

T.P. Singh (En. No. 2473), Senior ... vs Registrar/A.R., Firms Societies & ... on 10 October, 2018

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 05.09.2018

Delivered on 10.10.2018

Court No. - 34

Case :- WRIT - C No. - 58426 of 2017

Petitioner :- T.P. Singh (En. No. 2473), Senior Advocate

Respondent :- Registrar/Assistant Registrar, Firms Societies & Chits, Teliyarganj & 4 Or

Counsel for Petitioner :- Siddharth Nandan, Shashi Nandan

Counsel for Respondent :- C.S.C., S.D. Kautilya

Hon'ble Sudhir Agarwal, J.

Hon'ble Om Prakash-VII, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Aggrieved by order dated 26.08.2017 issued by Assistant Registrar, Firms, Societies and Chits, Teliyarganj, Mehdaury Colony, Allahabad (hereinafter referred to as the "Assistant Registrar") to the extent it has observed that issues raised by petitioner are not within the the purview of Section 4B of Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860"), present writ petition has been filed challenging aforesaid order to that extent. Petitioner has also prayed for issue of a writ of certiorari for quashing resolution dated 17.01.2016, passed by Governing Council of Kayastha

Pathshala, Prayag (hereinafter referred to as "Society") which was affirmed in the meeting of Governing Council dated 07.02.2016 and 27.03.2016 to the extent of removal of membership of petitioner from various offices held by him being past President and Honorary General Secretary as also the membership of General Body. Third prayer is for issue of a writ of mandamus directing Assistant Registrar to decide petitioner's application dated 28.02.2017, expeditiously.

2. Brief facts giving rise to present writ petition are that "Kayastha Pathshala Prayag, Allahabad" is a registered Society registered under Act, 1860 and constituted with an aim and object as contained in Bye laws/ Rules of Society. Basically the purpose is to impart education to various sections of Society in general and upliftment of Kayastha community in particular. Petitioner was enrolled as Member of General Body of Society, assigned Enrollment No. 2473, and his name was placed at Serial No. 740. When Society applied for renewal, it also communicated to Assistant Registrar about cancellation of Membership of petitioner, whereupon a notice was issued to petitioner by Assistant Registrar under Section 4 of Act, 1860 and Society was also directed to produce relevant record for verification and inquiry, whether petitioner's Membership was cancelled as per procedure prescribed under Bye laws.

3. On 17.01.2016, meeting of Governing Council was convened. Item No. 2 in the agenda related to letter dated 15.12.2015 sent by petitioner. Members present in the meeting took a view that language used in letter is contemptuous and derogatory to the Members of Election Tribunal and, therefore, deserves cancellation of petitioner's Membership under Clause 17(vi) of bye laws. Ultimately resolution was passed to cease Membership of petitioner. Minutes of meeting dated 17.01.2016 with regard to cessation of petitioner's Membership of Society was confirmed in the meeting dated 07.02.2016. The aforesaid minutes dated 17.01.2016 and 07.02.2016 were placed before Governing Council's meeting dated 27.03.2016 but no otherwise decision was taken. On receiving communication of aforesaid decision, Assistant Registrar issued notice dated 16.04.2016 requiring Society to place proceeding register, membership register, information register, counterfoil of membership receipt, cashbook, bank passbook and other report and documents relating to management of Society. Petitioner claims to have filed an objection raising various issues including about termination of his membership. The above objection was not decided and the matter remained pending before Assistant Registrar which caused filing of Writ Petition No. 53462 of 2016 by petitioner seeking following reliefs:

"A. writ or direction in the nature of mandamus directing the Respondent no. 1 i.e. Registrar/ Assistant Registrar, Firms, Societies and Chits, Allahabad to decide the objections being registered as File No. 1, File No. 2, File No. 3 and File No. 4 raised against the Respondent no. 2 under Section 4, 12(d) and 24 of the Societies Registration Act, 1860.

B. Any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

C. To award cost of the writ petition to the Petitioner."

4. This writ petition was disposed of vide judgment dated 10.11.2016 passed by a learned Single Judge and relevant extract thereof is reads as under:

"In my considered opinion, as far as the objections under Section 12 (d) and Section 24 of the Societies Registration Act are concerned, they are prima facie within the jurisdiction of the authority before whom they have been raised. However, in my considered opinion, in so far as an objection under Section 4 raising a membership dispute is concerned, the same is not within the jurisdiction of the Registrar/Assistant Registrar, Firms, Societies and Chits and a membership dispute can only be decided by means of a civil suit.

Under the circumstances, therefore, this writ petition is disposed of directing the respondent no. 1 to dispose of the objections by reasoned and speaking orders, strictly in accordance with law, expeditiously, preferably within a period of three months from the date a certified copy of this order is filed before the respondent no. 1.

It is further provided that in so far as file no. 1, the objection under Section 4, is concerned, the order must specifically deal with the issue as to whether a membership dispute can be decided by him or not and he should take note of the prima facie observation of this court that he does not have jurisdiction to decide it and that a membership dispute is to be decided only by means of a civil suit.

Subject to the above, this writ petition is disposed of."

(emphasis added)

5. Against aforesaid judgment petitioner himself preferred Special Appeal No. 742 of 2016 which was disposed of on 30.11.2016, in the following manner:

"Heard Mr. G.K. Singh, learned Senior Advocate, with Mr. Shailendra, Advocate, for the appellant and Mr. Manish Goyal, learned counsel for the respondents.

Counsel for the parties have agreed for the order that we propose to pass. Hence, by consent, the appeal is disposed of by the following order:

The order dated 10.11.2016 is set aside. Writ - C No. 53462 of 2016 is restored to file. The learned Single Judge is requested to hear and decide the writ petition afresh.

All contentions on merits are kept open." (emphasis added)

6. The Division Bench judgment, therefore, restored and revived Writ Petition No. 53462 of 2016 and it got pending. It could not be taken up.

7. In the meantime petitioner preferred another Writ Petition No. 11801 of 2017 seeking following relief:

"i. A writ or direction in the nature of mandamus directing the Respondent no. 1 i.e. Registrar/ Assistant Registrar, Firms, Societies and Chits, Allahabad to pass final orders so far as the objection under Section 4 of the Act, 1860 regarding the membership of Petitioner no. 3 is concerned in view of the fact that arguments have heard and concluded as long back as 6.1.2017, being registered as File No. 1, in the Office of Respondent no. 1; by a reasoned and speaking order strictly in accordance with law on merit dealing issues raised by Petitioners within a week, in order to avoid any misgiving.

ii. A writ or direction in the nature of mandamus directing the Respondent no. 1 i.e. Registrar/ Assistant Registrar, Firms, Societies and Chits, Allahabad to conclude the hearing in respect to objection filed by Petitioner no. 1 and 2 under Section 12(d) read with Section 24 of Act, 1860 within a specified period.

iii. Any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. To award cost of the writ petition to the petitioner."

8. Above Writ Petition No. 11801 of 2017 initially came up before Hon'ble Suneet Kumar, J., who vide order dated 22.03.2017 directed the same to be placed alongwith Writ Petition No. 53462 of 2016. It could not be taken up by Hon'ble Suneet Kumar, J. and then was listed before Hon'ble Vivek Kumar Birla, J. who directed it to be listed before appropriate Bench vide order dated 17.04.2017. The matter came up before Hon'ble B. Amit Sthalekar, J. and on 02.05.2017, Court passed following order:

"Heard Sri V. K.Singh, learned senior counsel assisted by Sri Siddharth Nandan, counsel for the petitioners, Sri Ashok Khare, learned senior counsel assisted by Sri Ram Kaushik, learned counsel for the respondent no.2 and Sri Mata Prasad, learned Additional Chief Standing Counsel for the respondent no.1.

Prayer in the writ petition is for a direction to the Registrar/Assistant Registrar, Firms, Societies and Chits, Allahabad to pass final orders with regard to objection under Section 4 of the Act, 1860 regarding the membership of the petitioner no.3.

It is pointed out by both the counsel that the matter is already pending before the Assistant Registrar and 11.5.2017 has been fixed in the matter, therefore, put up this case on 17.5.2017 as fresh before the appropriate Bench.

In the meantime learned standing counsel may obtain instructions in the matter.

The matter shall not be treated as tied up or part heard with this Bench."

9. Thereafter matter ultimately came up before Hon'ble Manoj Misra, J. who disposed of writ petition vide order dated 04.07.2017 passing following order:

"Heard Sri Siddharth Nandan for the petitioners; Sri Ram Kaushik for the respondent no. 2; and learned Standing Counsel for respondent no. 1.

The prayer made in the writ petition is for a direction upon the Registrar/ Assistant Registrar, Firms Societies Chits, Allahabad to pass a final order on the objection taken as regards membership of petitioner no. 3 in exercise of power under section 4 of Societies Registration Act.

Sri Ram Kaushik who appears on behalf of the 2nd respondent states that the Registrar may not have jurisdiction to decide such a dispute and therefore no specific direction need be issued to the Registrar concerned.

Sri Siddharth Nandan has placed reliance on few authorities to demonstrate that he would have jurisdiction to decide the issue.

It is however not disputed at the Bar that the respondent no. 1 has heard the matter.

A question had been put to Sri Ram Kaushik, learned counsel for respondent no. 2, whether an objection as regards jurisdiction of the respondent no. 1 has been raised at the time of hearing or not.

In response to the above query, Sri Ram Kaushik had informed the Court that objection as regards jurisdiction had been raised before respondent no. 1.

Under the circumstances, this Court finds it appropriate to dispose of this petition by requiring the respondent no. 1 to take a decision on the aforesaid issue by considering the objection as regards his own jurisdiction so that the matter which has already been heard does not remain undecided. It is therefore provided that in the light of the observations made herein above, the respondent no. 1 shall take an appropriate decision in accordance with law, preferably within a period of six weeks from the date of filing of certified copy of this order.

