

(2017) 05 AHC CK 0080
ALLAHABAD HIGH COURT
Case No: 284 of 2017

SHAILENDRA SINGH
AND 2 OTHERS

APPELLANT

Vs

STATE OF U P AND 3
OTHERS

RESPONDENT

Date of Decision: May 15, 2017

Acts Referred:

- Societies Registration Act, 1860, Section 4, Section 25, Section 23, Section 24, Section 22, Section 12A, Section 3A, Section 25(1), Section 12B, Section 12D - Annual list of managing body to be filed

Hon'ble Judges: V K Shukla, Mahesh Chandra Tripathi

Bench: Division Bench

Advocate: Vijay Kumar Singh, Santosh Kr Singh Paliwal, J P Singh

Final Decision: Allowed

Judgement

1. Shailendra Singh and two others are before this Court assailing the validity of the judgment and order passed by the learned Single Judge of this Court in Writ Petition No. 17295 of 2017 (C/M Balidan Smarak Shiksha Parishad and another Vs. State of U.P. and others) filed by the contesting petitioner respondent nos. 3 and 4, whereby the writ petition in question has been allowed and the order impugned in the writ petition dated 19.1.2017 passed by the Assistant Registrar, Firms, Societies & Chits, Azamgarh Region, Azamgarh, has been set-aside with the further direction to refer the dispute in question to the Prescribed Authority under Section 25 (1) of the Societies Registration Act, 1960, within a period of two weeks from the date a certified copy of the said order was filed before him.

2. Brief background of the case giving rise to the present special appeal is that there

is a society known as Balidan Smarak Shiksha Parishad, Punapar Baragaon, Post Jamin Harkhori, Tehsil Sagri, District Azamgarh (hereinafter referred to as the "Society") which is a society duly registered under the Societies Registration Act, 1860 (hereinafter referred to as the "Act"). The affairs of the aforesaid society are governed by its bye-laws, as amended from time to time. The previous election of the committee of management of the society was held on 25.1.2015 and in the said election Dr. Shailendra Singh was elected as President, Sri Markandey Mishra was elected as Sabhapati, Sri Ram Udai Singh was elected as Up Sabhapati, Sri Sudhir Singh was elected as Manager, Sri Anil Singh was elected as Deputy Manager and Sri Kamla Kant Singh was elected as Secretary. In all 13 members and office bearers were elected in the said elections. Based upon the aforesaid elections a list of office bearers for the year 2015-16 was submitted in the office of Assistant Registrar, who passed an order on 1.5.2015 registering the aforesaid list. The problem arose on account of death of Sri Sudhir Singh on 28.10.2015, who was the Manager.

3. As per the appellants the procedure to fill up a casual vacancy which occurs in the management is prescribed under the bye-laws, wherein according to clause N-4 it is the committee of management which has to pass resolution for filling up the said casual vacancy and after passing such a resolution it is required to get it approved by the General Body by 2/3rd majority and it is in this manner prescribed that a casual vacancy which occurs in the committee of management of the society is to be filled up. Appellants claim that the contesting respondent nos. 3 and 4 claimed that a meeting of the committee of management was held on 28.11.2015 which was followed by a meeting of the General Body that was held on 18.12.2015. In these meetings, he claimed to have been elected as Manager in place of Late Sudhir Singh. It was further claimed by him that a meeting of the committee of management was, thereafter, held on 20.12.2015 in which it was decided to submit the amended list of office bearers before the Assistant Registrar and in pursuance of the said resolution he submitted a list in the office of Assistant Registrar on 31.12.2015 with a request to register the same under Section 4 of the Act.

4. Appellants claim that the proceedings that were set-up by the contesting respondents of 28.11.2015 and 18.12.2015 were fabricated one. No such meeting of the committee of management was held on 28.11.2015 at all. Based on minutes of meeting, so produced, it was suggested that even if some meeting of the committee of management was held on 28.10.2015 then from a perusal of the proceedings of the said meeting it would appear that no such resolution was passed in the said meeting electing the contesting-respondent as a Manager for the remaining term whereas as per the bye-laws of the society a decision to fill up the casual vacancy was to be taken by the committee of management first which could be approved by the General Body by its 2/3rd majority. In the present case, there was no decision of the committee of management to fill up the vacancy at all and, accordingly, there was no question of approval thereof by the General Body. The claim, therefore,

set-up by the petitioner-respondent in respect of his election as Manager for the remaining term was totally misconceived and was against the provisions of bye-laws. Defendant appellants also claimed that copy of the proceedings dated 28.11.2015 and 18.12.2015 filed before the Assistant Registrar was totally different with the proceedings that were filed in writ petition. Defendant appellants have come up with the case that elections of 2015 had been held on the basis of list of list of 34 members and after the death of Sudhir Singh the contesting respondent filed a list of 61 members who, according to him, were there in the General Body, as there were 27 more members in the General Body who by mistake were left out even though they had been enrolled way back in the year 2007-08. According to the case set up these members were enrolled in the meetings that were held on 18.3.2007 and 21.2.2008, but by mistake names of these persons were not included in the list of General Body that were filed before the Assistant Registrar. Defendant appellants claimed that the proceedings of 2008 are also manipulated proceedings. The resolution to include 20 members has been added by the contesting respondent subsequently whereas no such resolution was ever passed earlier at all and a perusal of the photostat copy of the said proceedings would show that the last resolution has been added subsequently by the contesting respondent and apart from this there is no proceeding filed by him with regard to 7 other members.

5. The Assistant Registrar after hearing the parties concerned has proceeded to reject the proceedings that were set-up by the contesting respondent on 19.1.2017 wherein it has been found by the Assistant Registrar that there was no resolution of the committee of management electing the petitioner respondent as Manager of the committee of management for the remaining term. The resolution dated 28.11.2015 simply condoled the death of late Sudhir Singh who was the Manager. The Assistant Registrar has further found that the proceedings that were filed before him by the petitioner-respondent earlier and the one filed by him at the time of hearing in the shape of proceeding book were totally different. The claim set-up by the contesting respondent that 27 members even though had been enrolled earlier but left out by mistake has also been disbelieved by the Assistant Registrar. The Assistant Registrar has perused the proceeding book which contained the proceedings of 18.3.2007 and 21.2.2008 and it has been mentioned by him that there were only 4 proceedings written in the said proceeding book. Pages 19 to 43 of the said proceeding book were blank for which there was no justification given by the other side. In so far as the remaining 7 members are concerned, there was no resolution submitted by the other side accepting these persons as members. According to these persons they had paid fee on 30.1.2016 where as their names were found in the list of 30.11.2015 which was not possible. Agenda for meeting of 18.12.2015 had been given to all these persons also who were not valid members of the society.

6. The Assistant Registrar further formed opinion that the meeting of 18.12.2015

was attended by outsiders who were not members of the General Body. The Village Pradhan was allowed to participate in the meeting who had got no concern at all with the society. The Headmaster of Junior High School and teachers were also allowed to participate in the meeting of General Body even though they were not members thereof. Since these persons who were not members of the General Body were allowed to participate in the meeting of 18.12.2015, the participation of these persons would make the proceedings vitiated.

