

GAHC010159072023



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

Case No. : WP(C)/4083/2023

RANJIT DAS AND 2 ORS.
S/O- LATE KAMINI DAS
RESIDENT OF VILLAGE- DIGHALTARANG,
P.O.- DIGHALTARANG,
P.S- BAGHJAN,
DISTRICT- TINSUKIA, ASSAM,
PIN- 786151.

2: BIJU CHOUDHURY
S/O- LATE PIYUSH CHOUDHURY

RESIDENT OF VILLAGE- DIGHALTARANG

P.O.- DIGHALTARANG

P.S- BAGHJAN

DISTRICT- TINSUKIA
ASSAM

PIN- 786151.

3: SANJAY DAS
S/O- SRI JAWAHARLAL DAS

RESIDENT OF VILLAGE- DIGHALTARANG

P.O.- DIGHALTARANG

P.S- BAGHJAN

DISTRICT- TINSUKIA
ASSAM

PIN- 786151

VERSUS

THE STATE OF ASSAM AND 13 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
COOPERATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 781022.

3:THE ADDITIONAL REGISTRAR OF COOPERATIVE SOCIETIES (G)
ASSAM
KHANAPARA
GUWAHATI- 781022.

4:ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
JORHAT ZONE
DIST.- JORHAT
ASSAM
PIN-

5:LALIT CHANDRA BORAH
ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES

TINSUKIA
DISTRICT- TINSUKIA

ASSAM
PIN

6:BIKASH DAS
S/O- LATE SACHINDRA MOHAN DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

7:SUDHANGSHU DAS
S/O- LATE SADANDRA DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

8:SAMENDRA DAS
S/O- LATE SACHINDRA MOHAN DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

9:JITEN DAS
S/O- LATE SAHDEV DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

10:JAYDHAN DAS
S/O- LATE PRAMADHAN DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

11:RAMCHANDRA DAS
S/O LATE RAJENDRA DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

12:KHITISH DAS

S/O MAHADEV DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

13:RAJIB DAS
S/O- LATE RANJIT DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM.

14:SMT SANDHYARANI DAS
W/O RANJIT DAS

RESIDENT OF DIGHALTARANG

TINSUKIA- 786151

DISTRICT- TINSUKIA
ASSAM

For the Petitioners : Mr. S. Dutta, Sr. Advocate.
Mr. K. Upamanya,
Mr. S. Khound, Advocates.

For the Respondents : Mr. S.K. Talukdar,
Mr. A.B.T. Haque- Caveator.
Mr. T.J. Mahanta, Sr. Advocate,
R-7 & 9.

Date of Hearing & Judgment : **25/07/2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT & ORDER (ORAL)

The instant writ petition has been filed by the Petitioners herein challenging the order dated 05.07.2023 issued by the In-charge, Zonal Joint Registrar of Cooperative Society of Jorhat Zone, Jorhat as well as the Resolution dated 05.07.2023 taken in the purported meeting of the Dibru Dangori River Part-1 Meen Samabai Samity Ltd.

2. Taking into account the factual matrix and the issue to be decided, the instant writ petition is taken up for disposal at the motion stage.

3. From the materials on record, it reveals that the Petitioner Nos. 1 herein is the President of the Cooperative Society in the name and style of Dibru Dangori River Part-1 Meen Samabai Samity Ltd. (for short referred to as 'the Cooperative Society'). The Petitioner Nos. 2 & 3 are the Vice President as well as the Secretary of the said Cooperative Society. On 16.06.2023, a meeting was held amongst the Directors/Members of the Board of Directors of the said Cooperative Society wherein taking into account the various illegalities being committed by the Respondent No. 6, he was removed from the post of the Secretary of the said Cooperative Society in exercise of the powers under Section 38(2) of the Assam Cooperative Societies Act, 2007(in short 'the Act of 2007'). Immediately thereupon on 20.06.2023 the Registrar of Cooperative Society was duly informed that the Petitioner No. 3 was appointed as the Secretary of the said Cooperative Society. It further reveals that on 27.06.2023, the Assistant Registrar of the Cooperative Societies, Tinsukia had issued a