The petition is disposed of." (emphasis added)

10. Pursuant to direction contained in judgment dated 04.07.2017 passed in Writ Petition No. 11801 of 2017, Assistant Registrar passed order dated 26.08.2017 (Annexure-6 to writ petition) and relevant extract thereof reads as under:

^ ^mDr /kkjk ds voyksdu ek= ls Li"V gS fd fdlh laLFkk ds uohuhdj.k @ iathdj.k ds le; izLrqr lk/kkj.k lHkk dh lwph dh 'kq)rk ds ijh{k.k ds vf/kdkj ml laLFkk ds vfHkys[kksa ds vk/kkj ij jftLV~kj dks iznRr fd;s x;s gSaA fdlh laLFkk dh lk/kkj.k lHkk vFkok izcU/k lfefr dh fdlh ,slh cSBd dh dk;Zokgh ftlesa fdlh lnL; dh lnL;rk dk fu"dklu fd;k x;k gks] dks fujLr djus ds vf/kdkj iznRr ugha fd;s x;s gSaA Jh Vhoiho flag }kjk dk;Zdkfj.kh dh cSBd fnukad 17-01-2016 ,oa cSBd fnukad 07-01-2016] ftlesa mudh lnL;rk lht dh x;h gS] dks fujLr djus dk vuqjks/k fd;k x;k gS] vr% v/kksgLrk{kjh ds fu"d"kZ ds vuqlkj mi;qZDr foosfpr fcUnqvksa ds vkyksd esa iz'uxr izdj.k lkslkbVh iathdj.k vf/kfu;e 1860 dh /kkjk 4 ch ds rgr vkPNkfnr ugha gSA Jh Vhoiho flag }kjk fn;s x;s izR;kosnu ds lEcU/k esa ;ksftr fjV ;kfpdk lao 53462@2016 esa fn;s x;s fu.kZ;] tks lnL;rk ds vf/kdkj {ks= ds lEcU/k esa gS ij Lis'ky vihy lao 742@ 2016 esa ikfjr vkns'k fnukad 30-11-2016 ds vuqikyu esa fjV ;kfpdk lao 53462@ 2016 dks u;s fljs ls lqudj fu.khZr fd;k tkuk gS] tks eko mPp U;k;ky; ds le{k fopkj/khu gSA vr% iz'uxr izdj.k esa fu;ekuqlkj vxzsRrj dk;Zokgh eko mPp U;k;ky; }kjk fjV ;kfpdk lao 53462@ 2016 esa ikfjr fd;s tkus okys vfxze vkns'kksa ds vuqikyu esa lEiUu dh tk;sxhA tgkWa rd lk/kkj.k lHkk dh cSBd fnukad 27-03-2016 esa Ik;Zos{kdfu;qDr djus dk iz'u gS] rks mDr izdj.k lkjghu gks tkus ds dkj.k bl lEcU/k esa orZeku esa dksbZ dk;Zokgh visf{kr ugha gSA rn~uqlkj izdj.k fjV ;kfpdk lao 11801 @ 2017 esa eko mPp U;k;ky; }kjk ikfjr vkns'k fnukad 04-07-2017 ds leknj esa fuLrkfjr fd;k tkrk gSA** "From a bare perusal of the aforesaid section, it is clear that the right to examine the authenticity of list of General Body/ Assembly produced at the time of renewal/ registration of an institution has been conferred upon the Registrar on the basis of institution's documents. No power has been conferred to cancel the proceeding of the meeting of the general assembly or the managing committee of any institution terminating any member's membership. A request has been made by Shri TP Singh to cancel the proceedings of the executive committee held on 17.01.2016 and 07.01.2016, by which his membership has been ceased; hence, as per the undersigned's findings, in the light of points discussed above, the matter in question is not covered u/s 4-B of the Societies' Registration Act, 1860.

In compliance of the order dated 30.11.2016 passed in Special Appeal No. 742/2016 arising out of the order passed in Writ Petition No. 53462/2016, pertaining to jurisdiction of membership, filed by Shri TP Singh with respect to his representation, the Writ Petition No. 53462/2016, pending before the Hon'ble High Court, is to be decided by hearing it afresh. Hence, further proceedings in the matter in question shall be conducted in compliance of the further orders to be passed by the Hon'ble High Court in Writ Petition No. 53462/2016.

As far as the question of appointment of observer at the meeting of General Assembly on 27.03.2016 is concerned, no action is required in this respect at this juncture because the said matter has been rendered redundant.

Accordingly, this matter is disposed of in compliance with the order dated 04.07.2017 passed by Hon'ble High Court in the writ petition no. 11801/2017." (English

translation by Court) (emphasis added)

11. Petitioner then filed third Writ Petition No. 55386 of 2017. Petitioner also filed an Amendment Application No. 369588 of 2017 in Writ Petition No. 53462 of 2016, seeking addition of following prayer, besides other amendment of addition of certain paragraphs and grounds in writ petition:

"IV. A writ, order or direction in the nature of certiorari quashing the impugned order dated 26.8.2017 to the extent the Respondent No. 1 has given a contrary finding of lack of jurisdiction for deciding the objection pertaining to the membership viz-a-viz the resolution dated 17.1.2016 and minutes of the meeting 7.2.2016, which forms the part of the impugned proceeding itself, in following manner:

^^Jh Vhoiho flag }kjk fn;s x;s izR;kosnu ds laca/k esa ;ksftr fjV ;kfpdk la[k; 53462@2006 esa fn;s x;s fu.kZ; tks lnL;rk ds vf/kdkj {ks= ds laca/k esa ij Lis'ky vihy uao 742@2016 esa ikfjr vkns'k fnukad 30-11-2016 ds vuqikyu esa fjV ;kfpdk la[k; 53462@2016 dks u;s fljs ls lqudj fu.khZr fd;k tkuk gS] tks ekuuh; mPp U;k;ky; ds le{k fopkjk/khu gS vr% iz'uxr izdj.k esa fu;ekuqlkj vxzsRrj dk;Zokgh eko mPp U;k;ky; }kjk fjV ;kfpdk la[k; 53462@2016 esa ikfjr fd;s tkus okys vfxze vkns'kksa ds vuqikyu esa lEiUu dh tk;sxhA** In compliance of the order dated 30.11.2016 passed in Special Appeal No. 742/2016 arising out of the order passed in Writ Petition No. 53462/2016, pertaining to jurisdiction of membership, filed by Shri TP Singh with respect to his representation, the Writ Petition No. 53462/2016, pending before the Hon'ble High Court, is to be decided by hearing it afresh. Hence, further proceedings in the matter in question shall be conducted in compliance of the further orders to be passed by the Hon'ble High Court in Writ Petition No. 53462/2016." (English translation by Court)

12. Against order dated 26.08.2017 certain persons also filed Writ Petition No. 44908 of 2017 seeking following reliefs:

"i. A writ or direction in the nature of certiorari quashing the order dated 26.8.2017, so far objection under Section 12(d) of Societies Registration Act, 1860 has been differed adjudication (contained as Annexure No. 2 to the writ petition).

ii. A writ or direction in the nature of mandamus directing the Respondent No. 1 to dispose of objection under section 12(d) of the Act on its merits within a time bound period.

iii. Any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. To award cost of the writ petition to the petitioners."

13. Writ Petitions No. 53462 of 2016 and 44908 of 2017 were decided by a learned Single Judge vide judgment dated 20.11.2017 and relevant extract thereof reads as under:

"In so far as the scope of enquiry which can be made by the Assistant Registrar under Section 4-B of the Act, 1860 is concerned, as noted above, he can examine the correctness of the list of membership by asking the office-bearers or person concerned to provide the original registers etc. which would prove the said fact. He can also summon the record in case of any change reported to it by induction, removal etc. But he cannot examine witnesses or record any evidence. The dispute before the Registrar can only be decided within the four corners of the said provision i.e. on the basis of records placed before it, by the person whose rights may be prejudicially affected or the contending parties. The intricate questions or complicated issues which would require leading of evidence, summoning of witnesses, examination and cross-examination thereof are not within the domain of the Assistant Registrar. Such a dispute would thus be beyond the scope of his jurisdiction and would have to be referred to the Competent Authority or the Civil Court.

In the instant case, looking to the plea taken by Sri T.P. Singh and the prayer made in the application under Section 4 of the Act, 1860, it is evident that the petitioner/applicant seeks to challenge the resolution of the Executive Committee of the Society on the grounds that it was the result of the controversy hatched against him, fourteen elected members had voted against the resolution and the resolution was passed by the nominated members including only one elected member; the petitioner/applicant was not provided opportunity of hearing before decision of removal of his membership was taken; the nominating members did not have right to vote; and that the resolution dated 17.1.2016 was passed by thirty (30) nominated members which cannot be treated to have been passed by majority.

On the above noted grounds, the prayers made in the application are that:-

- (1) The decision of the Executive Committee be declared null and void or having been passed by minority, treating the membership of thirty (30) nominated members as null and void.
- (2) The petitioner/applicant was not provided opportunity of hearing by the Executive Committee, inasmuch as, the applicant was not provided opportunity to cross-examine those members who were having personal biases and grudges against him on account of filing of an election petition against them. His membership was removed in order to frustrate his election petition.
- (3) The voting process in the meeting of Executive Committee was faulty being in contravention of Bye-law and the resolution having been passed by nominated members only and being undemocratic.

(4) The Executive Committee was not empowered to remove membership of the petitioner/applicant who was member of the General body of the Society.

All the grounds for seeking the prayers noted above make it evident that the petitioner/applicant had challenged the merits of the resolution of the Executive Committee of the Society. There was no challenge regarding the meeting of the Executive Committee having been convened on the said date or any other objection regarding the said meeting being validly convened which would require a summary enquiry to be made by the Registrar. The questions which are sought to be raised by the petitioner/applicant are necessarily beyond the scope of jurisdiction of the Assistant Registrar under Section 4-B of the Act, 1860 and can only be adjudicated in a Civil suit.

Even otherwise, the contention of Sri G.K. Singh learned Senior Advocate that the Assistant Registrar did not decide the application/objection of the petitioner rather he had refrained himself from adjudicating the same on the ground of the writ petition being pending, is incorrect. A careful reading of the order dated 26.8.2017 passed by the Assistant Registrar (brought on record) does indicate that after examining the prayer of the petitioner/applicant, he had categorically observed that the prayer for setting aside the resolution of the Executive Committee made therein was beyond the scope of his jurisdiction under Section 4-B of the Act, 1860. The observation in the last paragraph of the said order regarding pendency of the present petition could not be construed to mean that the issue was not addressed/adjudicated. In any case, having reached at a conclusion that the prayers made in the application under Section 4 of the Act, 1860 of the petitioner/applicant were not within the scope of enquiry which can be made by the Assistant Registrar under Section 4-B of the Act, 1860, the prayer made in the present petition for issuance of mandamus is liable to be rejected.

In so far as other matters/applications under Section 12-D and Section 24 of the Act, 1860 are concerned, no prayer, in that regard, was either pressed nor any arguments have been extended. However in the opinion of the Court, it is incumbent upon the Assistant Registrar to adjudicate all the pending matters, in accordance with law.

Subject to the above observations and directions, both the connected writ petitions are being disposed of."

(emphasis added)

14. A review application was also filed against judgment dated 20.11.2017 in Writ Petition No. 53462 of 2016 and it was registered as Review Application No. 403262 of 2017. The same was rejected by learned Single Judge (Hon'ble Sunita Agarwal, J.) vide judgment dated 16.03.2018.

15. A Special Appeal No. 408 of 2018 was filed by Sri T.P. Singh against judgment dated 20.11.2017 passed in Writ Petition No. 53462 of 2016 and dated 16.03.2018 whereby review application was dismissed. Aforesaid special appeal has been decided vide judgment dated 16.07.2018 and the order passed by Division Bench in special appeal reads as under:

"1. Heard Sri Shashi Nandan, learned Senior Advocate, assisted by Sri Siddharth Nandan, learned counsel for the appellant and Sri Sunil Dutt Kautilya, assisted by Sri Umesh Kumar Gupta for respondent no. 2.

2. This intra Court appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 (hereinafter referred to as 'Rules, 1952') has arisen out of judgment dated 20.11.2017 in so far as it relates to Civil Misc. Writ Petition No. 53462 of 2016 and judgment dated 16th March, 2018 passed in Civil Misc. Review Application No. 403262 of 2017 in the aforesaid writ petition.

3. After going through judgment dated 20.11.2017 we find that two writ petitions were decided together by learned Single Judge i.e. Civil Misc. Writ-C Petition Nos. 44908 of 2017 and 53462 of 2016.

4. In Civil Misc. Writ-C Petition No. 44908 of 2017, order dated 26.8.2017 passed by Assistant Registrar, Firms, Societies and Chits was challenged to the extent it has initiated proceedings under Section 12 - D of Societies Registration Act, 1860 (hereinafter referred to as 'Act, 1860'). The judgment of learned Single Judge also shows that on the statement of learned counsel for petitioner in Civil Misc. Writ-C Petition No. 44908 of 2017 the writ petition was dismissed as not pressed. Since Writ Petition No. 44908 of 2017 was dismissed as not pressed and no argument was advanced therein, we deal with further discussion on merits made by learned Single Judge in Civil Misc. Writ-C Petition No. 53462 of 2016.

5. So far as Civil Misc. Writ-C Petition No. 53642 of 2016 is concerned, it was filed seeking following relief :

"A writ or direction in the nature of Mandamus directing the respondent no. 1 i.e. Registrar/Assistant Registrar, Firms, Societies and Chits, Allahabad to decide the objections being registered as File No. 1, File No. 2, File No. 3 and File No. 4 raised against the respondent no. 2 under Section 4, 12 (d) and 24 of the Societies Registration Act, 1860."

6. This writ petition appears to have been filed in November, 2016. Initially it was disposed of by learned Single Judge (Hon'ble Anjani Kumar Mishra, J.) vide judgment dated 10.11.2016 which reads as under :-

"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

This writ petition has been filed seeking the following relief:-

"(I) A writ or direction in the nature of mandamus directing the Respondent no. 1 i.e. Registrar/Assistant Registrar, Firms, Societies and Chits, Allahabad to decide the

objections being registered as File No. 1, File No. 2, File No. 3 and File No. 4 raised against the Respondent no. 2 under Section 4, 12 (d) and 24 of the Societies Registration Act, 1860."

The averments made in paragraph 21 of the writ petition are in my considered opinion relevant and are quoted below:-

"That Petitioner and other members of the Society have raised dispute regarding the membership as well as the mismanagement invoking the jurisdiction of the Registrar/Assistant Registrar, Firms, Societies and Chits, Allahabad under Section 4, 12(d) and 24 of the Act, 1860 which was pending for more than eight months and inspite of written argument having been filed, the Registrar Society is not taking any interest in deciding the same."

In my considered opinion, as far as the objections under Section 12 (d) and Section 24 of the Societies Registration Act are concerned, they are prima facie within the jurisdiction of the authority before whom they have been raised. However, in my considered opinion, in so far as an objection under Section 4 raising a membership dispute is concerned, the same is not within the jurisdiction of the Registrar/Assistant Registrar, Firms, Societies and Chits and a membership dispute can only be decided by means of a civil suit.

Under the circumstances, therefore, this writ petition is disposed of directing the respondent no. 1 to dispose of the objections by reasoned and speaking orders, strictly in accordance with law, expeditiously, preferably within a period of three months from the date a certified copy of this order is filed before the respondent no. 1.

It is further provided that in so far as file no. 1, the objection under Section 4, is concerned, the order must specifically deal with the issue as to whether a membership dispute can be decided by him or not and he should take note of the prima facie observation of this court that he does not have jurisdiction to decide it and that a membership dispute is to be decided only by means of a civil suit.

Subject to the above, this writ petition is disposed of."

(emphasis added)

7. Since learned Single Judge expressed his opinion in respect of jurisdiction of Registrar while dealing the application of petitioners under Section 4. Petitioner filed Special Appeal No. 742 of 2016 which was allowed vide judgment dated 30.11.2016. The judgment dated 10.11.2016 was set aside and matter was remanded to learned Single Judge to decide writ petition afresh. The judgment of Division Bench reads as under :-

"Heard Mr. G.K. Singh, learned Senior Advocate, with Mr. Shailendra, Advocate, for the appellant and Mr. Manish Goyal, learned counsel for the respondents.

Counsel for the parties have agreed for the order that we propose to pass. Hence, by consent, the appeal is disposed of by the following order:

The order dated 10.11.2016 is set aside. Writ - C No. 53462 of 2016 is restored to file. The learned Single Judge is requested to hear and decide the writ petition afresh.

All contentions on merits are kept open."

(emphasis added)

8. Thereafter when matter was pending before learned Single Judge, Assistant Registrar, in the meantime, passed an order dated 26.8.2017 on the objection filed by petitioner in respect whereof mandamus was sought in Civil Misc. Writ-C Petition No. 53462 of 2016 that Registrar should be directed to decide objections. Once order was passed by Assistant Registrar and writ petition was confined only to mandamus directing Registrar to decide petitioner's objection raising certain objections, instant writ petition rendered infructuous since objections were already decided. No cause of action survived to issue mandamus as prayed for. Therefore, as soon as, order was passed by Assistant Registrar on 26.8.2017 on the objections filed by petitioner, relief sought in Civil Misc. Writ-C Petition No. 53462 of 2016 became infructuous and the same ought to have been dismissed as infructuous.

9. However, learned Single Judge while hearing the matter has proceeded to consider question of jurisdiction of Registrar as to what issue it could have considered under Sections 4 and 12 (D) of Act, 1860. It has adjudicated the aforesaid issue vide judgment dated 20.11.2017.

10. Learned counsel for the parties agreed that once Assistant Registrar passed order dated 26.8.2017, relief sought in Civil Misc. Writ-C Petition No. 53462 of 2016 rendered infructuous and thereafter aforesaid writ petition ought to have been dismissed as infructuous.

12. In view thereof this appeal is allowed. Civil Misc. Writ-C Petition No. 53462 of 2016, in view of above discussion, stands dismissed as infructuous and decision of learned Single Judge on merits and with respect to scope of jurisdiction of Assistant Registrar under Sections 4 and 12 D of Act, 1860 is set aside. We make it clear that it will be open to parties to raise the issue of jurisdiction in appropriate proceedings and the judgment under appeal shall be construed as an authority on this aspect."

(emphasis added)

16. The result is that Writ Petition No. 44908 of 2017 stood dismissed as not pressed. Writ Petition No. 53462 of 2016 stood dismissed as infructuous. Now we are concerned with present Writ Petition No. 58426 of 2017 wherein the order passed by Assistant Registrar on 26.08.2017 has been challenged partly to the extent it has observed that issues raised by petitioner are not within the jurisdiction of Assistant Registrar and outside the scope of Section 4-B of Act, 1860 and also challenges the resolution dated 17.01.2016, 07.02.2016 and 27.03.2016 in so far as membership of

petitioner has been terminated.

17. First question up for consideration before this Court is, "whether the objections raised by petitioner before Assistant Registrar are within the ambit of inquiry under Section 4-B of Act, 1860 or not".