7. Defendant appellants have proceeded to make a mention that on the other hand according to the appellants after the death of late Sudhir Singh a condolence meeting of the General Body was held on 1.11.2015 in which the death of late Sudhir Singh was condoled and, thereafter, a meeting of the committee of management was held on 18.11.2015 in which Deputy Manager Anil Singh was authorized to act as Officiating Manager for a period till a Manager was elected for the remaining term. The aforesaid meeting of 18.11.2015 was followed by a meeting of the committee of management of 29.12.2015. In this meeting of the committee of management Smt. Anjana Singh was elected as Manager for the remaining term by the committee of management and this resolution which was passed by the committee of management on 29.12.2015 was approved by the General Body in its meeting held on 10.1.2016 by 2/3rd majority. Defendant appellants also claimed that according to the bye-laws of the society, specially clause N-1 an ordinary meeting of the committee of management is to held by annually. However, the said provision provides that a special meeting could be called at any time by the Manager. The bye-laws further provides that in the absence of a Manager, the Deputy Manager can perform the functions that of the Manager. The meetings of 18.11.2015 and 29.12.2015 of the committee of management were special meetings and these meetings were called by the Deputy Manager Anil Singh. In the meeting of 22.12.2015 a resolution was passed authorizing the Manager to convene the meeting of the General Body and, therefore, the newly elected Manager convened the meeting of the General Body on 10.1.2016 . The meeting of General Body held on 10.1.2016 was attended by 27 out of 33 members who were present. The resolution was passed by 2/3rd majority to elect the appellant no. 1 as Manager for the remaining term.

8. The order passed by the Assistant Registrar has been subjected to challenge before the learned Single Judge and the learned Single Judge, in the present case, quashed the order dated 19.1.2017 and asked the Assistant Registrar to refer the dispute to the Prescribed Authority, at this juncture, present special appeal has been filed before this Court.

9. Sri G.K. Singh, Senior Advocate, assisted by Sri S.K. Singh Paliwal, Advocate, contended with vehemence that in the present case learned Single Judge without going into the merits of the order dated 19.1.2017 and even without perusing the

order dated 19.1.2017 passed by the Assistant Registrar, has proceeded to pass an order for referring the dispute by terming the same without jurisdiction whereas the Assistant Registrar is not required to act as post-office and fictitious and ingenuine disputes are not at all liable to be referred to the Prescribed Authority, in view of this, the order dated 19.1.2017 was well within the competence of Assistant Registrar, Firms, Societies & Chits and mechanical direction to make reference by learned Single Judge should not at all be subscribed in law and, accordingly, special appeal deserves to be allowed.

10. Sri Ashok Khare, Senior Advocate, assisted by Sri J.P. Singh, Advocate, has contended that in the present case the contesting respondents are not at all outsiders, Kamla Kant Singh has been the Secretary of the committee of management and, in view of this, rightful orders have been passed by the learned Single Judge, as proper forum to get such disputes decided is the Prescribed Authority and learned Single Judge rightly has not gone on the merits of the order dated 19.1.2017 as the order passed was itself without jurisdiction as merit of the said order dealt with the continuance of office bearers and elections of office bearers, as such, special appeal is liable to be dismissed.

11. In order to appreciate the respective arguments, we proceed to examine the provisions, as are contained under Section 4 of the Societies' Registration Act, 1860, as amended in the State of U.P. the following provision has been made:-

"4. (1) Annual list of managing body to be filed.-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 officebearers do not counter-sign the list, the Registrar may, in his discretion, 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 a correct copy and also a copy of the balance-sheet for the proceeding year of account."

The proviso to Section 4, as amended in the State of U.P., states 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 countersign the list the Registrar may in his discretion issue a public notice inviting objections and decide all the objections received within the said period.

Section 25(1) as applicable in the State of U.P. provides as follows:-

"25.Dispute regarding election of office-bearers.-

(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in the Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an officer-bearers of such society, and may pass such orders in respect thereof as it deems fit:

[Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such officebearer;
or

(b) that the nomination of any candidate has been improperly rejected;
or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society."

12. The provisions, that have been quoted above, has been subject matter of consideration in the case of All India Council and another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, AIR 1988 Alld. 236, and therein paragraph 7 of the judgment provides for as follows;

"7. It will, therefore, be seen that insofar as disputes or doubts in respect of the election or continuance in office of the officebearers of a society registered in Uttar Pradesh are concerned, the Legislature has created a specific forum and laid down an exhaustive procedure for determination of the same under S.25. There is no other provision, express or otherwise, providing for determination of such disputes specifically. It is settled law that where, as here, the Legislature creates a specific forum and lays an exhaustive procedure for determination of a particular class of disputes in respect of matters covered by the stature, such disputes can be determined only in that forum and in the manner prescribed thereunder and not otherwise. If, therefore, a dispute is raised with regard to the election or continuance in office of an office-bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed Authority under S. 25 (1) and not by the Registrar, save, of course, to the decision of the Prescribed Authority being subject to the result of a civil suit."

