

GAHC010053472023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1423/2023

ASIMGANJ WAKF PARICHALONA SAMITTEE
TO BE REPRESENTED BY ITS MUTAWALLI NAMELY,
ABU MD. SUFIAN,
AGED ABOUT 62 YEARS,
S/O- LT. IMDADUR RAHMAN,
VILL- DURLAVPUR,
P.O.- KANAIBAZAR,
DIST- KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION,
ASSAM SECRETARIAT COMPLEX,
DISPUR, GHY-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

3:THE INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT CIRCLE
DISTRICT- KARIMGANJ
ASSAM.

4:DEPUTY COMMISSIONER
KARIMGANJ
DISTRICT- KARIMGANJ
ASSAM.

5:THE DISTRICT LEVEL COMMITTEE

CONSTITUTED FOR THE PURPOSE OF AMALGAMATION OF SCHOOLS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

DEPARTMENT OF EDUCATION

GHY-06

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

15-03-2023

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing Counsel, Department of School Education for the respondent Nos. 1 to 3 and 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.4.

2) The State Government in the Secondary Education Department, Assam vide letter No. ASE.23/2022/75 dated 18.02.2022 accorded approval for amalgamation of Asimia High School, (erstwhile Asimia Title Madrassa) and Asimia High School (A) (erstwhile Asimia Senior Madrassa) with Asimia Higher Secondary School at Bagersongon, Kanaibazar in the Patharkandi Education Block of Karimganj District under the Scheme of Siksha Khetra relating to merger and amalgamation of different School in terms of the Office Memorandum No.ASE.48/2016/64 dated 03.08.2021.

3) Pursuant to such approval, the Director of Secondary Education, Assam by order under No.DSE/GIS/CC/15/2021/119 dated 27.05.2022 issued necessary order regarding the amalgamation of said Asimia High School, (erstwhile Asimia Title Madrassa) and Asimia High School (A) (erstwhile Asimia Senior Madrassa) with Asimia

Higher Secondary School with certain terms and conditions amongst other that the movable and immovable property of said Asimia High School (Asimia Title Madrassa) shall be vested in the name of the Base School i.e., Asimia Higher Secondary School.

4) Petitioner is Asimganj Wakf Parichalona Samity represented by its Mutawalli, namely, Abu Md. Sufian. Petitioner submitted that such Wakf property is according the religious rights of the concerned Mutawalli.

5) It is stated by the petitioner that land measuring 4 Bigha 8 Kathas and 14 Chattaks of land comprising in two parts under (i) Patta No.6281/10 No. Jawaid Ali-28 No Dag, (ii) 6285/14 No Mamod Ali-39/44/47 Dag, (iii) 6292/21 No Abdul Wajid - 43 Dag, (iv) 6294/23 No. Arjid Ali-40 Dag, (v) 6295/24 No. Arju Mia - 49 Dag, (vi) 6296/25 No Habibz Mia-48 Dag, (vii) 6297/26 No Arsad Ali 41 Dag, (viii) 6298/17 No. Etim Ali-42 Dag, (ix) 6299/28 No Arju Mia-46/50 Dag and (x) 6300/29 No Arju Mia 45 Dag bounded by the house of Arfiz Ali in the North, Asimganj Bazarghat Road in the South, PWD Road in the East and Railway Pond in the West.

6) Petitioner further submitted that said 4 Bighas 8 Kathas and 14 Chattaks of land is a Wakf property over which the Asimia Senior Madrassa was established.

7) Petitioner is aggrieved since by said terms and condition No.9, the respondents in the Secondary Education Department directed that the said immovable Wakf property of Asimia High School (A) (erstwhile Asimia Senior Madrassa) over said Wakf property shall now be merged and vested in the name of the Base School, namely, Asimia Higher Secondary School stating that the respondent authorities have no such power and jurisdiction to take over such Wakf property in the guise of amalgamating Asimia High School (A) (erstwhile Asimia Senior Madrassa).

8) Hence, this writ petition.

9) The respondent authorities placed before the Court that as numbers of persons aggrieved with such amalgamation and merger of Educational Institution under the Siksha Khetra Scheme have approached this Court against such amalgamation and

merger, it has constituted an amalgamation/merger Re-verification Committee by an order dated 10.09.2022 issued by the Secretary to the Government of Assam in the Department of School Education vide letter No.E.225457/1 to re-verify such amalgamation and merger of Educational Institutions under the Siksha Khetra Scheme.

10) In the said Siksha Khetra Scheme issued under the OM dated 03.08.2021 at Clause 19 as well as in the impugned order dated 27.05.2022 issued by the Director of Secondary Education, Assam amalgamating Asimia High School, (erstwhile Asimia Title Madrassa) and Asimia High School (A) (erstwhile Asimia Senior Madrassa) with Asimia Higher Secondary School at Clause 10 provided that *any dispute to the Office Memorandum as well as existing Government Rules, procedure etc., shall be followed.*

11) In the OM dated 03.08.2021 at Clause 19 it is specified that for *any dispute arising out of the order of amalgamation the aggrieved Institution/public may appeal before the Government in the Secondary or Elementary Education Department, as the case may be.*

12) After hearing the learned counsels for the parties and for the reasons noted above, the petitioner is directed approach the Secretary to the Government of Assam Department of School (Secondary) Education by preferring an appeal with regard to its grievances regarding the taking over of the Wakf property of Asimia Senior Madrassa by way of such order of amalgamation under No.DSE/GIS/CC/15/2021/119 dated 27.05.2022, noted above.

13) Such appeal shall be preferred by the petitioner forthwith along with a certified copy of this order, annexing a copy of the writ petition including the Annexures appended thereto as well as the relevant land documents for establishing its case that said Asimia Senior Madrassa existed in the Wakf property.

14) In the event of filing such appeal by the petitioner before the Secretary to the Government of Assam

Department of School (Secondary) Education, within the time so specified, the said authority on due verification of relevant records and after giving an opportunity of hearing to the petitioner and the authorities in the Revenue Department of the District of Karimganj shall dispose of the said appeal of the petitioner within a period of 60 (sixty) days from the date of receipt of the same from the petitioner, as noted above, intimating the petitioner about the outcome of the same.

15) With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant