

21

submitted in the office of registrar of the society on the date of election i.e. 19.12.2013 in terms of Section 4 of Societies Registration Act, 1860. Therefore, Sh. Anil Sharma is not a general secretary of ABPP and thus not authorised by the plaintiff and hence the present suit is barred under Section 34 of Specific Relief Act 1963.

3. It is further submitted that perusal of article 10 of the Constitution of ABPP provides that a general secretary will represent ABPP in legal cases since in ABPP there are about 10 general secretaries, therefore in terms of Section 6 of Society Registration Act, only that general secretary who is authorised by the governing body of ABPP can only represent on behalf of ABPP. Further, it is alleged that the plaintiff has filed alleged order dated 10.06.2017 and 27.09.2013 signed by one Subodh Kant Sahay claiming to be the president of ABPP. However, both the signatures on these orders do not match and are not similar, therefore, it raises suspicion regarding genuineness of the orders.
4. It is further stated that Sh. Anil Sharma is not an elected committee member and the same is evident from the so called list of elected office bearers and 10 executive members dated 21.12.2013 and in this list the name of Sh. Anil Sharma is not mentioned. Therefore, Anil Sharma cannot seek declaration in respect of election held on 21.12.2013 in which he was neither a candidate nor was a member. Further, both Anil Sharma and Subodh Kant Sahay are not eligible to contest election of ABPP

22

Suit no. 765/17

Akhil Bhartiya Panchayat Parishad vs. Balmiki Prasad Singh

as they are not voters of Gram Sabha and Sh. Subodh Kant Sahay is a resident of Ranchi whereas Anil Sharma is resident of DIZ area, BKS Marg, New Delhi.

5. Furthermore, as per rule 6 of ABPP Nirwahan Niyamawali 1983, election dispute has to be preferred before the election tribunal duly constituted by the executive committee and the election dispute has to be raised within 30 days from the date of declaration of election result as provided under Rule 6 clause 4 of ABPP Nirwahan Niyamawali 1983. It is further submitted that the executive committee headed by defendant as national president of ABPP has already constituted a three members tribunal of which Sh. Varun Kumar Sinha is the chairman.
6. After the election, the election officer Dr. Narender Singh Gautam alongwith co-election officer Mrs. Ram Singh submitted the entire record pertaining to election before the registrar of societies against a receipt acknowledgment. Thereafter newly elected executive committee submitted list of newly elected office bearers as per requirement of Section 4 of Society Registration Act and then the registrar of society issued a certified list of newly elected office bearers with the name of the defendant as its president. Certified list was supplied to the defendant, Sh. Anil Sharma and Sh. Sheetla Shankar Vijay Mishra claiming to be general secretary, approached the office registrar of societies in the month of September 2015 objecting to issuing the certified list. Thereupon, registrar of societies vide letter no. FS-1735/15057 dated 1.10.2015 informed that a true

23

copy of list of governing body numbers of the year 2013-2015 has been supplied to them and not to use the same till the dispute is settled in an appropriate forum. Therefore, the registrar of societies have not cancelled the certified list. Therefore, the existing governing body of ABPP is headed by defendant as its president. Therefore, the election dispute ought to have been brought before the election tribunal constituted by governing body. Moreover, neither Anil Sharma, Sheetla Shankar, Vijay Mishra, Subodh Kant Sahay have challenged the election held on 19.12.2013 and therefore the election has attained finality and accordingly election allegedly held on 21.12.2013 is void ab initio and illegal.

7. It is further stated that the suit of the plaintiff is time barred as the suit has been filed on 18.09.2017 seeking declaration of list of committee members elected through election held on 21.12.2013 as valid. However, as per Nirwahan Niyamawali the plaintiff ought to have raised this issue within 30 days from the date of election before the election tribunal.
8. In reply, the plaintiff has stated that the application filed by the defendant is not maintainable and is liable to be dismissed. Further, it is also stated that the issues raised in the application have to be decided through trial and cannot be rejected at this stage. Further, the issues raised by the defendant does not fall under any of the clause of Order 7 Rule 11.
9. I have heard the arguments on behalf of the parties and carefully perused the record. While considering the question of rejecting

24

the plaint, this court has to keep in mind the mandatory provisions of Order VII, Rule 11 CPC which reads as below—

"The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of Rule 9...." (emphasis supplied)

10. In *T. Arivandandam v. T.V. Satyapal and Another*, (1977) 4 SCC 467, the Apex Court held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled.