13. A Division Bench of this Court in the case of Committee of Management Vs. Assistant Registrar, 1995 (2) UPLBEC 1242, took the view that the Assistant Registrar is not a post-office, he has to apply his mind and only a bonafide dispute can be referred to the Prescribed Authority under Section 25 (1) and not the frivolous dispute.

14. Once again a Division Bench of this Court in the case of Committee of Management, Rashtriya Junior High School (Society), Babhaniyaon, District Jaunpur v. The Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and others, (2005) 3 UPLBEC 2817, has held as follows;

"4. It is the standard law that, if any, bonafide dispute as to two rival Committees of Managements is shown to be in existence to the Registrar or Assistant Registrar, a reference by him of the dispute to the Prescribed Authority follows as a matter of course. But a bonafide dispute does come into existence merely because one member, even if he is a founder member,

chooses simply to say or ascertain that he has a rival Committee and therefore, a bonafide dispute as to Management exists. Sufficient prima facie material must be produced before the Registrar before he can validly exercise his jurisdiction of referring the dispute. He must, simply put, be satisfied that there is something to refer and he is not merely sending litigations before the Prescribed Authority, without there being even a shadow of real cause for litigation."

15. A Division Bench of this Court in the case of Committee of Management Adarsh Krishak Junior High School, Mauaima, Allahabad Vs. State of U.P. and others, 2009 (9) ADJ 270 (DB), took the view that Assistant Registrar while exercising power in respect of filling of list of office bearers under Section 4-A of the Act or granting renewal of a society, does not act as a mere post-office and he does not bound to refer any and every dispute to Prescribed Authority under Section 25 of the Act and only a bonafide and genuine dispute could be subject matter of reference not otherwise. The relevant paragraphs 18 and 19 are hereby quoted below;

"18. It is in the aforesaid background that the Assistant Registrar has rightly recorded in the order dated 14.08.2006 that the appellant at least had the right to hold elections as it was the outgoing Committee of Management. The Assistant Registrar has not gone to the extent of making a declaration on the validity of elections, and has acknowledged the appellant as a genuine office bearer entitled to seek renewal of the registration of the Society, which stands renewed for a period of five years till 2010. The respondents-petitioners have now come up questioning the elections dated 9th October 2005 by filing a writ petition almost three years thereafter. The learned Judge, in our opinion, without taking notice of the aforesaid facts, has issued a mandamus to the Registrar to pass an order in respect of the dispute of elections dated 09.10.2005. In our opinion, there is no plausible explanation on behalf of the respondents-petitioners as to why they filed the writ petition almost after two years of the passing of the order and three years after the holding of the elections, and further as to why they did not challenge the order dated 14.08.2006.

19. The aforesaid facts having not been noticed by the learned Judge, in our opinion, renders the impugned judgment unsustainable. Further such a direction, in our opinion, could not have been issued without putting the appellant to notice. The Assistant Registrar, as pointed out in the case of Kisan Shiksha Sadan, Banksahi, (supra), is not a post office for referring any and

every dispute. The respondents-petitioners with the aid of 1/5th members of the general body of the Society could have moved for a reference as provided for under Section 25 of the Act 1860 or they could have filed a civil suit. There was absolutely no occasion for a writ petition to have been entertained at such a belated stage and further after more than three years of holding of the elections."

16. A Division Bench of this Court in the case of Gram Shiksha Sudhar Samiti Vs. Registrar, Firms, Societies & Chits, U.P., Lucknow, 2010 (7) ADJ 643 (DB), has held as follows;

"8. Considering the ratio of this judgment, it would be clear that the learned Division Bench has harmonised both the provisions so that both can be given effect to. The effect is that what can be gone into under Section 25 of the Act, cannot be gone into under the proviso to Section 4 of the Act. This, in our opinion, would be the proper reading of both the provisions without rendering any provision otiose.

9. In view of the above, though the direction of the learned Single Judge would be an appropriate direction, nonetheless the learned Single Judge ought to have, at the same time, set aside the order dated 11th June, 2010, as that would be an order without jurisdiction. The moment an application for taking on record the names of the office bearers and an objection as to the validity or otherwise of the office bearers, who are duly elected, have been filed, the Registrar considering Section 25 (1) of the Act ought to have referred the matter to the Prescribed Authority under the said provision.

10. The assumption of jurisdiction by the Registrar, therefore, is without jurisdiction and that order dated 11.6.2010 is liable to be set aside, and is accordingly, set aside.

11. The Registrar is directed to refer the objections along with the application filed by the appellants herein to the Prescribed Authority under Section 25 (1) of the Act for a decision in accordance with law.

12. The appeal is disposed of, accordingly. No order as to costs."

17. Another Division Bench of this Court in the case of Committee of Management Anjuman Kherul Almin Allahganj and another Vs. State of U.P. & others, 2014 (1) ADJ 44 (DB), has held as follows;

"12. In the present case, a list was submitted by the third respondent, of office bearers under Section 4 for 2013-14. The list was objected too. The Deputy Registrar had conflicting claims between the appellants on the one hand and the third respondent on the other hand. Hence when an application for taking on record the names of the officer bearers was filed and an objection to the validity of the elected office bearers was placed before him, the Registrar ought to have referred the dispute to the Prescribed Authority under Section 25(1). In entertaining the dispute himself and going into merits of the rival claims, the Deputy Registrar has clearly transgressed his jurisdiction. The jurisdiction to decide any doubt or dispute in respect of an election of the office bearers of the Society lies with the Prescribed Authority and the Registrar ought to have made a reference to the Prescribed Authority.

13. The learned Single Judge is right in holding that the Prescribed Authority would have to decide under Section 25(1) upon the dispute which is raised. To that extent the observations of the learned Single Judge are justified. However, we find merit in the contention of the appellants that the petition could not have been dismissed merely with liberty to move the Prescribed Authority. The appropriate direction to pass, was to set aside the order of the Deputy Registrar which is an order without jurisdiction since the Deputy Registrar has decided an issue which fell within exclusive domain of the Prescribed Authority.

14. In consequence and while allowing the special appeal, we modify the order of the learned Single Judge in the following terms:-

(1) The order passed by the Deputy Registrar on 26 July 2013 is quashed and set aside as being without jurisdiction;

(2) The Deputy Registrar is directed to make a reference under Section 25(1) of the Societies' Registration Act, 1860 to the Prescribed Authority within a period of two weeks of the receipt of a certified copy of this order;

(3) The Prescribed Authority shall upon receipt of the reference under Section 25(1) decide upon the reference within a period of three months of the receipt of the reference;

(4) The Deputy Registrar shall thereafter take necessary steps under Section 4 upon receipt of the order of the Prescribed Authority expeditiously.

Another Division Bench of this Court in the case of Malati Devi Vs. State of U.P. and others, 2016 (4) ESC 2146 (All) (DB), has taken the following view;

"Both the counsel for the parties are agreeable to the settled legal position in this regard.

In view of the above, we find that the order dated 1.2.2016 passed by the Assistant Registrar for re-registration of the list of office bearers 2015-16 and the subsequent order dated 20.5.2016 passed by him deciding the dispute regarding resignation of Malati Devi cannot be legally sustained as they suffer for want of jurisdiction.

The questions whether Malati Devi had resigned from the post of Manager of the Society/Institution and that in her place respondent Munna Rajbhar has been elected as the Manager for the remaining period need to be examined only under Section 25 of the Societies Registration Act at the first instance.

