behest of the petitioner no.2-Shiv Bahadur Singh was not maintainable as he filed the petition claiming to be a Manager of the Society whereas the fact is that he ceased to be the Manager on 24.05.2008. In support of this submission, the judgments cited by the learned counsel for the appellant are as under:

- (i) Umesh Chandra vs. Mahila Vidyalaya Society, 2006 (24) LCD 1373**
- (ii) Baba Bariyar Shah Association vs. State of U. P., 2019 (37) LCD 887**
- (iii) State of U.P. vs. C.O.D. Chheoki... Cooperative Society, (1997) 3 SCC 681**

Shri Mehrotra, learned counsel appearing for the appellant has further submitted that contradiction of statement recorded in the order which was under challenge in the writ petition before the learned Single Judge was not permissible as such statement available in an order is the conclusive proof of its existence and the same cannot be contradicted except before the authority passing the order. The judgments relied upon in this regard are:

- (i) State of Maharashtra vs. R. S. Nayak, AIR 1982 SC 1249**
- (ii) Bhagwati Prasad vs. Delhi State Mineral Development Corporation, (1990) 1 SCC 361**
- (iii) Ram Bali vs. State of U.P., (2004) 10 SCC 598**
- (iv) State of Assam vs. Union of India, (2010) 10 SCC 408**
- (v) Jitendra vs. State (NCT of Delhi), (2019) 13 SCC 691**
- (vi) Madan Mohan vs. Arun Shourie, AIR 2010 All 66**

Further submission is that though certain allegations of mala fides were asserted by the petitioners against the Deputy Registrar but since he was not impleaded a party in person hence, in this view as well the writ petition was not maintainable. The judgments relied upon in this context on behalf of the appellant are:

- (i) Bishundeo Narain vs. Seogeni Rai, AIR 1951 SC 280**
- (ii) Purushottam Kumar Jha vs. State of Jharkhand, (2006) 9 SCC 458**
- (iii) Union of India vs. Ranbir Singh Rathaur, (2006) 11 SCC 696**

It has further been argued that in absence of necessary parties, namely, the persons who were included in the final list of the members of the General Body by the order dated 13.08.2012, the order could not have been quashed by the learned Single Judge. In this respect, learned counsel for the

appellant has relied upon the judgment of Hon'ble Supreme Court in the case of **State of Assam vs. Union of India, (2010) 10 SCC 408.**

Several other arguments have also been raised by the learned counsel for the appellant stating that since the writ petition involved adjudication of disputed question of facts as such proper recourse upon to the petitioners was to invoke the remedy of a civil suit and not that of writ petition and that once election process had commenced, no interference in the writ petition was permissible. It is also stated that the petitioner no.2 did not approach the Court with clean hands wrongly claiming to be the Manager of the Society and hence he, being guilty of misrepresentation, could not have maintained the writ petition. It has also been contended by the learned counsel for the appellant that it is well settled principle of law that preliminary objection must be adjudicated upon first, however, learned Single Judge has completely overlooked the said well settled principle of law by passing the judgment and order under appeal.

In view of the aforesaid submissions, Shri Mehrotra has vehemently argued that the learned Single Judge has completely ignored the submissions made on behalf of the appellant as also the legal principles involved in the matter which vitiates the judgment and order under appeal. Accordingly, the prayer is that the judgment and order passed by the learned Single Judge be set aside and the writ petition be also dismissed.

Countering the submissions made on behalf of the appellant, Shri Prashant Chandra, learned Senior Advocate assisted by Shri Mahendra Bahadur Singh representing the respondent no.2 has opposed the prayers made in the special appeal and has submitted that having regard to the facts and

circumstances of the case the judgment rendered by the learned Single Judge does not call for any interference in this special appeal which is liable to be dismissed at its threshold.

We have considered the rival submissions made by the learned counsel representing the respective parties and have also perused the records available before us on this special appeal. Before advertng to the submissions raised for and against the instant special appeal, we may notice certain facts in brief which will have a bearing on the adjudication of the issue involved in this case.

A Society in the name of Gandhi Junior High School, Korari Lachhan Shah, Post Korari Heer Shah, Tehsil & District Amethi (earlier District Sultanpur) was registered on 01.12.1969 at File No.I-10279. The registration of the said Society was renewed from time to time and at a subsequent stage the word "Gandhi" occurring in the name of the Society was removed. The registration of the Society in the name of Intermediate College Korari Lachhan Shah, District Sultanpur was renewed on 26.07.2003 with effect from 10.10.1977 which was valid till 09.10.2005. While renewing the Society till 09.10.2005, the change of the name of the Society as also the amended Memorandum of Association and rules were also taken on record/registered.

Thereafter, on an application preferred by one Paras Nath Singh on 05.04.2006, the certificate of registration was renewed for a period of five years with effect from 10.10.2005 and accordingly renewed certificate of registration was issued on 27.06.2006.

After renewal of the Society on 27.06.2006, the petitioner no.2 in the writ petition, namely, Shiv Bahadur Singh moved an application on 10.09.2009 stating therein that the earlier

Manager, Kali Prasad Singh had died on 06.11.2004 whereafter for the remainder period he was elected as Manager in a meeting of the General Body of the Society held on 12.12.2004, however, Paras Nath Singh, who was the former Principal of the School run by the Society fraudulently got a Society registered in the name of Korari Inter College at registration File No.F-17017. Accordingly, a dispute was raised by Shiv Bahadur Singh in respect of the renewal of the registration of the Society done on 27.06.2006. The matter was considered by the Deputy Registrar, Firms, Societies and Chits, Faizabad Division, Faizabad, who by means of an order dated 21.07.2010 has categorically held that after 25.05.2003 no valid election of the office bearers of the Society was held and accordingly the Deputy Registrar declared the Executive Body of the Society to have become barred by time. The Deputy Registrar, Faizabad also recorded a finding in his order dated 21.07.2010 that the renewal of registration of the Society was made on 26.09.2003 on the basis of the documents/papers presented by Kali Prasad Singh and at that time there was no dispute in the Society. He has also recorded in the order dated 21.07.2010 that the papers presented by Kali Prasad Singh at the time of seeking renewal of the registration of the Society contained a list of the members of the General Body of the Society for the year 2003-04 which comprised of 60 Members. The Deputy Registrar also recorded a finding that the renewal of the registration of the Society made in the year 2006 i.e. on 27.06.2006 was not proper and lawful and as such he withheld the said renewal of the registration of the Society while passing the order dated 21.07.2010.

The Deputy Registrar, Faizabad accordingly after giving the aforesaid findings in the order dated 21.07.2010, as observed above, declared the Executive Body of the Society to have

become barred by time and accordingly issued the tentative list of the Members of the General Body of the Society comprising of 60 Members which he determined on the basis of list of Members of the General Body for the year 2003-04 presented by Kali Prasad Singh while seeking renewal of the registration of the Society which was done on 26.09.2003. Thus, the Deputy Registrar, Faizabad while passing the order dated 21.07.2010 recorded the following findings:

- (a) Renewal of the registration of the Society done on 26.09.2003 on the basis of the documents/papers presented by Kali Prasad Singh was lawful and even undisputed.
- (b) Renewal of the registration made in the year 2006 i.e. on 27.06.2006 was improper and incorrect.
- (c) The papers presented by Kali Prasad Singh while seeking renewal of the registration of the Society which was made on 26.09.2003 contained a list of 60 Members of the general body of the Society and since no dispute arose on the renewal of the registration of the Society based on these papers including the list of Members, the list of 60 Members of the General Body of the Society appears to be correct.
- (d) After 25.05.2003 no valid election of the Society was held as such the Executive Body had become barred by time.

After recording the aforesaid findings as noticed in the preceding paragraph, the Deputy Registrar, Faizabad issued a list of 60 Members of the General Body of the Society terming it to be tentative list and inviting objections to the said tentative list so that for the purposes of executive body of the Society final electoral college may be notified

It is very significant to note that the aforesaid order dated 21.07.2010 was not challenged by any of the parties to this special appeal neither by any one else before any forum or court.

Thus, so far as the findings recorded in the said order dated 21.07.2010 are concerned, the same became final between the parties.

Since the electoral college for the purposes of holding election of the Executive Body of the Society, as directed by the Deputy Registrar Faizabad by means of his order dated 21.07.2010, was not being finalized, a writ petition was filed by the respondent no.2-Shiv Bahadur Singh, namely, Writ Petition No.6859 (M/S) of 2011 which was disposed of by a learned Single Judge of this Court dated 17.11.2011 whereby a direction was issued to the authority concerned to publish the final list of the Members of the General Body of the Society within a period of three months.

The Deputy Registrar instead of finalizing the electoral college for the purposes of holding election of the Executive Body of the Society pursuant to the earlier order dated 21.07.2010 passed an order on 20.03.2012 whereby he referred the matter for adjudication before the Prescribed Authority under section 25(1) of the Societies Registration Act.

The said order dated 20.03.2012 was challenged before this Court by filing writ petition no.1876 (M/S) of 2012. The said writ petition was disposed of by means of an order dated 05.04.2012 by quashing the order dated 20.04.2012 and further permitting the parties to file objections to the tentative list. This Court by the said order dated 05.04.2012 also directed the Deputy Registrar, Firms, Societies and Chits to consider the objections which could be raised by the parties against the tentative list and take final decision and publish the final list to hold the election of the Executive Body of the Society. The court also directed the Incharge Registrar, Firms, Societies and Chits to place the matter before a Deputy Registrar other than the

Deputy Registrar Faizabad Region, Faizabad. It is thereafter that the Deputy Registrar Firms, Societies and Chits, Kanpur Division, Kanpur passed the order dated 13.08.2012 which was challenged by the petitioners before the learned Single Judge by instituting Writ Petition No.4847 (M/S) of 2012 (which was assigned new Number as Writ-C No.1004847 of 2012). The judgment and order under challenge herein dated 20.04.2022 has been passed allowing the said writ petition and quashing the order dated 13.08.2012, as a result of which the order dated 21.07.2010 has been revived and accordingly a direction has been issued by the learned Single Judge to the Deputy Registrar to pass a fresh order in respect of the electoral college for the purposes of holding the election of the Executive Body of the Society by including the members who were living out of 60 members as were finalized by means of the order dated 21.07.2010. The learned Single Judge also directed that if required the election of the Executive Body of the Society shall be held under the supervision of the Deputy Registrar. Learned Single Judge has also clarified that no person shall be added in the list over and above 60 persons as mentioned in the order dated 21.07.2010.

Having noted the background facts of the case as narrated above, the questions which primarily fall for our consideration are, (a) as to whether, as contended by the learned counsel for the appellant, the writ petition filed by the petitioner nos.1 and 2 was maintainable and, (b) as to whether any addition in the list of 60 members of the General Body of the Society as per the order dated 21.07.2010 passed by the Deputy Registrar, Faizabad is legally permissible.

It has been argued on behalf of the appellant that the registration of the Society having not been renewed after

26.09.2003 (whereby renewal was valid for five years w.e.f. 10.10.2000), the writ petition filed by the petitioner no.1-Society was not maintainable. When we consider this submission, we find that the contention is based solely on the ground of non-renewal of the registration of the Society. Section 3 of the Act provides for registration of a society upon presentation of Memorandum of Association before the Registrar on payment of certain fee. Section 3A of the Act provides for renewal of certificate of the registration of a Society. Scheme of section 3-A of the Act as applicable in the State of Uttar Pradesh permits renewal of certificate of registration even after expiry of the period of registration on payment of late fee. Thus, a society once registered, will not get extinct, that is to say, it will not become non-existent in absence of renewal of the certificate of registration after expiry of the term of registration. The society shall still exist though with a non-renewed certificate. It will still be an entity for the reason that section 3-A permits renewal of certificate of registration even after expiry of the term of registration on payment of late fee. Existence of society will not get extinguished only because of non-renewal of its registration certificate. Section 13 of the Act provides for dissolution of a society and thereupon adjustment of its affairs. Accordingly, we have no hesitation to hold that a society once duly registered, does not lose its entity as a society on account of non-renewal of the certificate of registration. The society will get extinct only when it is dissolved as per the provisions contained in section 13 or 13-A of the Act.

So far as the judgments cited by the learned counsel for the appellant in this regard, as mentioned above, are concerned, all the cases related to non-registered society or and unincorporated club and it is in this context that it has been

observed that such a society will have the character of an association which cannot sue or be sued except in the name of all the members of the association. In the case of **Arya Samaj (supra)** it has been held by a Division Bench of this Court that as soon as a society is registered, it acquires a legal entity. We are, thus, of the opinion that non-renewal of certificate of registration may have certain consequences, however, that in itself cannot be a cause of extinction of existence of the society as an entity. The existence/entity of a society comes to an end only on its dissolution as envisaged under sections 13 and 13-A of the Act.

Reliance placed by the learned counsel for the appellant on paragraphs 12 & 13 of the judgment in the case of **Adare Madarsa and others (supra)** is misplaced. This judgment only holds that since renewal of the society in question was granted on the basis of some illegal list as such the society had become unregistered society within the meaning of section 3-A(v) of the Act and the only remedy available was to hold the fresh election in terms of the provisions of section 25(2) of the Act. Thus, this case does not help the petitioner at all, rather it fortifies the contention of the learned counsel representing the respondents that once the Deputy Registrar in his order dated 21.07.2010 has held the executive body of the society being barred by time, it was appropriate and proper on his part to have proceeded to hold the election under section 25(2) of the Act. Thus, in our opinion, the submission of the learned counsel for the appellant that the writ petition was not maintainable at the behest of the petitioner no.1, is not tenable.

Similarly the submission raised by the learned counsel for the appellant that the writ petition was not maintainable at the behest of the petitioner no.2, is also not tenable for the simple

reason that he is one of the persons included in the list of 60 members of the General Body of the Society as contained in the order dated 21.07.2010 passed by the Deputy Registrar and he, in our considered opinion, did have adequate locus to challenge the order dated 13.08.2012 passed by the Deputy Registrar, Kanpur Region, Kanpur, who had extended the list of 60 members to 112 members which was contrary to the unchallenged findings recorded by the Deputy Registrar in his earlier order dated 21.07.2010. As regards the submission that the petitioners while impeaching the order dated 13.08.2012 in the writ petition before the learned Single Judge could not be permitted to contradict the statement of facts recorded in the said order as the facts recorded in an order by an authority or tribunal or court is conclusive, we may only refer to the averments made in paragraph 29 of the counter affidavit filed in the writ petition by the Deputy Registrar Firms, Societies and Chits, Faizabad where it has been stated by the Deputy Registrar that there are no provisions under the Act which permit providing copies of the documents submitted by the opposite party no.5 in the writ petition to the petitioners, however, under sections 23 and 24 of the Societies Registration Act related documents can be inspected personally by the Deputy Registrar and that copies of such documents cannot be handed over to any other person.

The said submissions were made in reply to paragraphs 54 and 55 of the writ petition, wherein it was stated by the petitioner that the Deputy Registrar did not supply copies of the reply and documents submitted by the opposite party no.5 in the writ petition and further that the Deputy Registrar considered the documents filed by the opposite party no.5 in the writ petition, however, he did not supply copies of those documents to the petitioners and that such documents must have been provided to

them so that they were able to put up their case before the Deputy Registrar. If the averments made in paragraph 29 of the counter affidavit filed before the learned Single Judge by the Deputy Registrar Faizabad is read in juxtaposition with the submissions made in paragraphs 52, 54 and 55 of the writ petition, it is abundantly clear that there is admission on the part of the Deputy Registrar that copies of the documents submitted before him by the opposite party no.5 in the writ petition were not supplied to the petitioner. In view of this admission by the Deputy Registrar before the Single Judge as made in paragraph 29 of the counter affidavit filed by the him, the submission made on behalf of the appellant that the petitioners could not be permitted to contradict the submissions of facts recorded in the order of Deputy Registrar, loses significance.