18. For this purpose, it would be appropriate to have a glance over the objection filed by petitioner before Assistant Registrar. Copy of objection dated 23.03.2016 filed by petitioner before Assistant Registrar is on page 109 of paper book of writ petition. In aforesaid objection petitioner has arrayed himself as complainant. There are three respondents, i.e., Ch. Raghvendra Nath Singh, President, Kayasth Pathshala; Ch. Jitendra Nath Singh, Vice President, Kayasth Pathshala; and, Sri Sunil Dutt Kautilya, General Secretary, Kayasth Pathshala. Title of objection is "termination of petitioner's membership and objection under Section 4 of Act, 1860". Validity of meeting of Society was challenged by petitioner on the ground that nominated members also participated and voted though they should not have been allowed; before terminating membership petitioner was not given any opportunity and, therefore, decision of Society is in violation of principle of natural justice; Secretary misrepresented the members during meeting and did not convey petitioner's letter dated 09.11.2016 alongwith agenda. Prayer made by petitioner in objection dated 23.03.2016, reads as under:

"vr% Jheku ls izkFkZuk gS fd mi;qZDr of.kZr rF;ksa ds vkyksd esa lkslkbVht jftLV~s'ku vf/kfu;e] 1860 dh /kkjk 4 ds vUrxZr vius vf/kdkjks dk iz;ksx djrs gq, dk;Zdkfj.kh lfefr dk fu.kZ; fnukad 17-01-2016 rFkk 07-02-2016 ml lhek rd ftlesa izkFkhZ dh lnL;rk izfrefU/kr @ lekIr dh x;h gS] dks fuEu dkj.kksa ij fujLr dj fuEufyf[kr ?kks"k.kk dh tk;s& 1- dk;Zdkfj.kh lfefr ds ukfer rhl lnL;ksa esa ls mu lnL;ksa ds er dks ux.; o 'kwU; ?kksf"kr fd;k tk;s ftUgksaus mDr izLrko ds i{k esa er fn;k gSA tSlk fd dk;Zdkfj.kh dh dk;Zo`Rr fnukad 17-01-2016 ,oa 07-02-2016 ls Li"V gS fd vU;Fkk Hkh izLrko vYi er ls ikfjr fd;k x;k gSA 2- layXu izi=ksa ls Li"V gS fd uSlfxZd U;k; ds fu;eksa dk mYya?ku djrs gq;s fcuk iVy ds le{k ;g yk;s fd fdlds lkFk nqO;Zogkj gqv k gS] fdlus bldh f'kd;k; r dh gS vkSj mlds mRrj esa izkFkhZ dks mDr O;fDr ls dzkl bDtkfeu djus dk volj fn;k x;k fd ugha] iw.kZr;k pquko ;kfpdk ds fuLrkj.k esa vojks/k iSnk djus ds fy, }s"k Hkkouk ls izkFkhZ dh lnL;rk lekIr dh x;hA 3- ;g mn~?kksf"kr fd;k tk;s fd fu;ekoyh ds fu;e 11 lifBr fu;e 49 esa ukfer dk;Zdkfj.kh lfefr ds lnL;ksa dks ernku djus dh O;oLFkk fu;e fo:) rFkk viztkrkaf=d gksus ds dkj.k 'kwU; gSA 4- laLFkk dh lk/kkj.k lHkk }kjk iznRr lnL;rk dk;Zdkfj.kh lfefr }kjk lekIr djuk voS/kkfud gSA** "It is, therefore prayed that in the light of aforementioned facts, exercising power under Section 4 of Societies Registration Act, 1860, decision of Executive Committee dated 17.08.2016 and 07.02.2018 be set aside to the extent membership of applicant has been ceased/ cancelled on the following grounds and it be declared as under:

1. Votes of the Members out of thirty nominated Members of Executive Committee who have voted in favour of aforesaid agenda, be declared void.

2. It is clear from documents enclosed that without placing the matter before the Committee, as to with whom misconduct was committed, who has made complaint of the same and whether applicant has been afforded opportunity to cross-examine the said person or not, membership of applicant has been terminated violating the principles of natural justice with mala fide intention in order to create obstruction in disposal of election petition.

3. It be declared that provision of voting by members of executive committee, nominated under Rule 11 read with Rule 49, being against the law and undemocratic, is void.

4. Cancellation by Executive Committee of membership conferred on a Member by General Body of the institution, is illegal. (English translation by Court) (emphasis added)

19. Whether, Assistant Registrar can look into aforesaid issues and prayer made by petitioner before Assistant Registrar could have been addressed by him while exercising powers under Section 4-B of Act, 1860, is the moot question.

20. Section 4 of Act, 1860 requires a regular annual general meeting of Society and filing of list of members with Registrar. By U.P. Act No. 25 of 1958, there was an amendment in Section 4 and words "Registrar of Joint-Stock Companies" were substituted by word "Registrar". Another amendment was made by U.P. Act No. 52 of 1975 and existing Section 4 was renumbered as sub-section (1) and thereafter sub-section (2) was inserted w.e.f. 10.10.1975. A further amendment was made by U.P. Act No. 11 of 1984 w.e.f. 30.04.1984 and in sub-section (1) a proviso was inserted. Section 4 as it stands amended from time to time, presently reads as under:

"4. Annual list of managing body to be filed.--(1) Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not counter-sign the list, the Registrar may, in his direction, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or

abridgment of purposes made under section 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be correct copy and also a copy of the balance sheet for the proceeding year of account." (emphasis added)

21. A new Section 4-A was inserted by U.P. Act No. 52 of 1975 w.e.f. 10.10.1975 and it reads as under:

"4-A. Changes etc. in rules to be intimated to Registrar.--A copy of every change made in rules of the society and intimation of every change of address of the society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change." (emphasis added)

22. A further Section 4-B was inserted by U.P. Act No. 23 of 2013 published in U.P. Gazette Extraordinary dated 09.10.2013 and reads as under:

"4-B(1) At the time of registration/ renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the registrar of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society." (emphasis added)

23. The reason for insertion of Section 4-B mentioned in "Statement of Objects and Reasons", of U.P. Act No. 23 of 2013 is that there is no provision of filing of list of General Body of Society and a large number of disputes in Societies are raised due to non existence of correct list of General Bodies with Registrar. In several cases an illegal person fraudulently produces before Registrar incorrect list of General Body of Society and claims to be the member and office bearer of such Society.

24. In order to avoid such situation it was decided to amend Act, 1860 for its application to State of U.P. and that is how Section 4-B came to be inserted in Act, 1860. List of members of General Body of Society has to be filed at the time of registration or renewal of Society. List must mention names, father's name, address and occupation of members. Registrar is under a statutory duty to examine correctness of list of members of General Body of such Society on the basis of register of members of General Body and minutes thereof, cash book, receipt book of membership fee and Bank pass book

of Society. Apparently it shows that members included in the list, whether included correctly, has to be examined by Registrar. If a member is not included in list, whether such non inclusion also can be examined by Registrar is not very clear from Section 4-B(1) of Act, 1860 but this is made clear by sub-section (2) which says that if there is any change of list of members of General Body of Society referred to in sub-section (1) on account of induction, removal, registration or death of any member, a modified list of members of General Body shall be filed with Registrar within one month from the date of change.

25. A plain reading of above provision shows that at the time of registration or renewal, a list of members of General Body of Society has to be filed by Assistant Registrar. Thereafter whenever there is any change in said list, same has to be informed to Registrar by submitting a modified list of members of General Body. When such a modified list is submitted to Registrar, in our view, examination allowed to be made by Registrar in respect of correctness of list of members of General Body in sub-section (1) would also include removal of member(s) for the reason, when modified list is communicated to Registrar, whether modification is on account of induction or removal in any manner, both aspects and correctness thereof can be and must be examined by Registrar.

26. The incidental question which immediately crops up is the extent of authority of Registrar of such examination. Whether it is an indepth examination which may be termed as adjudication of dispute or it is a summary inquiry subject to adjudication of dispute by a Court of Law.

27. On this aspect various judicial precedents have been relied by parties and we may examine the same at length so as to complete our search to answer the questions formulated above.

28. In Committee of Management A.S. Degree College Association and another vs. State of U.P. and another, 2016(4) ADJ 207 a learned Single Judge (Hon'ble M.K. Gupta, J.) had the occasion to examine Section 4-B of Act, 1860. A complaint was made alleging illegal induction of 1450 members of Society. Since said complaint was not entertained and decided by Assistant Registrar, a writ petition was filed which was disposed of vide judgment dated 20.01.2016 directing Assistant Registrar to take necessary action to conclude the proceedings. Thereupon a notice was issued by him to office bearers of Society. Communication dated 18.02.2016 was challenged in above writ petition by Society on the ground that Assistant Registrar has no power to make inquiry under Section 4-B since examination permitted under Section 4-B is only at the stage of registration or renewal of Society and not otherwise. It was argued before Court that renewal was granted on 30.11.2011 and is valid for five years from 26.09.2011, therefore, in between no examination and inquiry was permissible by Assistant Registrar. This Court referred to Section 4-B and Statement of Objects and Reasons for its insertion by U.P. Act No. 23 of 2013. Court held that sub-sections (1) and (2) of Section 4-B have to be read together and harmoniously. The object of Act is to minimize litigation which may crop up on account of non existence of a valid list of General Body. Court said that sub-section (1) of Section 4-B is only an enabling provision whereunder a list of General Body is required to be filed at the time of registration/ renewal of Society. It does not mean that in case such list is not in existence as the registration/ renewal had taken place before insertion of Section 4-B of Act, 1860, Registrar will have no power to decide a membership dispute subsequently. Court further said, in reference to facts of that case, as under:

"Concededly, in the instant case, the petitioners claim to have inducted 1450 members and also expelled Dr. Naresh Chandra from the General Body. They are also holding election by altering the electoral college accordingly. The adjudication of these questions by the Registrar would undoubtedly minimise the chances of a dispute in future and will thus effectuate the legislative intent. In such view of the matter, this Court does not find any illegality in the proceedings that have been undertaken by the second respondent on the basis of the complaint made by the third and the fourth respondent." (emphasis added)

29. The writ petition was decided by permitting Society to produce relevant record before Registrar and to show valid induction/ expulsion of members.

