

Neutral Citation No. - 2023:AHC:146558

A.F.R.

Reserved.

Delivered on 24.07.2023.

Court No. - 10

Case :- MATTERS UNDER ARTICLE 227 No. - 6926 of 2023

Petitioner :- Mahendra Singh

Respondent :- Committee Of Management Rastriya Sabha
Khair And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar
Gangal, Utkarshni Singh

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6922 of 2023

Petitioner :- Balvir Singh

Respondent :- Committee Of Management Rastriya Sabha
Khair And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Utkarshni Singh
Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6923 of 2023

Petitioner :- Rahul Panchal

Respondent :- Committee Of Management Rastriya Sabha
Khair And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar
Gangal, Utkarshni Singh

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6924 of 2023

Petitioner :- Pawan Kumar

Respondent :- Committee Of Management Rastriya Sabha
Khair And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar Gangal

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6945 of 2023

Petitioner :- Dinesh Kumar

Respondent :- C/M Rastriya Sabha, Khair, District-Aligarh
And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar
Gangal, Utkarshni Singh

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6946 of 2023

Petitioner :- Om Prakash

Respondent :- C/M Rastriya Sabha, Khair, District-Aligarh
And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar Gangal

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6947 of 2023

Petitioner :- Devendra Singh

Respondent :- C/M Rastriya Sabha, Khair, District-Aligarh
And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar
Gangal, Utkarshni Singh

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6948 of 2023

Petitioner :- Rakesh Kumar

Respondent :- C/M Rastriya Sabha, Khair, District-Aligarh
And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar Gangal

Counsel for Respondent :- Ankit Kumar Rai

WITH

Case :- MATTERS UNDER ARTICLE 227 No. - 6949 of 2023

Petitioner :- Rajendra Prasad

Respondent :- C/M Rastriya Sabha, Khair, District-Aligarh
And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar Gangal

Counsel for Respondent :- Ankit Kumar Rai

AND

Case :- MATTERS UNDER ARTICLE 227 No. - 6921 of 2023

Petitioner :- Brijwasi Sharma

Respondent :- Committee Of Management Rastriya Sabha
Khair And 2 Others

Counsel for Petitioner :- Pankaj Agarwal, Shekhar
Gangal, Utkarshni Singh

Counsel for Respondent :- Ankit Kumar Rai

Hon'ble Kshitij Shailendra, J.

1. This bunch of petitions under Article 227 of the Constitution of India involve common questions of fact and law and, therefore, all these petitions are being decided by a common judgment. For the purpose of judgment, Matter under Article 227 of the Constitution of India No. 6926 of 2023

(Mahendra Singh v. Committee of Management Rastriya Sabha Khair & 2 others) is being treated as a leading case.

2. As per pleadings contained in the petition and the material annexed thereto, the petitioner was a tenant in the shop bearing No.36 forming part of a building belonging to Khair Kanya Mahavidyalaya Khair, District Aligarh. A suit bearing S.C.C. Suit No.38 of 2014 (Committee of Management Rastriya Sabha Khair & others v. Mahendra Singh) claiming a decree for eviction was filed by the Committee of Management, Rastriya Sabha Khair, Aligarh with the description that it is a Society registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as 'the Act, 1860') through its Manager/Secretary Dr. Vishal Sharma; by Vishal Sharma himself as a person in the capacity of Manager/Secretary of Rastriya Sabha Khair and also by Committee of Management, Khair Kanya Mahavidyalaya, Khair, Aligarh respectively as plaintiff Nos.1, 2 and 3.

3. The aforesaid suit was filed with the averments that the property in dispute belongs to an educational institution which is recognised under the provisions of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as 'the Act, 1973') and the said Institution is run by a Society registered under the Act, 1860. It was alleged that the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as 'the U.P. Act No.13 of 1972') were not applicable to the shop in dispute and

since the Institution felt a great need of space to construct its building, the shop in dispute alongwith various shops (forming subject matter of litigation in the connected petitions) was required. It was further alleged that tenancy of the petitioner was determined by serving a registered notice dated 13.06.2014 but since the shop was not vacated, suit for ejectment claiming decree of eviction was filed.

4. The petitioner filed written statement and admitted the landlord-tenant relationship in between the petitioner and the Society but denied the said relationship in relation to Khair Kanya Mahavidyalaya, Khair, Aligarh. The written statement was amended during the course of proceedings and it was alleged that the plaintiff-Committee/Society was not registered under the Act, 1860; the office bearership of the persons described in the plaint was not approved by the University; no rent was due on the date of issuance of notice; the notice was invalid and that the suit having been filed by unauthorized persons was liable to be dismissed.