Yet another submission made by the learned counsel representing the appellant is that the persons whose names were added amongst 112 members in addition to 60 members, by means of the order dated 13.08.2012 passed by the Deputy Registrar, were not impleaded as parties in the writ petition, hence the writ petition suffered from the vice of non-joinder of necessary parties and as such the same was not maintainable. While considering this submission on behalf of the appellant, what we find is that there is a categorical finding recorded by the Deputy Registrar while he passed the order dated 21.07.2010 that documents on the basis of which undisputed renewal of the registration of the society was done on 26.09.2003 also contained a list of 60 members of the General Body of the Society and this order dated 21.07.2010 was never challenged by any one, including those persons, who were added in the list of 112 members over and above 60 members of the General Body of the Society. Since the order dated 21.07.2010 passed by

the Deputy Registrar was never challenged, hence the finding recorded in respect of the fact regarding validity of 60 members of the General Body of the Society remains undisputed. Any addition of members apart from 60 members of the General Body of the Society made by the subsequent order passed by the Deputy Registrar on 13.08.2012, in our considered opinion, was not permissible. It is also to be noticed in this regard that vide order dated 21.07.2010 the Deputy Registrar had published undisputed list of 60 members terming such list of members of the General Body as tentative list inviting objections so that electoral college may be finalized for the purposes of holding election of the Executive Body of the Society as contemplated under section 25(2) of the Act. Finalization of electoral college pursuant to the order dated 21.07.2010, in our considered opinion, was only meant for removal of such member from amongst 60 members of the General Body of the Society who for some or other reason might have disqualified themselves to be member of the General Body on account of certain exigencies such as death or resignation or any other like situation. Thus, amongst 60 members of the Society, while finalizing the electoral college pursuant to the order dated 21.07.2010 passed by the Deputy Registrar, the only alteration which was permissible in the said list of 60 members was deletion of names of such persons who might have disqualified themselves to be members on account of the reasons as aforesaid, such as death or resignation or any other like situation. The Deputy Registrar, thus, while passing the order dated 13.08.2012 had clearly exceeded his mandate and jurisdiction in view of the undisputed findings recorded in his earlier order dated 21.07.2010.

Accordingly, we have no hesitation to hold that those persons, who were added in the list of 60 members of the

General Body of the Society by means of the order dated 13.08.2012, were illegally added. Since the Deputy Registrar while passing the order dated 13.08.2012, thus, exceeded his mandate which was available to him only for the purposes of finalizing the electoral college from amongst 60 members of the General Body of the Society by means of the order dated 21.07.2010, the submission made by the learned counsel for petitioner merits rejection, which is hereby thus, not accepted.

We also notice that in the writ petition disputed questions of facts relating to membership of the Society were not involved as the issue related only to finalization of the electoral college on the basis of determination of the members of the General Body of the Society made by the Deputy Registrar by means of his order dated 21.07.2010.

For the reasons as aforesaid, we are not inclined to interfere in the judgment and order passed by the learned Single Judge.

There is yet another reason why no interference in this special appeal is warranted. The dispute relating to election of the Executive Body of the Society has been pending since fairly a long time and as such we are of the opinion that such dispute should be given quietus which shall be not only in the interest of the warring factions of the society but it shall also be in the interest of the society of the college being run, of the education of the students as also the welfare of the teachers.

For all the aforesaid discussion made above, we are of the opinion that the instant appeal lacks merit. Resultantly, the special appeal is, thus, **dismissed**.

The Deputy Registrar concerned is directed to ensure compliance of the directions issued by the learned Single Judge in his order dated 28.04.2022 as corrected by means of the order

dated 06.05.2022 passed in Writ Petition No.4847 (M/S) of 2012 (New Number: Writ-C No.1004847 of 2012) within the time period specified for the said purpose in the order passed by the learned Single Judge.

However, there will be no order as to costs.

**Order Date :-14.06.2022**

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**[Subhash Vidyarthi, J.] [Devendra Kumar Upadhyaya, J.]**