30. Anjuman Farogh-E-Islam and others vs. State of U.P. and others, 2014(5) ADJ 673 is also a decision of learned Single Judge (Hon'ble P.K.S. Baghel, J.) considering Section 4-B of Act, 1860. Anjuman Farogh-e-Islam, Kanpur is a Society initially established by nine members. The affairs of Society were regulated by bye-laws. Its registration was renewed from time to time and last renewal was on 12.05.2004 for a period of five years. Alleging that Mohammad Aslam, Secretary of recognised management was not taking steps for holding election, a complaint was made to Deputy Registrar with a request to appoint an observer for holding election. Notice was issued by Deputy Registrar to Secretary but instead of replying, Secretary submitted an information that election was already conducted on 20.11.2004. Complaint was made that alleged election was conducted on the basis of fictitious electoral roll containing names of 19 members which was not at all enrolled as members of Society. Deputy Registrar did not entertain the complaint and instead recognized election claimed by Secretary to have been held on 20.11.2004. Order of Deputy Registrar recognizing election was challenged in Writ Petition No. 46831 of 2005. Court taking the view that matter was not properly examined by Deputy Registrar and appropriate forum was prescribed under Section 25(1) of Act, 1860, set aside order dated 27.05.2005 and directed Deputy Registrar to transmit record to Prescribed Authority. Prescribed Authority decided matter vide order dated 27.09.2007 and held election set up by Secretary on 20.11.2004, illegal. Prescribed Authority directed Deputy Registrar to hold fresh election under Section 25(2) of Act, 1860 from among 11 members. This order of Prescribed Authority was challenged in Writ Petition No. 62144 of 2007 which was dismissed vide judgment dated 20.12.2007. Deputy Registrar then published a tentative list of 37 members allegedly enrolled prior to 20.11.2004. Objections were filed. Vide order dated 23.12.2009, 23 members were declared constituting electoral roll and on that basis election was held on 30.12.2009. Said determination of electoral roll by Deputy Registrar's order dated 23.12.2009 was challenged in above writ petition. It was also claimed that pursuant to electoral roll finalized by Registrar vide order dated 23.12.2009, election programme was notified on 29.12.2009 and election was held on 30.12.2009 though conduct of said election was clearly challenged by petitioner in above case. This Court found that Prescribed Authority had examined matter and found vide order dated 27.09.2007 that there were only 11 valid members on the date when last election was held on 20.11.2004. Said order of Prescribed Authority was challenged in Writ Petition No. 62144 of 2007 which was dismissed vide judgment dated 20.12.2017, therefore, Deputy Registrar could not have made a fresh determination of electoral roll under the pretext that while dismissing writ petition vide judgment dated 20.12.2007, Court has observed that if any person has been or is being made a

valid member the same may also participate in election. Deputy Registrar by adding 13 members has failed to examine the fact, whether they were enrolled in terms of bye laws of Society or not. Court observed that Deputy Registrar had not even recorded its findings as to how and in what manner these 13 persons had become members of Society. While making above observations referring to Section 4-B of Act, 1860 Court has said in paras 24, 25 and 26, as under:

"24. From a plain reading of Section 4-B of the U.P. Act 2013 of it is discernible that now all the Societies at the time of the registration or renewal of certificate, as the case may be, are required to submit a list of members of general body alongwith their required documents. The Registrar has been empowered to examine the correctness of a list of members of general body on the basis of register of members of general body, Minute Books, Cash Book, Receipt book of membership and Bank etc. of the Society. It further requires that if there is change in the list of the members of the general body of the Society due to enrollment of new members, bare resignation or removal, the modified list of members of general body is required to be filed with the Registrar within one month from the date of the change.

25. From the aforesaid amendment it is also evident that the intention of the legislature is to minimize the dispute of the Societies as in the most societies the disputes are with regard to validity of enrollment of the members and the election held on the basis of disputed members.

26. The requirement of Section 4-B of the U.P. Act No. 23 of 2013 is for all the Societies at the time of registration / renewal of a Society, therefore, requirement under Section 4-B of the U.P. Act No. 23 of 2013 can be applied in pending cases also. If there is a dispute with regard to the enrollment of the fresh members, the Registrar can direct the parties concerned to produce the minutes book, cash book, membership fee receipts etc. to establish that the enrollment was in terms of the bye-laws. If the Registrar examines the validity of the enrollment of the members on the basis of the aforesaid documents, it would ensure that rank outsider could not be able to control the affairs of the Society on the basis of fake documents." (emphasis added)

31. The above judgment shows that under Section 4-B, scope of inquiry by Registrar is to see validity of enrollment of members on the basis of documents referred in Section 4-B and to ensure that outsiders may not be able to control the affairs of Society on the basis of fake documents.

32. In Sri Jain Dharm Parvardhani Sabha, Daliganj, Lucknow and another vs. State of U.P. and others, 2016(34) LCD 503 scope of Section 4-B was examined by a Division Bench. Sri Jain Dharm Parvardhani Sabha, a Society, was registered on 06.09.1972 under Act, 1860. Registration was renewed on 24.09.1996 w.e.f. 10.10.1985 and was valid till 09.10.2000. After 13 years an application for renewal was filed on 27.11.2013 and registration of Society was renewed on 31.12.2013. An application for recall of order dated 31.12.2013 was filed which was rejected by Deputy Registrar on 11.12.2014. A writ petition was filed in this Court at Lucknow. On 23.01.2015 Registrar passed an

order accepting list of members of committee of management and allowing amendment in bye laws. This was challenged in another writ petition wherein an interim order was passed directing Registrar/ Deputy Registrar to decide upon rival list of members of General Body and finalise list of members. General Body thereafter was to hold election as per finalized list of members. Deputy Registrar, thus, finalized list of members of General Body on 20.07.2015. This order was set aside on the ground of violation of principle of natural justice and matter was remanded. A fresh order was passed which was challenged in writ petition again but the same was dismissed by learned Single Judge vide judgment dated 14.10.2015. Then the matter was taken in intra-Court appeal wherein it was held that submission of list of members alongwith relevant documents which are to be examined by Registrar is related with time of renewal of registration and since in above case order of renewal was passed on 31.12.2013, by which time Section 4-B already come in statute book, it had to be given effect to and Deputy Registrar has erred in law in holding that Section 4-B in above case was not applicable. This Court then observed that learned Single Judge after holding that Section 4-B was applicable in the case, ought to have referred the matter to Deputy Registrar to examine correctness of list of members in the light of Section 4-B and pass order accordingly. Aforesaid judgment, in our view, does not help at all on the issue as to what is the scope of examination under Section 4-B of Act, 1860.

33. Adarsh Sanskrit Vidyalaya and others vs. Committee of Managemenr, Adarsh Sanskrit Vidyalaya, Ambedkar Nagar and others, 2016(9) ADJ 679 is also a Division Bench judgment. Last election of Adarsh Sanskrit Vidyalaya (Society) was held on 10.08.2005. Renewal of Society was allowed on 19.03.2008 for a period of five years w.e.f. 10.10.2005. A list of 26 members was communicated to Registrar in which names of Sri Hriday Narayan Mishra and Sri Sarju Prasad Dubey did not include. It was alleged that a lot of manipulation was made by Sri Hriday Narayan Mishra in collusion with one, Man Singh, and by submitting a forged letter it was informed that fresh election held on 10.08.2009, allegedly confirmed on 06.09.2009. There is document also indicating Man Singh as President, Sarju Prasad Dubey as Vice President and Hriday Narayan Mishra as Member. A complaint was filed and a request was also made to supply documents which are forged and fabricated and inserted in file. Sri Hriday Narayan Mishra submitted reply giving list of 25 members of General Body claiming that they are life members of Society and had deposited fee. It was claimed that documents submitted by Sri Hriday Narayan Mishra are all fake and forged. The objection filed by respondent no. 2 in said case was rejected by Deputy Registrar vide order dated 13.07.2010 and he acknowledged documents submitted by Sri Hriday Narayan Mishra. This order dated 13.07.2010 was challenged in Writ Petition No. 5043(MS) of 2010. Learned Single Judge vide judgment dated 13.03.2013 allowed writ petition, set aside order passed by Deputy Registrar and directed him to examine the matter again. Deputy Registrar reconsidered and recorded a finding in its order dated 23.08.2013 that Sri Hriday Narayan Mishra was minor on 12.07.1976 when he claimed to have become member of General Body of Society and thus his membership was nothing but a nullity. It, however, said that list of 25 members submitted by Sri Hriday Narayan Mishra would be treated valid for holding fresh election, excluding name of Sri Hriday Narayan Mishra, and direction was issued to hold fresh election. This list included Man Singh and Sarju Prasad Dubey. This order dated 23.08.2013 passed by Deputy Registrar was challenged in Writ Petition No. 5518 (MS) of 2013 which was dismissed as withdrawn with liberty to file fresh one. Fresh Writ Petition No. 6484 (MS) of 2013 was filed. Vide judgment dated 05.07.2016

writ petition was allowed by learned Single Judge holding that Deputy Registrar erred in not examining correctness of all 25 members of General Body. This judgment of learned Single Judge dated 05.07.2016 came up for consideration in intra-Court appeal before Division Bench, which upheld direction given by learned Single Judge that Deputy Registrar erred in law in not examining correctness of membership of entire list submitted by Sri Hriday Narayan Mishra and in this regard referred to Section 4-B of Act, 1860 but did not deal on the scope of Section 4-B, as to what extent and in what manner Registrar has to examine the matter. It, however, upheld the judgment of learned Single Judge. Therefore, we do not find that above judgment would render any help in answering the issue up for consideration before us.

34. Executive Committee, Saraswati Bal Mandir Shiksha Samiti & Anr. vs. State of U.P. and 2 others (Writ Petition No.51358 of 2016) decided on 25.10.2016 is a judgment rendered by learned Single Judge (Hon'ble Ashwani Kumar Mishra, J.) wherein an order dated 24.9.2016 passed by Deputy Registrar was challenged whereby Deputy Registrar has discarded registration of list of office bearers submitted by petitioner in that case and instead Deputy Registrar accepted claim of respondent no.3 therein. The dispute related to Saraswati Bal Mandir Shiksha Samiti, Ludhiyani, Tehsil Bharthana, District Etawah, a Society registered under Act, 1860. Under the bye-laws, Manager/Mantri had right to enroll a new member. He was free to accept any application for the said purpose. Bye-laws also provided that founding member, and in his absence, his legal heirs alone would be elected as manager of the Society. The decision to terminate membership could be taken by Managing Committee of Society by majority. Bhagwan Singh Bhadauria claimed to have been enrolled as a member in a meeting dated 01.7.2011, chaired by Vice President Madan Pandey, and, subsequently elected as President in the meeting dated 10.12.2011, which was also chaired by Madan Pandey. Deputy Registrar did not accept the said claim of Bhagwan Singh Bhadauria stating that Madan Pandey himself has filed an affidavit that no meeting on 01.7.2011 was held which was chaired by him. Therefore, Bhagwan Singh Bhadauria was not even a member of Society. The order of Deputy Registrar was challenged on the ground that since there was a dispute with regard to office bearers of Society, Deputy Registrar had no jurisdiction to take a decision and matter ought to have been referred to Prescribed Authority under Section 25(1) of Act, 1860. Respondents contended that attempt of Bhagwan Singh Bhadauria was to grab Society with manipulated documents and, therefore, Deputy Registrar has rightly rejected his claim. This Court found from record that Society was founded in 2010. Madan Pandey was one of the original members of Society. He submitted an affidavit disowning any meeting chaired by him. Since Bhagwan Singh Bhadauria claimed to have become member of Society in the meeting dated 01.07.2011, which itself was disowned by Madan Pandey, finding recorded by Deputy Registrar that petitioner could not establish his membership is based on appreciation of material available on record and is not erroneous. The above inquiry and finding recorded by Deputy Registrar, learned Single Judge found within the scope of Section 4-B of Act, 1860. Court also took the view that since there was no bona fide dispute, Section 25 of Act, 1860 is not attracted.