Accordingly, the present appeal and Writ Petition Nos. 27742 of 2016 and 21456 of 2016 are disposed of with the following directions:

(a) Both the orders dated 1.2.2016 and 20.5.2016 passed by the Assistant Registrar are hereby set aside.

(b) The Assistant Registrar is directed to transmit the entire records as submitted by the parties in respect of resignation of Smt. Malati Devi to the Prescribed authority under Section 25 of the Societies Registration Act within two weeks from the date of receipt of certified copy of this order. The prescribed authority shall consider the dispute as raised by the parties and shall decide the same strictly in accordance with law

after affording full opportunity to the parties concerned preferably within eight weeks thereafter."

18. Based on these judgments, that have been cited at the Bar, mention is being made that in the present case dispute in question has rightly been directed to be referred to the Prescribed Authority as dispute in question was a bonafide and genuine dispute whereas from the side of defendant appellants it has been sought to be contended that present dispute is totally ingenuine dispute and had the order impugned been examined then this Court certainly would have proceeded to refuse to exercise its authority of judicial review.

19. We have proceeded to examine the judgment and order dated 25.4.2017 passed by the learned Single Judge of this Court and what we find from the same that learned Single Judge, at no point of time, has proceeded to even examine the order dated 19.1.2017 passed by the Assistant Registrar and learned Single Judge has proceeded to make a mention that once rival claims are submitted the Registrar is required to refer to dispute to the Prescribed Authority and he has no jurisdiction to decide such a dispute himself. The proposition of law may not be absolutely correct as Section 4 of the Act provides that a list of members of the managing body of a Society shall be filed with the Registrar. That list is maintained by the Registrar for the purpose of performing his administrative functions as a Registrar. Section 25 of the Act provides that whenever any doubt or dispute is raised regarding the election of members of a managing body of a society, the Registrar may refer such doubt or dispute to the Prescribed Authority for his decision. But when one fourth members of the Society raise a doubt or dispute relating to the election of the members of managing body or Society, the matter automatically goes to the Prescribed Authority for decision and in such a case the Registrar does not come into the picture. In exercising this power whether to refer or not any doubt or dispute relating to the election of members of the managing body of a Society to the Prescribed Authority, the Registrar has to apply his mind to the facts of the case and take a decision. In such a situation the decision of Registrar/Assistant Registrar is required to be looked into by the learned Single Judge as to satisfy himself on prima facie basis as to whether the dispute that is sought to be referred is a genuine dispute or it is merely a pretence or a fabricated dispute, in such a situation and in this background, once the matter has travelled before the Registrar/Assistant Registrar and in this direction requisite exercise has been undertaken, then unless and until the finding, that has been recorded by the Registrar/Assistant Registrar is perverse, unreasonable, contrary to record the artificial and ingenuine, disputes are not required to be referred.

20. We, at this juncture, approve the view taken in the case of Babu Ram Shiksha Prasar Samiti (Reg. Society), Dist. Etah & another v. Deputy Registrar Firms, Societies and Chits, Regional Office, Agra and others, 2007 (9) ADJ 262, wherein this Court held as follows;