Communication to the Assistant Registrar (M), Office of the Assistant Registrar of Cooperative Societies, Tinsukia thereby informing and intimating the latter that some of the members of the said Cooperative Society had submitted a complaint as regards the Resolution No. 1 of the meeting of the Board of Directors held on 16.06.2023 and thereupon directed that after making an enquiry in respect to the same, the latter was requested to submit a report within 7 days. On the same date, another communication was issued by the Assistant Registrar of Cooperative Society, Tinsukia thereby intimating the Petitioner No. 1 that the Departmental Officer had been appointed to make an enquiry as regards the allegations made pertaining to the meeting of the Board of Directors of the Cooperative Society held on 16.06.2023. It was further mentioned that the approval in respect to the Resolution No. 1 of the meeting of the Board of Directors dated 16.06.2023 was suspended for the time being and till completion of the enquiry the Respondent No. 6 be allowed to carry out the function of the Secretary.

4. It is further relevant to take note of that an FIR was filed by the Petitioner No. 1 before the Officer-in-Charge of Dhola Police Station alleging certain misappropriation of the amounts by the Respondent No. 6. The said FIR was registered and numbered as Dhola P.S. Case No. 27/2023 under Sections 406/420 of the Indian Penal Code. The said FIR was registered on 03.07.2023. Immediately on the next date, i.e. on 04.07.2023, the Assistant Registrar of Cooperative Society, Tinsukia vide a communication bearing No.DTC(P)45/74/Part-5/331 dated 04.07.2023 withdrew the communication dated 27.06.2023, whereby the approval in respect to Resolution No. 1 of the meeting of the Board of Directors dated 16.06.2023 was suspended for the time being as well as the Respondent No. 6 was allowed to carry out the function of

the Secretary till completion of the enquiry.

5. On the very next date i.e. on 05.07.2023, the In-charge Zonal Joint Registrar of Cooperative Society temporarily vacated the communication bearing No. DTC(P)45/74/Part-5/331) dated 04.07.2023 issued by the Assistant Registrar of Cooperative Society, Tinsukia for 10 days. The In-Charge Zonal Joint Registrar of Cooperative Societies further directed the Assistant Registrar of Cooperative Society to submit the evidence of the FIR whether it is registered in the Police Station or not within 3 days of the receipt of the letter for further action. The Assistant Registrar of Cooperative Society was further directed to submit an Enquiry Report of Shri Rana Borthakur, Sub-Registrar of Cooperative Society (Misc), Tinsukia for further necessary action from their end. This order dated 05.07.2023 issued by the In-Charge, Zonal Joint Registrar of the Cooperative Society, Jorhat Zone has been assailed in the instant writ proceeding.

6. On the very date i.e. 05.07.2023 a purported meeting of the Board of Directors of the Cooperative Society was held. In the said purported meeting, it was resolved that the Chairman of the said meeting was authorised to take action against the Petitioner Nos. 1 & 2 by removing them from the Society and confiscating their shareholdings and for indulging in the conspiracy for destroying the Society.

7. This Resolution dated 05.07.2023 has also been assailed in the present writ proceeding. The Petitioner Nos. 1 & 2 herein who were not put to notice in holding the meeting held on 05.07.2023 thereupon had preferred an appeal under Section 36(5) of the Act of 2007 before the Registrar of Cooperative Society, Assam challenging the meeting of the Board of Directors dated 05.07.2023. The Assistant Registrar of Cooperative Society (GEN) fixed the appeal for hearing on 28.07.2023 in the Office of the Chamber of the Registrar

of the Cooperative Society.

8. The Petitioners herein being aggrieved and apprehending that serious mischief might be caused by the Respondent No. 6 and others in pursuance to the Resolution adopted in the Board's meeting held on 05.07.2023 wherein a Resolution was adopted to take stringent action against the Petitioner Nos. 1 & 2 have approached this Court by filing the instant writ petition.