35. Syed Akhtar Hasan Rizvi Vs. State of U.P. and Ors. (Special Appeal No.261 and 263 of 2015) decided on 07.01.2016 is a Division Bench judgment of this Court at Lucknow. The dispute relates to Board of Trustees of Shia College and School and other connected institutions, which was registered as a Society under Act, 1860. Vide resolution dated 14.10.2011, membership of three members was

ceased by the Society. The said three members challenged resolution dated 14.10.2011 before Deputy Registrar, who vide order dated 17.10.2012 held resolution dated 14.10.2011, illegal. The Deputy Registrar's order dated 17.10.2012 was challenged by Society in Writ Petition No.6597 (MS) of 2012 wherein no interim order was passed. In the meeting dated 28.6.2014, General Body resolved to withdraw writ petition and restored membership of above three members in whose favour Deputy Registrar had passed order dated 17.10.2012. It was also resolved that list of members of Society shall be filed before Deputy Registrar for certification. List of members of General Body as on 28.6.2014 was filed by Secretary before Deputy Registrar on 03.09.2014. Writ petition No.6597 (MS) of 2012 was also withdrawn on 05.09.2014. Many objections were filed before Deputy Registrar against above list of General Body. Deputy Registrar, however, vide order dated 17.10.2014 accepted the list after including name of S.Mazhar Abbas. In the meantime, in furtherance of order dated 17.10.2012, Reference was also made under Section 25(1) of Act, 1860, which was dismissed for want of prosecution on 10.7.2014. A recall application was filed and Prescribed Authority, vide order dated 18.10.2014, recalled order dated 10.7.2014. Thereupon, Writ Petition No.7042 (MS) of 2014 was filed in the name of Society through President S.M.Raza Ali Khan, assailing order dated 17.10.2014. Here also, no interim order was passed. In the meantime, a General Body meeting was held on 14.11.2014. List of members of Society was filed before Deputy Registrar on 17.11.2014, who issued notice to Raza Ali Khan and Hidayat Husain on 25.11.2014. Subsequently, vide order dated 03.01.2015, Deputy Registrar held claim of Raza Ali Khan and Hidayat Husain as non bona fide. Deputy Registrar took list of office bearer filed by Society on record. Again, Writ Petition No. 71 (MS) of 2015 was filed challenging order dated 03.01.2015 passed by Deputy Registrar. Writ Petition No.71(MS) of 2015 and 7042 (MS) of 2014 were disposed of vide judgment dated 01.7.2015 by quashing order dated 17.10.2014 and 03.01.2015. Learned Single directed that membership as on 15.11.2009 be taken as basic membership after excluding deceased members and members whose term has expired. It also directed that membership of members as on 15.11.2009 was extended for a further period of five years w.e.f. 10.10.2014 and members elected in the years 2010, 2011, 2012, 2013 or before 10.10.2014 be subjected to fresh election. A direction was given to Registrar to hold fresh election of office bearers under his supervision and in interregnum period, a High Level Committee comprising five members be constituted to take charge of affairs of the College. This judgment of learned Single Judge passed on 01.07.2015 in the above two writ petition was challenged in the two special appeals. Division Bench observed that under Section 4-B of Act, 1860, Registrar is obliged to examine correctness of list of members of General Body of aforesaid Society on the basis of register of members of General Body, minutes book, cash book, receipt book of membership fee and bank passbook. Court observed that renewal of Society was made on 30.10.2010 and list of members submitted to Registrar was not objected by anyone till that date. Thus, there was no dispute of members till 30.10.2010. Court held that subsequent election and induction of members were two different issues and Deputy Registrar was competent to consider question of membership and any person aggrieved by his decision may avail remedy before Civil Court. Referring to Section 4-B of Act, 1860, Court observed that at the time of registration/renewal of Society, list of members of General Body of Society has to be filed before Registrar. Thereupon, Registrar is obliged to examine correctness of list of members of General Body of Society on the basis of register of members of General Body, minutes book, cash book, receipt book of membership fee and bank passbook. Court said :

"29. Sub-section (2) of Section 4-B of the Act casts an obligation upon the Society to inform the Registrar that if there is any change in the list of members of the General Body of the Society on account of induction, removal, resignation or death of any member, a modified list of members of General Body to be filed within a period of one month.

30. Whether the list furnished at the time of registration/ renewal of the Society has to remain valid forever or if there is any change in the said list at any point of time, then that change has to be informed to the Registrar under sub-section (2) of Section 4-B of the Act on account of induction, removal, resignation or death of any member.

31. What was the intention of the legislature in enacting Section 4-B(1) and (2) of the Act. Section 4-B(1) operates in a given contingency at the time of registration/renewal of the Society, but the legislature contemplates that there should not be any loss of communication in regard to the validity of the members between the Registrar and the Society and so in its wisdom, the legislature in sub-section (2) laid down that a continuous exercise should be undertaken by the Society, informing the change in the membership within a period of one month." (emphasis added)

36. Construing sub-sections (1) and (2) of Section 4-B of Act, 1860 harmoniously, Court clearly said that examination of correctness of list if confined only at the time of registration/renewal, it will exclude subsequent change in the membership till next renewal and that will defeat the purpose that bogus membership dispute should not stake to obstruct simple functioning of Society and induct bogus claim. Therefore, if any change in membership takes place within the period when next renewal is due, such change is also to be informed to Registrar and he is empowered to look into the correctness of such change. We may notice paras 32 and 33 of the judgment of Division Bench making observations for harmonious interpretation of entire Section 4-B of Act, 1860 as under :

"32. If the aforesaid interpretation is not given in such a harmonious manner, then the list of members filed at the time of registration/renewal of the Society will be there upto the next renewal, but if any change in the membership takes place within five years as the renewal of the Society falls due in five years, then whether that change is required to be informed to the Registrar or not. The Registrar will be clueless and will be lacking information, if in the meantime, various members in the General Body are inducted by the Society, though inducted in accordance with the provisions contained in the bye-laws. The Registrar can place as check on illegal induction in this manner.

33. The rider of one month imposed in sub-section (2) itself is indicative of the fact that if there is any change at any point of time, then the same should be informed to the Registrar within a period of one month, and this can be the only interpretation of sub-sections (1) and (2) of Section 4-B of the Act, keeping in view the statement of objects and reasons, which states that in order to curb the menace of fraudulent list being produced before the Registrar by unscrupulous persons, a check was required

to be placed. Now the check, which is required to be placed, is to be placed in a continuous manner and if it is in piece-meal, then it is to be of no avail and the intention of the legislature will stand defeated in regard to validity of the list of members of the General Body being submitted before the Registrar at the time of registration/renewal. The mischief is required to be checked and if it is checked, then under sub-section (2) of Section 4-B of the Act, the Society must inform the Registrar regarding the change in the membership after the registration/renewal takes place upto the period of next renewal. The legislature does not presume vacuum and if there is any *causus omissus*, then the same can be supplied by the Court." (emphasis added)

37. Court also observed that in making inquiry under Section 4-B of Act, 1860, Registrar is not a Post Office but supposed to act administratively by applying his mind on the facts and documents placed before him. Division Bench also referred to Supreme Court judgment in *A.P. Aboobaker Musaliar vs. District Registrar (G), Kozhikode and others* (2004) 11 SCC 247 and observed that when more than one returns are filed before Registrar, it may not hold an elaborate enquiry but bound to satisfy himself *prima facie* as to which return is to be accepted. Inquiry made by Registrar is not final and aggrieved party can always take up the matter before a Competent Court. Court also held that term "membership" has been defined under Act, 1860 and it indicates that a member of a Society shall be a person who, having been admitted therein according to rules and regulations, paid subscription, signed the roll or list of members and has not resigned in accordance with such rules and regulations. Hence, upholding action taken by Deputy Registrar, Court in para 55 of judgment observed :

"The original records were deposited by the appellant. The Deputy Registrar has undertaken exercise to verify the membership on the basis of agenda, proceedings, membership register and passbook of the bank account etc., and found that there was nothing illegal in the induction of those members and proceeded to accept the membership under Section 4-B of the Act on 17.10.2014." (emphasis added)

38. This judgment makes it clear that under Section 4-B of Act, 1860, Registrar is not supposed to make adjudication of dispute of correctness of membership like a Court but whenever a list is submitted or there is any change in the list of members and any objection is raised or otherwise, Registrar has to *prima facie* satisfy himself that change has been made in accordance with provisions of bye-laws and *prima facie* genuine. For this purpose, Registrar may examine agenda, minutes of meeting and other relevant steps taken by Society. To this extent, an inquiry can be made by Registrar to find out whether list of members or change in list of members is correct or not.