"13. On the basis of statutory provision, which covers the field and the view point of this Court. The inevitable conclusion is, that whenever issue is raised before Registrar/Assistant Registrar/Deputy Registrar, that an incumbent is valid member or not within the scope and ambit of Section 15 of Societies Registration Act, 1860, the said question can be very looked into and decided by Registrar/Assistant Registrar/ Deputy Registrar, as the case may be, in view of wide amplitude of authority vested under Section 22,23,24 of Societies Registration Act, 1860. Registration and renewal of registration of society is the exclusive domain of Registrar/Assistant Registrar/Deputy Registrar as the case may be, under Section 3 and 3-A of Societies Registration Act, 1860. Authority to accept, annual list of Managing Body, is also exclusive domain of Registrar/Assistant Registrar/Deputy Registrar as the case may be. While proceeding to exercise authority vested under Section 3-A or 4 of Societies Registration Act 1860, in case election dispute or dispute in respect of continuance of office bearers is raised, then Registrar/Assistant Registrar/Deputy Registrar, may in his /her discretion, refer the dispute to the Prescribed Authority, if he/she is satisfied that bona fide, genuine dispute has arisen, in respect of election or continuance of office bearers and in case dispute totally lacks bona fides and is in genuine dispute, then reference is not at all required, and there is no impediment in the exercise of authority vested under Section 3A and 4 of Societies Registration Act 1860. This action of Registrar/Assistant Registrar/Deputy Registrar, can always be tested on the parameters of judicial review. Apart from this, the group of persons on list being accepted under Section are not remediless, as they can always assail the validity of the said list, after mustering support of one fourth members of society, before the Prescribed Authority. Prescribed Authority gets jurisdiction to decide dispute in respect of election or continuance of office bearers, either on reference or on being moved by one fourth members of the General Body. In entertaining dispute, on behalf of one fourth member of the general body of the society, Prescribed Authority, must satisfy himself that dispute has been raised by one fourth members of the General Body of society, who are members in term of Section 15 of Societies Registration Act 1860, and once satisfaction is recorded on this score, then dispute can be adjudicated in summary manner, and in the event of negative finding being there, the Prescribed Authority will have no jurisdiction. The parties are thereafter free to approach Civil Court."

21. We may also refer to a judgment of the Apex Court in the case of A.P. Aboobaker Musaliar v. Distt. Registrar (G), Kozhikode and others, (2004) 11 SCC 247, wherein Apex Court has considered the issue where two rival groups had submitted the list of office-bearers under Section 4 of the Societies Registration Act. In the said case, two groups had filed the list of office-bearers under Section 4 of the Societies Registration Act, as applicable in the State of Andhra Pradesh. The District Registrar had accepted one of the lists of the office-bearers under Section 4. Aggrieved party challenged the order of the District Registrar before the Andhra Pradesh High Court. Learned Single Judge of the High Court took the view that under Section 4 the Deputy Registrar had no power to adjudicate the matter, but in the letters patent appeal the Division Bench set aside the order of the learned Single Judge and took the view that in case of a dispute when more than one return is filed, the Registrar has got the power to find out as to which group has to be recognised. For the said purpose, it is not necessary for the District Registrar to hold an elaborate enquiry. The Deputy Registrar, on prima facie satisfaction, can accept one of the lists submitted by a faction. In the said case, the District Registrar held that one of the groups, whose list was accepted, had submitted the list for a long period. The Division Bench held that the enquiry made by the Registrar and his decision does not become final and aggrieved party can take up the matter before the competent court about the dispute of the office-bearers. In the special leave petition, the Supreme Court upheld the order of the Division Bench of the Andhra Pradesh High Court and held as under:

"3.It is clear from what is stated above by the Division Bench that the enquiry made by the Registrar and the decision taken did not become final and the party could take up the matter before a competent court as to who were the members of the governing body. When there were two lists, the District Registrar, prima facie, on being satisfied, accepted the list filed by E.K. Aboobaker as he was filing the lists for the previous years also. The District Registrar has only taken into consideration the limited question of accepting the list of members of the governing body. The Division Bench of the High Court was right in taking the view that the list accepted by the District Registrar did not become final; if the appellant was aggrieved, it was open to him to establish his claim in a competent court/forum. To us, it appears even the District Registrar did not adjudicate any dispute as such. It was only a question of accepting, prima facie, the list of members of the governing body. If the appellant's claim was right and justified, merely because the District Registrar accepted the list of the governing body of members given by E.R. Aboobaker, it did not prevent him from establishing his claim in a competent court."