25

11. The basic principle which can be culled from the cases above mentioned above is that the in an application under Order VII, Rule 11, the court is only to read the plaint and not see the averments made by the defendant. The Court has to see whether if on reading the plaint as a whole the plaintiff is able to establish a cause of action.

12. In the instant case, As per Section 6(1) of the ABPP Nirwahan Niyamawali 1983, the executive committee of ABPP shall constitute election tribunal consisting of three members and as per Section 6(4), any dispute relating to the election has to be raised before election tribunal within 30 days of declaration of result. As per clause 5, the jurisdiction of any other court is barred with respect to issue of election procedure. If we consider this document submitted by the plaintiff which is the election rules of ABPP, 30 days limitation is given for filing any dispute before the election tribunal and as the plaintiff himself is relying upon the same document, he himself is bound to follow the rules mentioned therein.

13. However, as per the plaint filed by the plaintiff, the election took place on 21.12.2013 and therefore, cause of action shall arise from this date. If for the sake of arguments, this election rules is not taken into consideration, then also as per the limitation act, for obtaining declaration, three years time period is given to file the suit from the date when the right to sue first accrued. In the present case, the right to sue shall first accrue on the date of election i.e. 21.12.2013. However, the plaintiff has claimed that

26

the cause of action has accrued from the date 28.04.2017 when the ABPP executive committee submitted its list of office bearers for the year 2016-17 and the Registrar of societies directed not to use the certified copies of list of governing members as there is a dispute regarding the Governing Body of the ABPP. In my opinion the reliance of the plaintiff on this incident being the cause of action is misplaced as the annual list of managing body is to be submitted every year to the Registrar of Societies. Therefore, in this case, the list of office bearers would have been submitted firstly after the declaration of election result i.e., 21.12.2013 and thereafter annually on every year starting from 2014. Hence, the plaintiff is trying to mislead the court by stating that cause of action has accrued on 28.04.2017.

14. Moreover, even if we consider that the suit is within limitation, but, then also the jurisdiction of civil court is barred as per Section 6(5) ABPP Nirwahan Niyamawali 1983. However, no arguments have been forwarded by the plaintiff in this regard.

15. Further, the plaintiff has sought to declare the election dated 21.12.2013 as valid without seeking declaration regarding the election which took place on 19.12.2013. The plaintiff has himself filed an order dated 19.12.2013 passed by Sh. Subodh Kant Sahay, the alleged president of ABPP wherein the election dated 19.12.2013 was declared null and void and suspended the membership of the participating candidates and therefore, appropriate remedy would be to seek declaration of the previous

27.

election as null and void without which the subsequent election cannot be held as valid.

16/ Further, the defendant has also alleged that Sh. Anil Sharma has no authority to file the present suit as he is neither the elected member of the committee nor he contested in the election. Perusal of nomination list dated 21.12.2013 and list of elected members dated 23.12.2013 does not reflect the name of Sh. Anil Kumar. Moreover, the plaintiff has also not placed any document pertaining to the authority given by ABPP to file the present suit on its behalf. Therefore, I am of the considered view that Sh. Anil Kumar does not have locus standi to file the present suit.

17. In view of the observations made above, I am of the view that suit of the plaintiff is clearly barred by law. Accordingly, the application filed by the defendant under Order 7 Rule 11 is allowed. The suit of the plaintiff is rejected.

18. Pending applications, if any stand dismissed. File be consigned to record room after necessary compliance.

Announced in open Court
on 05.09.2019

Swayam Siddha Tripathy
Civil Judge/East/Karkardooma