5. The parties led evidence in support of their respective cases and I find from the record that apart from other documents, the plaintiffs filed Scheme of Administration of the Institution, list of office bearers approved by the University pertaining to year 2014-2015; certain letters issued by the authorities in this regard; the Bye-laws and also Certificate of renewal of registration of the Society. In oral evidence, Vishal Sharma appeared as PW-1 in the capacity of Manager/Secretary

of the Committee of Management of the Society and was cross-examined on behalf of the defendant-petitioner.

6. After analysing the case of the parties, the Judge Small Causes Court, by impugned judgment and decree dated 06.09.2022, decreed the suit and directed the defendant-petitioner to vacate the shop in dispute within a period of two months. The defendant-petitioner assailed the aforesaid decree by filing a revision under Section 25 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as 'the Act, 1887'), however, the challenge has been turned down by the District Judge, Aligarh by dismissing the revision by order impugned dated 01.04.2023.

7. I have heard Ms. Utkarshni Singh, learned counsel for the petitioner and perused the record. Shri Ankit Kumar Rai represents the respondents through caveat.

8. Learned counsel for the petitioner has mainly argued that Vishal Sharma, alleging himself to be Manager of the plaintiff No.1 was not a duly elected Manager and as the Society was not duly recognized by Deputy Registrar, Firms, Societies and Chits, Aligarh, the suit instituted on behalf of the Society through the said Manager was not maintainable. It has further been argued that though the landlord-tenant relationship was not denied by the defendant-petitioner, the courts below, while considering the admission to this effect, have erred in holding the suit as maintainable. It has further been argued that the

petitioner had moved an application 29-C before the trial court under Order XI Rules 12 and 14 read with Section 151 of the Civil Procedure Code, 1908 (hereinafter referred to as ‘the Code, 1908’) seeking a direction for the plaintiffs to file documents of registration and Constitution of Society and also recognition letter of the plaintiff No.3 under the provisions of U.P State Universities Act, 1973 and though the said application was allowed by the Judge Small Causes Court by order dated 03.10.2015, the documents were not filed by the plaintiff-respondents and, hence, adverse inference should have been drawn by the courts but has not been drawn. It has further been argued that the courts below have failed to take into consideration the amended paragraphs of the written statement, by which, the locus and right to sue of the plaintiffs was specifically objected to by the defendant-petitioner.

9. I have considered the submissions advanced by the learned counsel for the petitioner and I would like to deal with the same in the light of statutory provisions which are applicable in the proceedings instituted by a Society registered under the Act, 1860 and other laws.

10. There is no dispute about the fact that since the shop in dispute forms part and parcel of the building vested in a recognized educational institution, the provisions of U.P. Act No.13 of 1972 would not be applicable by virtue of Section 2(1)(b) of the said Act. There is also no dispute about the landlord-tenant relationship in between the parties to the

litigation, atleast in between the plaintiff Nos.1 and 2 and the defendant-petitioner. There is also no dispute that the notice determining the tenancy of the defendant-petitioner was duly served upon him. The dispute in the present case is as to whether, in the light of the material placed before the courts below, it could be said that the plaintiffs had no right to sue or that the suit instituted by them was not maintainable.

11. I find that there was sufficient material on record in the form of Scheme of Administration of the Institution, list of office bearers approved by the University pertaining to the year 2014-2015; certain letters issued by the authorities in this regard; the Bye-laws and also Certificate of renewal of registration of the Society, Paper No.27-Ga/14 (list of office bearership of 2014-15) and paper No.27-Ga/15 (certificate issued by the Registrar of Societies, U.P. renewing the registration of the Society for a period of five years w.e.f. 28.01.2015) to establish that the Society was duly registered under the provisions of Act, 1860. Even if, by any stretch of imagination, it is assumed that the Society was not registered on the date of institution of the suit (though I do not find any such material to this effect), the question would arise as to whether office bearers of the Society, having actual and effective control over the affairs of the Society, are competent to institute and press a suit for ejectment of a tenant from immovable property forming part of the building vested in a recognized educational institution run by the Society.

12. Sections 5 and 6 of the Act, 1860 are required to be referred in this regard and are quoted hereinbelow:-

“5. Property of society how vested.—*The property, movable and immovable, belonging to a Society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society for their proper title.*

6. Suits by and against societies—*Every society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such persons as shall be appointed by the governing body for the occasion :*

Provided that it shall be competent for any person having a claim or demand against the Society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.”

13. From the aforesaid, it is clear that any immovable property belonging to a Society shall be deemed to be vested for the time being in the Governing Body of such Society and in all proceedings, the property, movable and immovable,

belonging to a Society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society for their proper title. It is also clear that such a Society may sue or be sued in the name of the President, Chairman or Principal Secretary or Trustees and, in case, anybody has claim or demand against the Society, he may sue the office bearers of the Society by launching appropriate proceedings.

14. Insofar as the requirement of a suit instituted by such plaintiff is concerned, Order VII Rule 1(b) and Rule 4 of the Civil Procedure Code, 1908 need to be referred and are quoted hereinbelow:-

“Order VII Rule 1(b)- the name, description and place of residence of the plaintiff;

Rule 4- When plaintiff sues as representative.-
Where the plaintiff sues in a representative character the plaint show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.”

15. From a perusal of the aforesaid provisions read with the array of the parties, I find that the description of plaintiffs was in consonance with Order VII Rule 1 (b) of the Code, 1908 and

the office bearers of the Societies had, by leading cogent documentary and oral evidence, established that they were having **actual existing interest in the subject matter (i.e. the shop in dispute)** and, hence, since the office bearers were representing the Society, the requirement of Order VII Rule 4 of the Code, 1908 also stood fulfilled.

16. Admittedly, the suit was filed under Sections 15 and 16 of the Act, 1887 and Section 15, as amended in the State of U.P., as per the Second Schedule contained in the Act clearly provides institution of a suit by lessor for eviction of lessee from the building after determination of his lease. Since the provisions of U.P. Act No.13 of 1972 are not applicable, as already observed, the definition of “lessor” and “lessee” shall have to be read in the light of Section 105 of the Transfer of Property Act, 1882 which reads as follows:-

“105. *Lease defined.*—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

***Lessor, lessee, premium and rent defined.*—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the**

money, share, service or other thing to be so rendered is called the rent.”

17. In view of the above discussion, I find that there is no flaw in institution of suit by a Society represented by its office bearers. The emphasis of learned counsel for the petitioner that the Society was not duly registered under the provisions of Act, 1860 is contrary to the record of proceedings.

18. Now coming to the order dated 03.10.2015 passed by the Judge Small Causes Court on application 29-C, I find that even the Judge Small Causes Court did not mention in his order dated 03.10.2015 as to what documents were not filed by the plaintiffs and what were required to be filed. A perusal of the said order shows that specific objections were filed by the plaintiffs that the documents sought to be brought on record as per the defendant-petitioner, were already filed by the plaintiffs and there was no other document with the plaintiffs. The Judge Small Causes Court observed that whatever documents are available with the plaintiffs may be filed by them and whatever documents are not available, the plaintiffs are not bound to file the same. I have already observed in the judgment that sufficient documents were there to establish that Society was renewed under the provisions of law and list of office bearers was also duly approved.

19. In this regard, analysis of oral evidence is also of quite significance. PW-1 Vishal Sharma, who appeared in the

capacity of Manager/Secretary of the plaintiff No.1, had clearly stated in his cross-examination that list of office bearers and other documents pertaining to the Society had been filed by the plaintiffs and that it was wrong to allege that he was not office bearer or Secretary of the Society. The petitioner who had appeared as DW-1, in his cross-examination, stated as follows:-

“मुझे नहीं मालूम कि राष्ट्रीय सभा खैर क्या है, मैं राष्ट्रीय सभा का संविधान नहीं पढ़ा मैं डा० निशान शर्मा को नहीं जानता, सोसाइटी का रजिस्ट्रेशन कब तक वैधानिक है, हमें नहीं मालूम है, मैं डिप्टी रजिस्ट्रार सोसाइटी आगरा नहीं गया हूँ, सोसाइटी की तरफ से दावा दायर करने का किसे अधिकार है मुझे नहीं मालूम हैं। मैं किरायेदारी कानून को नहीं पढ़ा, सोसाइटी का नवीनीकरण कब हुआ मुझे नहीं मालूम है। सोसाइटी का कार्यालय कहाँ है नहीं मालूम है।”

20. The Judge Small Causes Courts, in the final judgment, has also referred to the cross-examination of petitioner DW-1 and has also held that the plaintiff-petitioner No.1, being a juristic person, and there being sufficient material placed by the plaintiffs, the suit was clearly maintainable. It was also held that the educational institution is being run by the plaintiff No.1-Society and also that nobody has raised any objection with regard to office bearership or any other aspect of the Society. The Judge Small Causes Court also held that the dispute was neither a dispute of title nor a dispute relating to

the office bearership of the Society and, therefore, the defendant had no right to raise any objection in this regard.

21. Even if, for the sake of argument, it is assumed to the extreme extent that on the date of institution of suit, there was some defect in the Society or its office bearership (though I do not find any such defect after perusing the entire record), the question of **effective and actual control** over and *de facto* management *qua* the affairs of the Society and educational institution needs to be elaborated.

22. Coming to the **de facto doctrine**, the literal meaning of this would be "in fact". The doctrine of *de facto* is based on sound principle of public policy and is aimed at removing any kind of insecurity and confusion amongst the people whose rights would get prejudiced in the event the orders passed or actions taken by a person, who in fact occupied the office, is held to be void on account of his occupation of office subsequently being held to be illegal. It is rightly said that doctrine is borne of necessity and to arrest mischief if there exists office in law and an authority occupies it by virtue of its appointment or election or nomination. Such a person or body is clothed with insignia of the office and exercises powers and functions as such and the authority to exercise such power is upheld by virtue of *de facto* doctrine.

23. In the case of ***Committee of Management Dayanand Arya Kanya Degree College, Moradabad and others v.***

Director of Higher Education, Allahabad and others reported in **(1998) 4 SCC 104**, the Supreme Court upheld the acceptance of voluntary resignation of a teacher by the Committee of Management which was *de facto* in office. Vide paragraph 3 of the judgment, the Court held that the Committee of Management that was continuing in office by virtue of interim order of the High Court, it would be taken to be a *de facto* and *de jure* as well.

24. Following the above judgment, a Division Bench of this Court in the case of **Mehandi Hasan and others v. State of U.P. and others** reported in **2014 (3) ADJ 437 (DB)**, had an occasion to deal with the situation where Committee of Management continued to enjoy office by virtue of stay order passed by this Court even though subsequently the election was held to be invalid. In that case, the Committee of Management which was continued by virtue of an interim order, issued an advertisement. The petitioners, who had applied against the advertisement and their selection was held but the same was questioned on the ground that their appointment was *void ab initio* as at that time the Committee was only on the strength of interim order. The similar view was taken by a Division Bench of this Court in the case of **Committee of Management Gangadin Ram Kumar Inter College, Ramgarh Barwan, District Jaunpur v. Deputy Director of Education, Vth Region, Varanasi and others, 2006(4) ADJ 381 (DB)**. The question of effective control over the managerial affairs of an

educational institution has also been emphasized by the Five Judges Full Bench of this Court in the case of ***Committee of Management, Pandit Jawaharlal Nehru Inter College, Bansgaon and Anr. v. Deputy Director of Education, Gorakhpur & Ors.*** reported in ***AIR 2005 Allahabad 101 (FB).***

25. In view of the aforesaid position of law, I find that there being no rival Committee or Society raising objection with regard to the office bearership of the plaintiffs, there being no suit or proceedings under the proviso attached to Section 6 of the Act, 1860, there being sufficient material to establish that plaintiffs were under effective and actual control over the affairs of the Society, and their control being saved by doctrine of both ***de facto*** and ***de jure*** management, I find that suit for eviction of the tenant-petitioner from the immovable property was very much maintainable in the light of the provisions of Sections 5 and 6 of the Societies Registration Act 1860, Order VII Rules 1(b) and 4 of the Civil Procedure Code, 1908, Section 105 of the Transfer of Property Act read with Second Schedule of U.P. (Amendment) contained in Section 15 of the Provincial Small Causes Court Act, 1887.

26. No other point was argued.

27. The findings recorded by the Judge Small Causes Court as affirmed by the revisional court are pure findings of fact which do not require any interference in exercise of powers under

Article 227 of the Constitution of India, and the present petition alongwith nine other petitions (as noted hereinabove) fail and are, accordingly, **dismissed**.

28. The petitioners are granted time to vacate the shop(s) in dispute **on or before 30.04.2024** provided they continue to deposit admitted rent before the Judge Small Causes Court, month-to-month, which shall be released in favour of the plaintiff-respondents without furnishing any security. It is also provided that, in case, the petitioners fail to vacate the shops in dispute as directed hereinabove, the Executing Court shall execute the decree of eviction forthwith by using force **on or before 31.05.2024** i.e. within a month of the last date fixed by this Court saving possession of the petitioners.

Order Date:-24.7.2023

Jyotsana

(Kshitij Shailendra, J.)