9. Mr. S. Dutta, the learned Senior Counsel appearing on behalf of the Petitioner submits that the Act of 2007 mandates the manner in which the meetings are required to be called and the manner in which the President and the Vice President of the Cooperative Society can be removed. The learned Senior Counsel appearing on behalf of the Petitioner draw the attention of this Court to Section 43(6) of the Act of 2007 and submitted that in terms with bye-laws 7 (6) (a) of the Cooperative Society, a 4 days notice is required to be given for all meetings of the Managing Committee specifying the date, hour and place. The learned Senior Counsel submitted that there was no notice as mandated under law for holding the purported meeting on 05.07.2023 and as such the purported Board's meeting held on 05.07.2023 was contrary to Section 43(6) of the Act of 2007 read with the bye-laws of the Cooperative Society. The learned Senior Counsel further drawing the attention to Section 36(4) of the said Act of 2007 submitted that the Board may by Resolution passed by $\frac{3}{4}$ th majority of the Directors present and voting at a meeting held for the purpose, remove the President or the Vice President. It is the specific contention of the learned Senior Counsel for the Petitioners that in the purported meeting held on 05.07.2023 only 8 out of 14 Directors of Cooperative Society were present and as such the Resolution dated 05.07.2023 on the face of it was contrary to Section 36(4) of the Act of 2007. The learned Senior Counsel further submitted

that a perusal of the Resolution No. 1 as adopted in the purported meeting held on 05.07.2023 is completely contrary to Section to Section 36(4) of the Act of 2007 inasmuch as it is in the Board's meeting where resolution is required to be adopted for the ouster of the President and Vice President and not authorise any person to take steps for ouster. The learned Senior Counsel further submitted that if the Resolution dated 05.07.2023 is not stayed pending disposal of the Appeal before the Registrar of Cooperative Society, the purported Chairman so appointed in the meeting held on 05.07.2023 on the basis of the Resolution so adopted, would take action against the Petitioners, which would be detrimental not only to the Petitioners but the Cooperative Society as well.

10. Mr. S.K. Talukdar, the learned counsel appearing on behalf of the Cooperation Department has drawn the attention to Section 49 (2) (I) of the Act of 2007 and submitted that in case of a dispute between the Chief Executive and the Board in any matter, the decision of the Registrar shall be binding on both. The learned counsel further submitted upon instructions that the powers under Section 49 (2) (I) of the Act of 2007 reserved to be exercised by the Registrar of Cooperative Society have not been delegated to any of the subordinate officials. In that regard, he drew the attention of this Court to a Notification dated 23rd of May, 2012 to show that various powers of the Registrar of Cooperative Society have been delegated to his subordinates, however, the power under Section 49 (2) (I) continues to be reserved to be solely exercised by the Registrar of Cooperative Society. He therefore, submitted that the concerned Respondent Authorities i.e. the Assistant Registrar of Cooperative Society or even the In-charge, Zonal Joint Registrar of the Cooperative Society could have passed the orders dated 27.06.2023 enclosed as Annexure-IX and X as well as the order dated 05.07.2023 enclosed as Annexure

XIII. He further submitted that it is only the Registrar of the Cooperative Society who could have taken a call or decided in respect to the dispute which has arisen out of the Board's Resolution dated 16.06.2023 with all fairness, the learned counsel for the Cooperation Department submitted that the said orders enclosed as Annexure IX and X and XIII are without jurisdiction.

11. Mr. A.B. T. Haque, the learned counsel appearing on behalf of the Respondent No. 6 who is on Caveat submitted that as the Appeal has been filed by the Petitioners before the Registrar of Cooperative Society on 18.07.2023 and the next date is fixed on 28.07.2023, this Court ought not to entertain the instant writ petition inasmuch as, a statutory authority is presently dealing with the dispute in question.

12. Mr. T.J. Mahanta, the learned Senior Counsel appearing on behalf of the Respondent Nos. 7 & 9 submits that he may be permitted to participate in the said Appeal proceeding pending before the Registrar of Cooperative Society wherein he would place the relevant materials before the said authority.

