

GAHC010154922023



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

Case No. : WP(C)/4022/2023

RADHESHYAM CHOUDHARY AND ANR
SON OF LATE RAM SWARUP CHOUDHURY,
RESIDENT OF RAI BAHADUR LANE,
NEAR DURGA MANDIR, WARD NO. 4,
JORHAT- 785001.

2: SATRUGHAN KANU
SON OF SRI MANIK CHAND KANU

RESIDENT OF RAI BAHADUR LANE

NEAR DURGA MANDIR
WARD NO. 4

JORHAT- 785001

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
FINANCE DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE REGISTRAR OF FIRMS AND SOCIETIES
ASSAM
OFFICE OF THE REGISTRAR OF FIRMS AND SOCIETIES
ASSAM

HOUSE NO. 1
4TH FLOOR
BANPHOOL NAGAR PATH

BELTOLA ROAD

NEAR HOUSEFED

DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
JORHAT
JORHAT- 785001

Advocate for the Petitioner : MR. T T TARA

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.07.2023

Heard Mr. T.T. Tara, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned Addl. Senior Govt. Advocate, representing all the respondents.

2) By filing this writ petition under Article 226 of the Constitution of India, amongst others, the petitioners are praying for (i) issuance of a direction upon the Registrar of Firms and Societies (respondent no. 2) to exercise its power under the Societies Registration Act, 1860 to conduct General Body Meeting of the *Hindustani Panchayati Thakurbari & Kali Mandir Samiti* under the *ad hoc* committee; (ii) to direct the respondent no. 2 to restrain the dissolved Executive Committee of the aforesaid society to give effect to its paper publication announcing to conduct the general body meeting; (iii) to direct the respondent no. 2 to act against the dissolved executive members of the said society; (iv) to direct the respondent authorities to dispose of a series of representations submitted by the petitioners.

Issue of non-joinder of necessary parties:

3) The two writ petitioners herein are (1) Radheshyam Choudhary, and (2) Satrugan Kanu. Three respondents have been impleaded in this writ petition, namely, (1) The State of Assam, represented by the Commissioner and Secretary to the Govt. of Assam, Finance Department; (2) The Registrar of Firms and Societies, Assam; and (3) The Deputy Commissioner Jorhat.

4) When the issue of non-joinder of necessary parties was raised by the learned Addl. Senior Govt. Advocate, the learned counsel for the petitioner had contested the point by submitting that no other persons are either proper or necessary parties in this writ petition because the petitioners are seeking mandamus only against the respondent no. 2. By making reference to the case of *Marbury v. Madison*, 2 L Ed 60, it was submitted that the High Court's power to issue prerogative writs would not be dependent on parties but it could issue writs upon the statutory authorities who have failed to discharge their duties. It is submitted that the respondent no. 2 was having power to ensure that the executive committee of the society is lawfully constituted and functioning.

5) The copy of the cited judgment was not placed for the perusal of the Court. However, with a caveat that memory, at times, is fallible, it may be stated that the case of *Marbury v. Madison (supra)*, is perhaps on the power of the writ courts in respect of judicial review wherein it is perhaps held that all State actions, including legislation, had to conform to the Rule of Law and that the said case was decided in the backdrop of the legal position of England, where there is no written Constitution. In this case, the petitioners have not been able to show that any action of the respondent no. 2 was contrary to the

Rule of Law. It is made clear that the Court has discussed the case of *Marbury v Madison (supra)* from memory, which is likely to be fallible and therefore, observations made in this paragraph is not to be construed as an authoritative comment on the ratio of the cited foreign case. Hence, if the memory of the Court is found to be not right, the observations made in this paragraph may be just ignored by the readers.

6) The prayers made in this writ petition are briefly referred to herein before. In the considered opinion of the Court, none of the prayers can be allowed in the absence of proper and necessary parties. No materials have been annexed to the writ petition to show that the earlier Executive Committee was dissolved in a lawful manner; or that the "so called" *ad hoc* Committee was constituted in a lawful manner. Therefore, prayer no. 1 cannot be allowed without hearing the members of the society, who are not before us.

7) The second prayer is to direct the respondent no 2 to restrain the dissolved Executive Committee to conduct general meeting. The third prayer is to act against the "so called" dissolved executive committee. Neither the members of the society nor the members of the "so called" dissolved executive committee are before us. Therefore, if the second and third prayers are allowed, it would be condemning the concerned parties unheard. It cannot be presumed that the general body meeting would not have power to disown the action taken by the "so called" dissolved executive committee to call a general meeting when such "so called" dissolved committee had no power to call for any meeting.

