

GAHC010160212023



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

Case No. : WP(C)/4113/2023

ROFIQUL ISLAM
S/O TASAR UDDIN AHMED, R/O VILL-RAMPUR SATRA, P.O.-KADAMONI,
P.S.-BATADRAVA, DIST-NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, CO-OPERATIVE SOCIETIES DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE REGISTRAR
CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ADDITIONAL REGISTRAR
CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

4:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
GUWAHATI ZONE
BHANGAGARH
GUWAHATI-781005

5:THE ASSISTANT REGISTRAR
CO-OPERATIVE SOCIETIES NAGAON
ASSAM

6:DEBANADA DEV GOSWAMI
S/O LATE PURNA CHANDRA DEV GOSWAMI
R/O BATADRAVA BARHISSA
P.O.-BATADRAVA
DIST-NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : SC, CO OP

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

28.07.2023

The instant writ petition has been filed challenging the order dated 13.07.2023 passed by the Registrar of Co-operative Societies, Assam whereby the said authority had dissolved the elected body in terms with Section 39 of the Assam Co-operative Societies, Act, 2007 (for short, 'the Act of 2007') and the Zonal Joint Registrar of Co-operative Societies, Guwahati was appointed as an officer on management to correct the voters list and convene the AGM/election of Batadrava Satra S.S. Ltd. within 90 days as per Section 41 (6) of the Act of 2007.

2. It appears from the record that the petitioner herein who was the Chairman of Batadrava Satra S.S. Ltd. (hereinafter referred to as 'Co-operative Society') had preferred a review against the said order dated 13.07.2023 before the Registrar of the Co-operative Societies in terms with Section 111 of the Act of 2007 which is presently pending.

3. From a perusal of the writ petition as well as the contentions so

forwarded by Mr. N. J. Dutta, the learned counsel for the petitioner, it appears that the case of the petitioner is that the voters list on the basis of which the AGM/election was held on 10.03.2019 was already approved by this Court vide the order dated 28.02.2018 passed in WP(C) No.1121/2018, and as such, it is the submission of the learned counsel for the petitioner that the Registrar of Co-operative Societies could not have held that the voters list was erroneous. It is the further contention of the petitioner that the Registrar of Co-operative Societies has passed the impugned order dated 13.07.2023 without taking into consideration that the petitioner herein who was the Chairman of the Co-operative Society was not served a complaint petition as well as the enquiry report so submitted by Sri Chandan Misra, SRCS, Morigaon.

4. The learned counsel for the petitioner, therefore, submitted that the said order dated 13.07.2023 is on the face of it, erroneous and requires interference.

5. I have also heard Ms. M. D. Bora, the learned counsel appearing on behalf of the Co-operation Department who submitted that when the statutory authority, in terms with Section 111 of the Act of 2007, has already taken up the said issue on review, it may not be proper on the part of this Court, at this stage, to interfere.

6. The learned counsel for the petitioner, however, submitted that the said order dated 13.07.2023 has acted prejudicially to the interest of the Co-operative Society taking into account that the one man person has been appointed and a democratically elected body have been ousted on the basis of an order passed without following the principles of natural justice. He further submitted that the said order dated 13.07.2023 may be stayed

pending disposal of the review proceedings before the said Court.

7. It, however, appears that although the petitioner had filed the review on 17.07.2023, but the petitioner has not filed any application in terms with Section 111 (4) of the Act of 2007 whereby a power has been conferred upon the Registrar of Co-operative Societies, Assam to stay any order so passed by it in exercise of Review Jurisdiction. The learned counsel for the petitioner submitted that he may be permitted to file appropriate application seeking stay before the Registrar of Co-operative Societies and further submitted that the said review proceedings requires to be urgently disposed of by the Registrar of Co-operative Societies taking into account the inconvenience as well as the prejudice caused to the members of the Co-operative Society.

8. Taking into account that a review proceedings is already pending before the Registrar of Co-operative Societies who has the power in terms with Section 111 of the Act of 2007, it is the opinion of this Court that interference with the order dated 13.07.2023, at this stage, would not be in the interest of justice. It is the further opinion of this Court that the petitioner can very well agitate the points so submitted before this Court before the Registrar of Co-operative Societies.

9. This Court further is of the opinion that the petitioner can be well advised to file an application for stay of the said order pending disposal of the review proceedings in as much as the Registrar of Co-operative Societies has the power in terms with Section 111 (4) of the Act of 2007 to stay such order so passed by the said authority.

10. Apart from the above, this Court cannot also be unmindful of the fact that a democratically elected Board of Directors has been dissolved by the

Registrar of Co-operative Societies vide the order dated 13.007.2023, and as such, it is the opinion of this Court that such review petition is required to be disposed of at the earliest.

11. In that view of the matter, the instant writ petition, therefore, stands disposed of with the following observations and directions:-

(i) The Registrar of Co-operative Societies, Assam shall dispose of the said review proceedings at the earliest and not later than 30 days from the date a certified copy of the instant order is served upon the Registrar of Co-operative Societies, Assam.

(ii) The petitioner herein is given the liberty to file appropriate application seeking stay of the order dated 13.07.2023 and the Registrar of Co-operative Societies shall taking into account the urgency shown pass appropriate order(s) on the said application immediately thereupon.

12. The non-entertaining of the instant writ petition as regards the challenge made to the order dated 13.07.2023 passed by the Registrar of the Co-operative Societies shall not prejudice the petitioner in the review proceedings pending before the said Authority.

JUDGE

Comparing Assistant