39. *Hari Singh Vs. State of U.P. & Ors.* 2015(9) ADJ 445 is a judgment of learned Single Judge (Hon'ble Rajan Roy,J.) adjudicating upon legality of an order passed by Prescribed Authority under Section 25(1) of Act, 1860. Two members were ousted from Society and at their behest, Deputy Registrar made a Reference to Prescribed Authority vide letter dated 07.10.2014 since those members claimed to have been elected as office bearer i.e. President and General Secretary of Society. One of the members sought to be disqualified due to conviction in criminal case by taking

recourse to Section 16-A of Act, 1860. Referring to Section 16-A of Act, 1860, learned Single Judge observed that disqualification is not automatic but there has to be a determination by concerned authority about existence of factors mentioned in Section 16-A for the reason that conviction in respect of every offence may not necessarily involve moral turpitude. We find that dispute in the above case was different and above judgment does not help at all in deciding the question with regard to scope and ambit of investigation by Registrar under Section 4-B of Act, 1860.

40. Sarvendra Veer Vikram Singh and others Vs. State of U.P. and others 2017(8) ADJ 671 is also a Single Judge judgment (Hon'ble Devendra Kumar Upadhyaya, J.) The dispute relates to Smarak Higher Secondary School, Ambedkar Nagar, a Society registered under Act, 1860. Order of Deputy Registrar passed on 21.6.2017, whereby he revoked his earlier order dated 20.12.2016 declaring it void, was challenged before this Court at Lucknow. Deputy Registrar, vide order dated 20.12.2016, has accepted a list of 70 members of Society. The said order was recalled by order dated 21.6.2017 and Deputy Registrar accepted a list of only 24 members of General Body and issued directions to Society accordingly. Court found that so far as 24 members are concerned, in respect thereto, there was no dispute. The remaining were new members, which were accepted by Deputy Registrar by earlier order dated 20.12.2016, which was declared void by subsequent order dated 21.06.2017. The argument was raised before Court that under sub-section (2) of Section 4-B of Act, 1860, Deputy Registrar is not supposed to make any inquiry. It is specifically stated in sub-section (1) of Section 4-B of Act, 1860. This argument was rejected by learned Single Judge observing that Section 4-B of Act, 1860 requires filing of a list of members and whenever there is any modification, communication of such modification has been made to Registrar. If inquiry of correctness of such information is not to be read in Section 4-B, sub-section (2), mischief, which legislature intend to remove, would continue and scrupulous persons, in the garb in change in the list, may obstruct the very objective for which Section 4-B was inserted. The correct interpretation, therefore, would be that Registrar, at any stage, whenever list of members is filed which includes change in the list also, would examine correctness of such information. Court held that when a change is intimated and there is no dispute, Registrar may not go into any inquiry about correctness, but, if there is any dispute or objection, then such inquiry would have to be made by Registrar. In the aforesaid case, Court however, observed that since Registrar has recalled its earlier order dated 20.12.2016, it could not have been done without giving an opportunity to affected members to present their case. This required observance of principles of natural justice. Court observed that oral hearing may not be necessary and only representation by affected person would be sufficient to fulfill bare minimum compliance of principles of natural justice before an order already passed is reviewed. The above judgment also stands on its own facts and in our view, gives no indication as to the extent of inquiry to be made by Registrar under Section 4-B of Act, 1860.

41. There are other authorities relied by learned counsel for petitioner, which we find are not in the context of Section 4-B of Act, 1860 but deal with some other aspects.

42. Ranveer Singh Vs. State of U.P. and others 2017(1) ADJ 240 is a case arising from proceedings under Mines and Minerals (Development and Regulation) Act, 1957 read with Uttar Pradesh Mineral (Prevention of Illegal Mining Transportation & Storage) Rules, 2002. Notices effecting recovery to certain persons were challenged on the ground of violation of principles of nature justice. Division

Bench of this Court held that an order of recovery affect civil rights of a person and thus a show cause notice giving details of relevant facts and also material relied by authorities is necessary. It is a detailed judgment particularly for the reason that Act and Rules under consideration did not contemplate or provide a procedure to be adhered by authorities concerned in the matter of fixing financial liability upon a person engaged in illegal mining. In the absence of any statutory provision, Court read therein 'principles of natural justice' holding that it is part of fair play and cannot be excluded. It is in this context, in para 33 of judgment, Court said :-

"Once the liability was to be fastened on the shoulder of petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in-fact has indulged in illegal mining. Not only this as a part of process, petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss." (emphasis added)

43. Dwarka Nath vs. Income Tax Officer, Special Circle, D Ward, Kanpur AIR1966 SC 81 is also a decision arising from proceedings under Income Tax Act, 1922 and we do not find that aforesaid judgment has any application on any aspect of the matter in the present case.

44. Indian National Congress India vs. Institute of Social Welfare and others (2002) 5 SCC 685 is a decision rendered in respect of proceedings initiated by Election Commission of India under Section 29A of Representation of People Act, 1951 and we find nothing therein which may help the petitioner on the issue in the present writ petition and reliance on above judgment, in our view, is palpably misconceived.

45. In T.P.Daver Vs. Lodge Victoria Air 1963 SC 1144 Court had occasion to consider scope of judicial review in respect of an issue of expulsion of member by an Association of persons like a club. It related to Masonic Lodge called "Lodge Victoria No. 363 S.C." at Belgaum. There was a Scottish institution known as "Grand Lodge of Ancient Free and Accepted Masons of Scotland" at Edinburgh. Under its supervision, several Lodges were constituted at Provincial or District level throughout the world. There are Daughter Lodges under the superintendence of District Grand Lodges. The Grand Lodge of Scotland is governed by its own written Constitution and Laws. There is also a separate Constitution and Laws for every District Grand Lodge. One such District Grand Lodge known as "The Grand Lodge of All Scottish Freemasonry in India and Pakistan" had its headquarters at Bombay. The daughter Lodge at Belgaum was directly under the said District Grand Lodge and

governed by the Constitution and Laws of said District Grand Lodge. Appellant T.P.Daver was a member of Lodge Victoria, joined sometimes in 1948. A complaint was made against him that he is guilty of 12 masonic offences and should be tried by Lodge for the charges levelled against him under Law 198 of the Constitution. After giving notice and holding proceedings, a resolution was passed to exclude T.P.Daver from the Lodge until exclusion is confirmed by District Grand Lodge under Law 199 of the Constitution. Sri Daver preferred an appeal against said resolution to District Grand Lodge, who rejected the said appeal. A further appeal was filed before Grand Lodge of Scotland, who held that sentence imposed upon appellant as one of "suspension sine die" and recommended to Lodge Victoria to review suspension after a period of 12 months if appellant apply for reinstatement. A suit was filed by Sri Daver in the Court of Civil Judge, Senior Division, Belgaum, for a declaration that resolution of Victoria Lodge dated November 8, 1952, was illegal and void and he continued to be a member of the Lodge. Suit was dismissed and thereagainst appeal preferred before High Court also failed and then matter went to Supreme court. Court observed that source of power of Associations like Clubs and Lodges to expel their members is the contract on the basis of which they become members. Court further held that in respect of Domestic Tribunals, principles, which have been laid down in various authorities are: (1) A member of a masonic lodge is bound to abide by the rules of lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules, whether a particular rule is mandatory or directory, falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of civil court is rather limited; it cannot obviously sit as a court of appeal upon decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra. The matter was thereafter examined and Court found that member of Lodge acts both as prosecutor as well as judge. The case of a private Association or Lodge has to be dealt with in the light of Rules made by such body and it cannot be equated with a Tribunal or Court. The decision was taken by Lodge after giving a show cause notice and application of principles of natural justice has to be seen in the context that rules applicable to Tribunals and Courts cannot mutatis mutandis be applied to such bodies as Lodges. Civil Courts have also no jurisdiction to decide on the merits of a decision given by a private Association like a Lodge.

46. In Allahabad High School Society, Allahabad and Another Vs. State of U.P. and others 2011 (4) ADJ 341, a learned Single Judge (Hon'ble V.K.shukla,J.) considered correctness of decision dated 24.7.2010 taken by Assistant Registrar annulling resolution dated 28.5.2007 passed by Allahabad High School Society, Allahabad, registered under Act, 1860. It examined power of Registrar on the validity of amendment made in the bye-laws. Court observed that Registrar is not a mere post office but can examine whether alleged resolution making amendment in bye-laws is forged, fictitious or otherwise patently illegal. Court also said that though amendment in bye-laws except for the change in the name do not require Registration but all changes in the rules are mandatorily required to be intimated to Registrar, who has to maintain record and hence when it is brought to its notice that there is any manipulation, maneuvering etc., he can examine the said issue. Similar view was taken by Division Bench in Allahabad High School Society, Allahabad and others vs. State of U.P. and others 2011(4) ADJ 887, which in fact, a judgment in appeal against Single Judge judgment in Allahabad High School Society, Allahabad and Another Vs. State of U.P. and others 2011 (4) ADJ

341 and Division Bench confirmed view taken by learned Single Judge. We find that the matter was taken by Allahabad High School Society, Allahabad to Supreme Court and Supreme Court dismissed appeal vide judgment reported in (2011) 6 SCC 118.

47. The above judgments, therefore, have no relevance for the purpose of case in issue before us.

48. The other authorities relied by petitioner i.e. Ashwinkumar K.Patel vs. Upendra J. Patel and others AIR 1999 SC 1125; P.Purushottam Reddy and another vs. Pratap Steels Ltd. 2002(48) ALR 319 (SC); Rahdey Shyam and others vs. State of U.P. and others 2013 (7) ADJ 71; Pushpa Devi and another vs. Binod Kumar gupta and another AIR 2004 SC 1239 and Rabindra Kumar ghosel vs. The State of West Bengal AIR 1975 SC 1408 have no application to the facts of present case as the said judgments are on totally different aspects.

49. On behalf of respondents, Sri S.D.Kautilya, Advocate, has placed reliance on a three Judges judgment in Satya Pal Anand vs. State of Madhya Pradesh and others (2016) 10 SCC 767. Therein dispute had arisen relating to a Co-operative Society governed by Madhya Pradesh Co-operative Societies Act, 1860 (hereinafter referred to as "MPCS Act, 1860"). Punjabi Housing Cooperative Society Ltd. was a Society registered under the said Act. It allotted plot no.7-B at Punjabi Bagh, Raisen Road, Bhopal to Smt. Veeravali Anand, mother of Satya Pal Anand vide registered deed dated 22.3.1962. Smt. Veeravali Anand died on 12.6.1988. Society through its office-bearer executed through its office-bearer a deed of extinguishment on 09.8.2001, unilaterally, cancelling allotment of plot to Smt. Veeravali Anand alleging violation of Bye-laws of Society by not raising any construction on the allotted plot within time. Society also executed a registered deed dated 21.04.2004 in favour of Mrs. Manjit Kaur allotting the said plot to her. Satya Pal Anand objected to above execution of deed. A compromise deed was executed between Society and Mrs. Manjit Kaur on the one hand and Satya Pal Anand on the other hand wherein a sum of Rs. 6.50 Lakh (Rupees Six Lakh Fifty Thousand) was paid to him. Despite compromise, Satya Pal Anand raised dispute by filing a petition before Deputy Registrar, Cooperative Societies under Section 64 of MPCS Act, 1860. He challenged Society's action of registering extinguishment deed dated 09.8.2001 and allotment of disputed plot to Mrs. Manjit Kaur vide deed dated 21.4.2004 and sought declaration that he continues to be owner of said plot having inherited the same. During pendency of dispute, Society further permitted transfer of disputed plot in favour of Smt. Meenakshi and Mr. S.C. Sharma vide registered Deed dated 11.7.2006. A notice was also issued to Satya Pal Anand to refund consideration amount received by him pursuant to compromise deed dated 06.7.2004. He did not pay any heed and instead continued with proceedings and also initiated criminal proceedings. Satya Pal Anand moved an application before Sub-Registrar (Registration) seeking cancellation of registration of Extinguishment Deed dated 09.8.2001 and subsequent deeds dated 21.4.2004 and 11.7.2006 respectively. Sub-Registrar (Registration) vide order dated 28.06.2008 rejected application. Satya Pal Anand approached Inspector General (Registration) under Section 69 of Registration Act, 1908 (hereinafter referred to as "Act, 1908"), who also rejected his application vide order dated 19.09.2008. Satya Pal Anand brought the matter to High Court of Madhya Pradesh at Jabalpur but writ petition was dismissed on the ground that Satya Pal Anand had already availed alternative remedy under MPCS Act, 1860. While dismissing writ petition, Court also entered some issues touching on merits. When the matter went to Supreme Court, two divergent views were taken

by Hon'ble Dipak Misra,J (as His Lordship then was) and Hon'ble V.Gopala Gowda,J. Hence matter came to be referred to a three judges Bench. Hon'ble A.M.Khanwilkar, J. deciding the matter, delivering an unanimous judgment, held that questions raised before Court are :

"(a) Whether in the fact situation of the present case, the High Court was justified in dismissing the Writ Petition?

(b) Whether the High Court in exercise of writ jurisdiction Under Article 226 of the Constitution of India is duty bound to declare the registered Deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (Appellant) has already resorted to an alternative efficacious remedy Under Section 64 of the Act of 1960 before the competent Forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an Extinguishment Deed for that purpose?

(c) Even if the High Court is endowed with a wide power including to examine the validity of the registered Extinguishment Deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent Forum under the Act of 1960?

(d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an Extinguishment Deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers Under Section 69 of the Act of 1908?

(e) Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 9th August 2001, unilaterally presented by the Respondent Society for registration?

(f) Whether the dictum in the case of Thota Ganga Laxmi and Anr. v. Government of Andhra Pradesh and Ors. (2010)15 SCC 207 is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"

50. Issues (a), (b) and (c) were taken together and Court held that High Court rightly declined to interfere on the ground that Satya Pal Ananad has already availed alternative remedy and multiplicity of litigation should not be allowed. On this aspect, Bench concurred with the view taken by Hon'ble Dipak Misra, J. (as is Lordship then was). Court also observed that decision of Society to cancel allotment of a plot to its member or to rescind its membership and to allot a plot to another member, is the business of Society. A Writ Court remedy cannot be used for declaration of private rights of parties or enforcement of contractual rights and obligations. Court also observed that Society being a Cooperative Housing Society is governed by its bye-laws. Members are obliged to

erect houses on the plot allotted to them within specified time, failing which must suffer the consequence including cancellation of allotment of plot and removal of membership. At the time of allotment, a member executes an agreement whereunder he/she undertakes to abide by the conditions specified for erecting a house on the plot allotted to him/her, in the manner prescribed therein. Whether Society is justified in proceeding against defaulting member by cancelling allotment of plot as well as membership, is an issue falling within the purview of the business of Society. A member is bound by stipulations contained in the agreement executed by him/her and in particular the Bye-laws of Society. Having said so, Court further said "Any action by the Society for breach thereof is just or otherwise can be questioned before the statutory Forum under the Act of 1960. Those are matters which can and must be answered in the proceedings resorted to by the Appellant before the statutory Forum." (emphasis added)

51. Then Court considered issues (d) to (f) together. It held that a plot when allotted and transferred to a member of Society, it creates and transfers right in an immovable property and therefore registration is compulsory. The deed of allotment therefore was got registered. Subsequently when a member failed to comply with the stipulation of allotment, it is open to Society to cancel such allotment, including membership and in that event, again it would be necessary for Society to execute an Extinguishment Deed qua such allotment deed operating in favour of member concerned, the reason being that mere cancellation of membership would not be enough. Society could extinguish the right, title or interest in immoveable property belonging to Society, by executing an Extinguishment Deed for that purpose and present it for registration, which can be registered by Registering Authority without having presence of other side since for Extinguishment Deed, presence of both parties is not necessary. Court clearly said that an Extinguishment Deed does not fall within Sections 31, 88 and 89 and, Section 32 does not require presence of both parties to the document when it is presented for registration. It also held that Section 35 of Act, 1908 does not confer a quasi judicial power on Registering Authority and once a document is registered, it has no authority to cancel the same. The relevant observations reads as under :

"43.In the present case, the subject Extinguishment Deed was presented by the person duly authorized by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the Act of 1908 to cancel the registration." (emphasis added)

52. We find that aforesaid judgment deals with an issue altogether different and, as such, does not help even respondent in respect of considering issues we have formulated above.

53. The discussion made by us and facts stated above show that Society in question, in the present case, held a meeting with agenda to consider letters of petitioner and thereupon read those letters as constituting a misconduct, justifying termination of membership and resolved to terminate membership of petitioner. This resulted in change in the list of members of Society and hence was communicated to Assistant Registrar. Petitioner filed objection raising various issues including issue of membership of some other persons as well as some office bearers of Society. It may be noticed that a person, filing objection before Assistant Registrar, may raise a whole gamut of issues to Assistant Registrar which may be a combination of issues, some within jurisdiction of Assistant

Registrar and some beyond but then the Registrar/ Assistant Registrar can always discern substantive issues which are within the scope of scrutiny and within his jurisdiction and can respond to those aspects. It is the substance and not the tenor of language or draft of letter by Objector, which has to be seen by Assistant Registrar/ Registrar who is a statutory authority supposed to look into the matter in exercise of statutory power conferred under Section 4-B of Act, 1860. It is true that Registrar/Assistant Registrar may not go into a detailed adjudication of a disputed question of fact like a Civil Court and remedy obviously would be available to the party concerned to take recourse to Civil Court but the mandate contained in the Statute regarding scrutiny, to the extent it is provided, has to be observed and discharged. Registrar/ Assistant Registrar is obliged to examine the question of correctness of alteration or change or modification in the list of members when an objection is taken. Cancellation /termination / removal of membership is a mode of alteration of list of General Body of Society. Section 4-B of Act, 1860 talks of correctness of list of members, which can be examined by Registrar/Assistant Registrar. Documents, which are supposed to be furnished to Registrar/Assistant Registrar are also specifically mentioned therein and from those documents whatever facts discern, may be seen to find out whether Society, in a bona fide manner has followed its own procedure laid down in Bye laws. For example, if abruptly a resolution is passed without there being any agenda on a particular issue and bye-laws require circulation of agenda to the members before meeting containing subject, it is apparent that action taken by Society is not in accordance with bye-laws and thus its decision would not be correct and can be interfered by Registrar/Assistant Registrar. Similarly, from documents relating to fee, if it is found that requisite fee has not been paid by a person inducted as member though deposit of fee is one of the conditions to become a member of Society, Registrar/Assistant Registrar can interfere and declare induction of such member to be illegal and declare resolution to this effect, bad in law. Similarly, if Society claims that fee has been deposited but from bank passbook, this claim is not found correct, Registrar/Assistant Registrar can again interfere. These are a few illustrations only. This interference includes declaration of resolution bad or illegal, and, mere fact that request has been made that resolution should be cancelled or be declared illegal, by itself, would not deprive Registrar/ Assistant Registrar from entering into scrutiny to the extent it is mandated by Section 4-B of Act, 1860 otherwise the very objective and purpose of insertion of Section 4-B of Act, 1860 would stand defeated.

54. The legislature intended to curtail litigation on account of frivolous induction or removal of members and alteration in the list of members of Society, being aware of the fact that remedy available in common law is time consuming and if disputes remain pending for long time, interest of Society in many cases suffer seriously. To give effect to the intention of legislature completely, Registrar/ Assistant Registrar is obliged to examine correctness of any inclusion, alteration, change etc. in the membership of Society particularly when an objection is raised. It must examine relevant record and find out the facts evident from record as to whether decision has been taken in accordance with procedure prescribed in bye-laws, bona fide and genuine.

55. In the present case, Assistant Registrar in observing that it has no authority to consider objection of petitioner that he has been removed from membership of General Body of Society without following procedure laid down in bye-laws, has failed to exercise statutory jurisdiction vested in it and, therefore, impugned order to this extent cannot be sustained.

56. Writ petition is allowed to the extent that impugned order passed by Assistant Registrar dated 26.8.2017 insofar as it has held that it has no jurisdiction to examine objection raised by petitioner by referring to Section 4-B of Act, 1860 is hereby set aside. Assistant Registrar is directed to examine objection raised by petitioner with regard to his removal from membership of General Body of Society in the light of observations made above and pass appropriate order expeditiously but not later than two months from the date of production of a certified copy of this judgment.

57. No costs.

Order Date :- 10.10.2018 AK/KA