13. I have heard the learned counsel for the parties and perused the materials on record.

14. From a perusal of the materials on record, it transpires that on 16.06.2023, the Board of the Cooperative Society in question had resolved to remove the Respondent No. 6 in exercise of the powers under Section 38 (2) of the Act of 2007. On the basis thereof a dispute arose between the Respondent No. 6 and the Board. A perusal of Section 49 (2) (I) categorically shows that it is only the Registrar of the Cooperative Society, who has the authority to decide a dispute between the Chief Executive i.e. the Secretary of the Cooperative Society and the Board. It however, reveals from the record that the Assistant

Registrar of Cooperative Society, Tinsukia had on the other hand, without any authority issued separate communications dated 27.06.2023 to the Assistant Registrar(M) of the Office of the Assistant Registrar of the Cooperative Society, Tinsukia to make necessary enquiry in respect to the Board's Resolution dated 16.03.2023 and to the Petitioner No.1 thereby suspending the Board's Resolution dated 16.03.2023 with a direction that till the completion of an enquiry, the Respondent No. 6 be allowed to carry out the function of the Secretary. Taking into account Section 49 (2) (I) of the Act of 2007, it prima facie appears that the exercise of the jurisdiction by the Assistant Registrar of Cooperative Society in issuing both the communications enclosed as Annexure IX & X both dated 27.06.2023 are without authority.

15. It further reveals that the communication dated 27.06.2023 by which the Board's Resolution dated 16.06.2023 was suspended by the Assistant Registrar of Cooperative Society was withdrawn by the said Officer on 04.07.2023. Immediately on the next date, another communication dated 05.07.2023 (Annexure-XIII) was issued by the Incharge Zonal Joint Registrar of Cooperative Society thereby again putting the Respondent No. 6 back to the post of the Secretary of the said Cooperative Society thereby temporarily vacating the communication dated 04.07.2023. This Court expresses deep anguish in the manner in which the powers was exercised by the In-Charge, Zonal Joint Registrar of Cooperative Society taking into account Section 49(2) (I) of the Act of 2007.

16. It further shocks this Court that on the very date i.e. 05.07.2023 a meeting of the Board of Directors of the Cooperative Society was called and held at 11 AM. A perusal of Section 43 (6) of the Act of 2007 read with bye-laws 7 (6) (a) of the Cooperative Society which mandates a 4 days notice to be

issued. The counsel appearing for the Respondent No. 6/Caveator however has failed to show any notice in compliance to the mandate of the Act of 2007 read with the bye-laws of the Cooperative Society. This Court further expresses serious doubts in the manner in which the meeting of the Board of Directors was called taking into account the stipulations contained in Section 43 (1) and 43 (2) of the Act of 2007.

17. On the other hand, it is also relevant to take note of that an appeal in respect to the same issues is pending before the Registrar of Cooperative Society and the said authority has fixed the Appeal for hearing on 28.07.2023. In the opinion of this Court, it would not be proper to decide the issues raised in the present writ proceeding which is presently pending adjudication before an Authority which is competent to decide the said issues. All the contentions so raised before this Court can also be raised before the Registrar of Cooperative Societies. Under such circumstances, this Court is not inclined to decide the issues so raised as regards the Resolution dated 05.07.2023 as well as the order dated 05.07.2023.

18. Be that as it may, this Court also finds it relevant taking into account the that the Resolution so adopted on 05.07.2023 in the purported meeting is required to be stayed pending decision of the Appeal preferred before the Registrar of Cooperative Society till the disposal of the said appeal. This Court have done so taking into account that serious consequences would ensure if the said Resolution dated 05.07.2023 is not stayed pending disposal of the Appeal. Accordingly, the Board's Resolution of the Cooperative Society dated 05.07.2023 is stayed till the final outcome of the Appeal preferred before the Registrar of Cooperative Societies.

19. The Registrar of Cooperative Society is further directed to dispose off the

said appeal within 15 days from the date a certified copy of the instant order is served by either of the parties before the Registrar of Cooperative Society. It is further observed that the Respondent Nos. 7 and 9 i.e. Shri Sudhangshu Das and Shri Jiten Das shall also be heard by the Registrar of Cooperative Society during the said appeal proceeding.

20. The above observations shall not influence the Registrar of Cooperative Society while deciding the appeal on merits.

21. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant