

K.P. Devaiah and anr. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Mar-05-2004

Reported in : 2004(4)KarLJ209

Judge : Tirath S. Thakur and ;Huluvadi G. Ramesh, JJ.

Acts : [Karnataka Societies Registration Act, 1960](#) - Sections 22, 23 and 25;
[Constitution of India](#) - Article 226

Appeal No. : Writ Appeal No. 7878 of 2000

Appellant : K.P. Devaiah and anr.

Respondent : State of Karnataka and ors.

Advocate for Def. : U.Y. Kumar, Government Adv. for Respondents-1 and 2 and ;R. Gopal Hegde, Adv. for Respondents-3 to 8

Advocate for Pet/Ap. : Udaya Holla, Adv.

Disposition : Appeal allowed

Judgement :

1. This appeal arises out of an order passed by a learned Single Judge of this Court whereby W.P. No. 17642 of 1994, DD: 8-11-2000 filed by the appellant challenging an endorsement issued by the Registrar of Societies has been dismissed (K.P. Devaiah v. State of Karnataka). The facts giving rise to the filing of

the writ petition and the present appeal may be summarised as under:

Mathikere Cambridge Education Society was registered under the [Karnataka Societies Registration Act, 1960](#), way back in August 1979. The Society was established primarily for the purpose of running a school under the name and style of Cambridge English School at Mathikere. A decade later, the members of the Society are said to have passed a resolution on 20-9-1990 by which they resolved to dissolve the Society and transfer its assets and liabilities to Mathikere Cambridge Education Trust. This Trust was according to the appellants established under a Trust deed dated 30-11-1990 executed by four of the members of the Society including the appellants and respondents 5 and 8 in this appeal. The resolution passed by the Society in September 1990 also noted that the affairs of the Society had been taken over by the Trust acting through respondents 4 and 5. Shortly thereafter a letter informing the Registrar of Societies regarding the dissolution of the Society is said to have been sent to the Registrar and acknowledged by him. According to the appellants, the institution has with effect from 16-1-1991 been managed by Mathikere Cambridge Education Trust. This is according to the appellants evidenced by a resolution passed in the meeting of the said Trust held on 16-1-1991 a copy whereof as produced as Annexure-A2 to the writ petition. The appellant's further case is that the Trust has been registered with the Income-tax Department who has issued a certificate under Section 12A of the Income-tax Act on 30-12-1991. In support of its claim that ever since the transfer of the institution to the Trust, the Trust is in actual management of the same it has produced certain documents including the balance-sheet of the Trust which is signed by the appellants as well as respondents 5 and 8. The school is according to the appellants being run presently in a premises taken on lease by the Trust a copy whereof has also been produced by the appellants as Annexure-G to the writ petition.

2. While the Trust was, according to the appellants, managing the institution, the Registrar of Societies has issued an endorsement dated 5-7-1993 by which he purports to have declined recognition to the dissolution of the Society and transfer of the school to the Trust. The endorsement inter alia records that there is no provision in the [Karnataka Societies Registration Act, 1960](#), under which a Society

could be converted into a Trust. The conversion of the Society as a Trust was therefore in the opinion of the Registrar illegal.

3. Aggrieved by the endorsement aforementioned, the appellants filed W.P. No. 17642 of 1994 in this Court inter alia for a writ of certiorari quashing the endorsement and for a writ of mandamus directing the Registrar of Societies not to receive any communication from respondent 3-Society or to enter into any correspondence with the said Society. The petitioners also sought a mandamus directing the Registrar to recognise the Trust deed dated 30-11-1990 and to declare that the Society was not in existence ever since the passing of resolution dated 20-9-1990.

4. In the objections filed on behalf of the State and the Registrar of Co-operative Societies, it was inter alia stated that the [Karnataka Societies Registration Act, 1960](#), did not envisage conversion of a Society into a Trust in the light of the bar contained in Sections 21 and 22 thereof and the decisions rendered by this Court from time to time. It was also stated that the accounts filed by the Secretary of the Society in terms of Section 13 of the Act and the correspondence made in that regard have been treated to be correspondence between the Society on the one hand and the Registrar on the other. The objections prayed for dismissal of the writ petition, as there was no room for grant of any relief to the petitioners.

5. Respondents 3 to 7 also filed their objection in which, it was inter alia alleged that the writ petition involved disputed questions of fact which could be adjudicated upon only in an appropriate civil action in a competent Civil Court. It was farther stated that while a resolution was passed in an extraordinary general meeting held on 12-9-1990 to dissolve the Society and to hand over the assets and liabilities thereof to Mathikere Cambridge Education Trust, the same was not given effect to firstly, because the Trust had not come into existence on the date of the resolution and secondly, because the decisions of this Court did not permit the conversion of a registered Society into a Trust. The resolution for conversion of the Society into a Trust, was according to the respondents passed without examining the true legal position in regard to the said issue. It was further alleged that Trust deed dated 30-11-1990 also had not been given effect to nor any action taken in pursuance

thereof. It was alleged that the petitioners were fully aware that the Society had not been dissolved and the Trust deed had not been acted upon. The endorsement in question was according to the respondents validly issued and the same not having been challenged within the time permissible, the petition was belated. It was also alleged that the writ petitioners were not entitled to maintain the petition as they were no longer members of the Society.

6. A separate set of objections was filed on behalf of respondent 8 who also found fault with the resolutions and their efficacy. It was alleged that upon coming to know that the Society's property could not be transferred to a Trust, the resolution was not acted upon and that no special general body was convened to confirm the same. The resolution not having been confirmed in the annual general body meeting, the creation of the Trust or the execution of the Trust deed was legally inconsequential. It was further stated that the Registrar had not recognised the Trust as the creation of a Trust by conversion or by taking over all the assets and liabilities of the Society was legally impermissible. The validity of the Trust itself was assailed for according to respondent 8, the settlers of the Trust had not settled any property with the result that no Trust in fact or in law had validly come into existence.

7. Dattu, J., before whom the matter was argued, upon consideration of the rival contentions dismissed the writ petition by order dated 8-11-2000. The learned Single Judge was of the view that a writ petition filed by only two of the Trustees could not be maintained in the absence of the remaining Trustees as petitioners. The Court further held that the provisions of the Act did not permit transfer of property belonging to a Society to a Trust. Following the decision in *Sri Kalidasa Kurubara Sangha v. The Deputy Commissioner and District Registrar of Societies and Anr.*, 1989(2) Kar. L.J. 343 : 1989(2) BLJ 157 the Court observed that keeping in view the nature of the allegations made by the parties, the issues that fell for consideration could be more appropriately raised in a Civil Court which could examine the same uninfluenced by the observations made by the learned Single Judge in the body of the order. The petition was with the above observations dismissed. The present appeal as mentioned earlier assails the correctness of the said order.

8. We have heard at considerable length Mr. Udaya Holla, learned Senior Counsel appearing for the appellants and Mr. Gopal Hegde, Counsel for the contesting respondents including learned Government Advocate who appeared for respondents 1 and 2. The immediate provocation for the filing of the writ petition as noticed earlier was the issue of the endorsement dated 5-7-1993 by the Registrar of Societies. This endorsement as is evident from a bare reading of the same was issued in response to a letter dated 28-6-1993 which the Registrar of Societies appears to have received from the Secretary, Mathikere Cambridge Education Society. A copy of the said letter however has not been produced by the parties before the learned Single Judge or before us in the course of the hearing. Even the relevant record of the Registrar in which the original letter should have been available has not been produced. Mr. Holla submitted that the letter in question was addressed to the Registrar by respondent 5 despite the dissolution of the Society who falsely continued to claim himself as the Secretary of the Society even after 3 years of the passing of the resolution by which the Society stood dissolved.

9. Mr. Hegde, Counsel appearing for respondent 5 on the other hand submitted that no such letter was addressed to the Registrar and that no such letter was available with the respondents nor had he himself seen any such letter. He was unable to state whether any such letter had at any stage been addressed by respondent 5 to the Registrar. He on the contrary referred us to para 3 of the writ petition filed by the appellants in which the appellants has made the following averment:

'After dissolution of the Society, a representation was made to the Registrar of Societies not to communicate and not to correspond in the name of Mathikere Cambridge Education Society as the said Society itself came to be dissolved on 20th September, 1990. Based on the representation given by the petitioners, the endorsement has been issued by the respondent 2 dated 5-7-1993 stated to have been communicated to the President and Secretary of the Society. The said endorsement has not been communicated to the petitioners. A copy of the said endorsement is herewith produced and marked as Annexure-C'.

10. According to Mr. Hegde, the endorsement in question was on the showing of the petitioners-appellants themselves issued by the Registrar in response to a letter addressed by them and not by any communication from the respondents.

11. The letter which has given rise to the issue of the impugned endorsement has not as mentioned above been produced before us. The parties are also unable to throw any light on the said aspect although according to Mr. Holla, the letter must have been issued by the respondents only because there was no question of the appellants issuing a letter in 1993 when the Society stood dissolved. It was according to Mr. Holla, only the respondents who were interested in resurrecting the Society by falsely claiming that one of the respondents continued to be its Secretary that such a letter could have been issued.

12. In the absence of the record or a copy of the letter, we are unable to record a specific finding as to who exactly out of the parties had addressed the letter and what was the nature of the relief prayed for in the same. All that we need say is that since the impugned endorsement is in reply to a letter which neither party claims to have written, it is unnecessary to examine whether the said endorsement can in law be sustained. We say so because if the endorsement in question is not invited by any one of the two parties, it would be better to have the same removed from the scene instead of determining its effect in an exercise which may be unnecessary and even academic.

13. The fact however remains that the parties have crossed swords over the core issue whether the Society is still in existence as claimed by the respondents represented by Mr. Hegde or the same has been dissolved as is asserted by the appellants. Also in serious dispute is the question whether a Trust in the name and style of Cambridge Education Trust was created and the management of the school being run by the Society transferred to the same. If any such Trust was validly established, was the property of the Society transferred to it and whether any such transfer was legally permissible having regard to the provisions of Sections 22 and 23 of the [Karnataka Societies Registration Act, 1960](#) is also an aspect that needs to be examined. These questions can in our opinion be legitimately investigated and answered by the Registrar of Societies in exercise of

its powers under Section 25 of the [Karnataka Societies Registration Act, 1960](#). The said provision empowers the Registrar on his own motion as also on the application of the majority of the governing body or of not less than one-third of the members of the Society to hold an enquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an enquiry into the constitution, working and financial condition of a registered Society. The expression 'constitution, working and financial condition of a registered Society' is in our opinion wide enough to empower the Registrar to direct an enquiry into the questions that arise for consideration between the parties and have been referred to above.

14. It was in the above background that we suggested to learned Counsels for the parties whether the Registrar of Societies could be directed to conduct an enquiry into the questions so that any party aggrieved of any one of the findings recorded in any such enquiry is in a position to assail the same either in a civil action if permissible or before any other appropriate forum. In fairness to the Counsels for the parties, we must say that none of them had any objection to the issue of an appropriate direction with a view to resolving the controversy in an orderly manner. We accordingly formulate the following three questions to be examined and answered by the Registrar of Societies after an enquiry conducted in terms of Section 25 of the Act:

(i) Whether Mathikere Cambridge Education Society has been validly dissolved in terms of a resolution dated 20-9-1990?

(ii) If the answer to the above be in the affirmative, whether a Trust in the name and style Mathikere Cambridge Education Trust was created and the management of the school transferred to the Trust?

(iii) In case there was a transfer as above, whether the same was valid in the light of the provisions of Sections 22 and 23 of the [Karnataka Societies Registration Act, 1960](#).

15. In the result, we allow this appeal, set aside the order made by the learned Single Judge, quash endorsement dated 5-7-1993 and direct the Registrar of

Societies to hold an enquiry in terms of Section 25 into the questions formulated above. Needless to say that the Registrar shall issue notices to the appellants and respondents 4 to 8 and afford to them adequate opportunity to adduce evidence/material which they may wish to rely upon in support of their respective versions. Depending upon his findings on the questions formulated by us, the Registrar shall be entitled to take appropriate follow up action if any required in accordance with the provisions of the Act. Any one of the parties aggrieved of any finding or direction issued by the Registrar shall then be free to seek appropriate redress against the same before the appropriate forum.

16. The Registrar shall expedite the enquiry and pass appropriate orders uninfluenced by any observations made by this Court or the learned Single Judge on the merits of the case. The needful shall be done as far as possible within six months from the date a copy of this order is received by him. The parties are left to bear their own costs.

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