8) The *Hindustani Panchayati Thakurbari & Kali Mandir Samiti* has also not been impleaded as a respondent for reasons best known to the petitioners.

9) Therefore, in the considered opinion of the Court, for non-joinder of (i) *Hindustani Panchayati Thakurbari & Kali Mandir Samiti*; (ii) members of the said society; and (iii) members of the "so called" dissolved executive committee. The petitioners have become disentitled to any relief. The Court granted the petitioners an opportunity to save the writ petition by impleading necessary parties. However, the said issue was contested by the learned counsel for the petitioners.

10) The Court is inclined to presume that the petitioners are afraid of impleading any other member of the society as there is every likelihood that on being impleaded they may be unfavourable to the petitioners.

11) Therefore, the writ petition is liable to be dismissed for non-joinder of necessary parties as morefully indicated herein before.

Power of the Registrar of Firms and Societies:

12) The petitioners have not referred to any provision in the Societies Registration Act, 1860 giving jurisdiction to the Registrar of Firms and Societies, Assam (respondent no.2) to conduct general body meeting of the society or to supervise such meeting through its officials. No statutory provision has been cited which empowers the respondent no. 2 to restrain any member of the society to call meetings. No statutory provision is referred to which gives power to the respondent no. 2 to approve the proceedings of the general body meeting of the said society or to approve the executive body members of the society. Therefore, the submission of the learned Addl. Senior Government Advocate appears to have force that the respondent no. 2 had no statutory duty to conduct general body meeting or to supervise such meeting for any reason

whatsoever.

Likelihood of breach of public peace and tranquillity:

13) In prayer no. (iii), it is mentioned about breach of public peace and tranquillity. In this regard, the learned Addl. Govt. Advocate has rightly suggested that if there is a likelihood of breach of public peace and tranquillity, there are other laws which would take care of such situation. Therefore, the petitioners are always at liberty to approach the police and/or the competent court having jurisdiction so as to ensure that public tranquillity is maintained at the site of meeting.

Maintainability of the writ petition:

14) The learned Addl. Senior Govt. Advocate had questioned the maintainability of this writ petition in the present form. In order to save the writ petition, the learned counsel for the petitioner had cited the case of *Committee of Management, Dadar Ashram Trust Society & Ors. v. Mahatma Gandhi Kashi Vidyapeeth & Ors., AIR 2017 All 60: 2016 SCC OnLine All 1072*, which was decided by the Full Bench of Allahabad High Court. In the said case it was observed that "... the right under Article 226 of the Constitution of India can be exercised not for the enforcement of fundamental rights, but "for any other purpose" as well as for enforcement of any legal right conferred by a statute, etc." The said words used in the cited judgment are salutary. However, the petitioners have miserably failed to demonstrate that the concerned statute i.e. Societies Registration Act, 1860 casts any duty to the respondent no.2, in relation to the prayers made.

15) Moreover, as per the facts narrated in the said judgment,

mandamus was issued to the Authorised Controller/ District Magistrate to hold election of office bearers of the registered society. The said observations have been cited out of context. The factual matrix in the said case, which was totally missed out by the learned counsel for the petitioner was that the State Government, sometime in the year 1988, in exercise of power under Section 57 of the Uttar Pradesh Universities Act, 1973 had appointed the District Magistrate as Authorised Controller to take over the management of the College. Since then, the power was continuously been exercised by the District Magistrate in respect of the concerned college. Under the said context, a writ petition to hold elections was entertained. In the said writ petition, direction was issued to the District Magistrate to determine who were the valid members of the general body of the society that were enrolled in terms of section 15 of the Societies Registration Act, 1860. Then came the directions to hold election. Thus, it is evident from the facts that the College was being managed by the Society, the management of the College was taken over by the State and handed over to the District Magistrate, who is a "State" within the meaning of Article 12 of the Constitution of India.

16) Thus, on facts, this case is distinguishable from the facts of the cited case for which the ratio of the case cannot be applied in the present case. The petitioners have not been able to demonstrate that any of the respondents are managing the property of the *Hindustani Panchayati Thakurbari & Kali Mandir Samiti*.

17) Therefore, this present writ petition is found to be not maintainable and accordingly, this writ petition stands dismissed in *limine* in the "motion" stage without issuance of notice on the respondents.

Exhausting alternative remedy:

18) The dismissal of this writ petition shall not preclude the petitioners to approach the competent Court having jurisdiction, if so advised, and agitate their grievances for which this writ petition has been filed. It is provided that the observations made in this order shall not prejudice the petitioners if they approach the competent Court having jurisdiction.

19) There shall be no order as to cost.

JUDGE

Comparing Assistant