22. Bearing in the mind the aforesaid principles of law, that the authority has been conferred upon the Registrar to accept list of members and office bearers of Managing Committee under Section 4 of the Act and anyone aggrieved against the acceptance of said list of members and office bearers, can approach appropriate forum. In the State of Uttar Pradesh, a proviso has been inserted under sub-section (1) of Section 4 by U.P. Act No. 11 of 1984, which requires that if the Managing Body is elected after the last submission of the list, the counter signature of the old members shall be obtained on the list and if the old office-bearers do not countersign the list, the Registrar may issue a notice to such person inviting objection from them and decide all the objections received within the specified period. In view of the said proviso, if any objection is filed by ex-office bearers and they raise the dispute of the election, it cannot be said that the Registrar cannot decide such dispute and he is bound to refer the dispute to the Prescribed Authority. Registrar in every case cannot be forced to refer the dispute to the Prescribed Authority and based upon evidence adduced Registrar has to take a call as to whose list of office bearers and members is required to be taken on record. In the State of U.P. dispute or doubt pertaining to the election and continuance of office bearer has to be decided in summary manner by the Prescribed Authority on receiving reference from Registrar or alternatively on reference being made by one fourth members of the society. Section 25 provides forum for settlement of dispute in summary manner and it does not altogether ousts the authority of Registrar to accept the list of members. If such interpretation is accepted, then the power conferred on the Registrar by the proviso to Section 4(1) will become redundant and otios and if reference is made mandatory in every case, the second part that provides for reference by one fourth members would also be a meaningless provision. Said interpretation would also be against the true intendment of the Legislature, which has empowered the Registrar to decide the objection raised before him and accept list of office bearers and members of Managing Committee and the said order always being subject to the provisions of Section 25 (1) of the Act or alternatively Civil Suit.

23. Under Societies Registration Act, as applicable in the State of Uttar Pradesh, Registrar has been given wide power, such as, under Section 3A of the Societies Registration Act for renewal of certificate of registration; under Section 4 to register the annual list of the Managing body; under Section 4A (U.P. amendment) intimation to the Registrar regarding the change etc. in rules; under Section 12-A power to approve change the name of the Society; under Section 12-B in respect of change of name and object of the Society; and, under Section 12-D power to cancel registration in the certain circumstances. Under Section 22 the Registrar is empowered to call for information, and under Section 23 he can direct the society to furnish its account or copy of the statement of receipts and expenditure for any

particular year duly audited by the Chartered Accountant. Section 24 also empowers the Registrar in directing the investigation of affairs of the Society and under Section 25 he has power to refer the dispute of the election or for continuance of the officebearers to the Prescribed Authority.

24. The powers conferred under the aforesaid sections clearly demonstrate that the Registrar is the principal Executive Officer to exercise his power in respect of the affairs of the Society. Thus, his power under Section 4 cannot be divested only on the ground that under Section 25 he has the authority to refer the dispute pertaining to election and continuance of office bearers and, accordingly, even if some frivolous dispute is raised in respect of the election or continuance of the officebearers, the same should be mandatorily referred. If there is a dispute of two parallel groups of the society, the Registrar can always examine whether the persons of rival group, who have raised the dispute, are member of the society or not. He can record his prima facie satisfaction in this regard as to who has the authority to convene the meeting and hold elections; persons who have participated are valid members of society; elections have been held as per bye-laws of society and if he is satisfied that the dispute is genuine and it is a dispute inter se between the members of the society, then he can refer the dispute to the Prescribed Authority.

25. The view which we are taking in the present case has already been taken by a learned Single Judge of this Court in the case of Committee of Management Gyan Bharti Shiksha Sadan Vs. State of U.P. and others, (2015) 1 ALJ 165, and we, accordingly, endorse the view taken by the learned Single Judge of this Court.

26. Coming to the facts of the present case as the order passed by the Assistant Registrar has not even been looked into by the learned Single Judge, as such, the order passed by the learned Single Judge is hereby quashed and set-aside and the learned Single Judge is requested to decide the matter afresh after hearing the parties as to whether the case in hand is of a ingenuine dispute and it would be an exercise in futility to refer the matter to the Prescribed Authority and in case it has got any semblance of truthfulness, then the dispute can be referred to the Prescribed Authority.

27. Special Appeal is allowed, accordingly. Writ petition is recorded to its original number and same be placed in the next cause list.