

Ramesh Kumar Vs. State of U.P. Through Its Secy. Deptt. of Finance

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Court : Allahabad

Decided On : Feb-25-2010

Judge : Devi Prasad Singh, J.

Appellant : Ramesh Kumar

Respondent : State of U.P. Through Its Secy. Deptt. of Finance

Advocate for Def. : Sri. Manish Kumar

Disposition : Petition allowed

Judgement :

Devi Prasad Singh, J.

1. Heard parties counsel and perused record.
2. Solitary argument advanced on behalf of the petitioner is that the Registrar Firms, Society and Chits Lucknow, lacks jurisdiction while passing the impugned order contained in Annexure No. 1 to the writ petition.
3. Sri Manish Kumar learned Counsel for the respondents submits that while passing the impugned order, the Registrar has observed that the petitioner committed fraud and interpolated the record. Accordingly, this Court may not interfere with the impugned order.

4. A perusal of the impugned order shows that the petitioner was heard by the Registrar Firms, Society and Chits Lucknow, while adjudicating the controversy. However, in case, the Registrar Firms, Society and Chits Lucknow was having no jurisdiction, he could not have recorded finding with regard to controversy even if the fraud was committed. The question of fraud is like any other evidence to be proved.

5. The petitioner relied upon the judgment reported in 2006 (24) LCD 1078 Fahim Ahmad and Anr. v. The State of Uttar Pradesh and Ors. passed by this Court (by me) and affirmed in a Special Appeal No. 462 of 2008 by the judgment of a Division Bench of this Court reported in 2008 (26) LCD 1109 Fahim ahmad and Ors. v. State of U.P. and Ors. In the case of Fahim Ahmad (supra), it has been held that the State Government by notification has delegated the work of Registrar to the Deputy Registrar or Assistant Registrar of the respective regions or districts. Once the State Government has delegated the power to the Deputy Registrar or the Assistant Registrar of the respective regions or the districts then the Registrar, Firms, Societies and Chits, U.P., Lucknow has got no jurisdiction to interfere with the discharge of statutory duties by the Deputy Registrar or the Assistant Registrar while proceeding with the controversy. In case the State Government has delegated the power to Deputy Registrar, the Registrar Firms, Societies and Chits, U.P., Lucknow, seems to be functus officio while adjudicating the controversy in question. Relevant portion of the judgment is reproduced as under:

30. (2) Power of the Registrar to interfere with the election Process:

Section 21 of the Societies Registration Act defines the word 'Registrar' which includes an Additional Registrar, a Joint Registrar, Deputy Registrar or Assistant Registrar. For convenience, Section 21 of the Societies Registration Act is reproduced as under:

21. In this Act, the word 'Registrar' means a person appointed as such by the State Government and includes an Additional Registrar, a Joint Registrar, Deputy Registrar, or Assistant Registrar, on whom all or any of the powers of the Registrar under this Act are conferred by general or special order of the State Government.³¹ The State Government by the notification dated 20th of July,

1981, 7th of January, 1982, 31st of July, 1985, 24th of January, 1987, 6th July, 1991 following by another notification dated 29th of October, 1991 has delegated the work of Registrar to the Deputy Registrar or Assistant Registrar of the respective regions or districts in view of the delegation of power by the State Government in pursuance to the power conferred by Section 21 of the Societies Registration Act, the Deputy Registrar or the Assistant Registrar of the regions or districts or as the case may be, have got power to discharge all the statutory duties provided under the Societies Registration Act. Once the State Government has delegated the power to the Deputy Registrar or the Assistant Registrar of the respective regions or the districts then the Registrar, Firms, Societies and Chits, U.P., Lucknow has got no jurisdiction to interfere with the discharge of statutory duties by the Deputy Registrar or the Assistant Registrar while proceeding with the controversy. The supervisory power vested in the Registrar does not seem to include to pass an order staying the election process or to summon the record and usurp the power of the Deputy Registrar or the Assistant Registrar. Of course, in case, it is brought into the notice of the Registrar relating to some malpractice, fraud or the corrupt practice by the Deputy Registrar, then in such situation, Registrar, Firms, Societies and Chits may transfer the proceeding to some other Deputy Registrar or the Assistant Registrar having the jurisdiction to discharge duties under Section 21 of the Societies Registration Act.

Corollary to that the Registrar does not have got jurisdiction to rescind or modify the order passed by the Deputy Registrar or the Assistant Registrar while discharging the statutory duties. The Registrar does not possess the appellate power under the Act to rescind the decision taken by the Deputy Registrar or the Assistant Registrar as the case may be.

It is settled law that the power of appeal or review or revision are the statutory powers and in the absence of any specific provision under the Act or Statute, the authorities have got no jurisdiction to exercise such powers.

6. From the judgment referred to hereinabove, it is evident that the Registrar means, a person, an Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar on him all or any power of the Registrar has been conferred by

the general or special order. The decision rendered by the Registrar with regard to present controversy, suffers from lack of jurisdiction. Any decision rendered by the authority, or quasi-judicial authority without jurisdiction, shall be deemed to be nullity in law. The writ petition deserves to be allowed.

7. Accordingly, the writ petition is allowed, a writ in the nature of certiorari is issued quashing the order dated 25.6.2009 contained in Annexure No. 1 to the writ petition, with consequential benefit. The controversy is relegated to the Deputy Registrar, Firms Society and Chits, Lucknow who shall decide the same after providing opportunity of hearing to parties within four months from the date of receipt of a certified copy of this order.

8. No orders as to costs.

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