

GAHC010240412023



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

Case No. : CRP(IO)/338/2023

MANORANJAN HALOI SOWARANI KALA PARISHAD @ MANORANJAN
KALA PARISHAD AND 2 ORS.
A SOCIETY HAVING ITS OFFICE AT VILLAGE AND PO- KAKAYA, MOUZA-
DHARMAPUR, P.S. BELSOR, DIST. NALBARI, ASSAM, PIN- 781304.

2: RAKESH HALOI @ RAKESH KUMAR HALOI
S/O- SRI BINOD HALOI
R/O- VILL.- KAKAYA
P.S. BELSOR
P.O. KAKAYA
DIST. NALBARI
ASSAM
PIN- 781304.

3: TAPAN KAKATI
S/O- LATE BIPIN KAKATI
R/O- VILL.- KAKAYA
P.S. BELSOR
P.O. KAKAYA
DIST. NALBARI
ASSAM
PIN- 781304

VERSUS

SURABHI SANGHA, KAKAYA
A SOCIO-CULTURAL ORGANISATION, HAVING ITS OFFICE AT VILL.-
KAKAYA, P.S. BELSOR, P.O KAKAYA, DIST. NALBARI, ASSAM, PIN- 781304,
REPRESENTED BY ITS AUTHORIZED PERSON NAMELY MANOJ DEKA, S/O-
LATE NIRMAL DEKA, R/O- VILL.- KAKAYA, P.S. BELSOR, DIST. NALBARI,
ASSAM, PIN- 781304.

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : MR. R B GOHAIN

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 17.10.2023

Heard Mr. P.K. Das, learned counsel for the petitioners. Also heard Mr. D.K. Medhi, learned counsel for the respondent.

2) By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 13.10.2023, passed by the learned Civil Judge (Junior Division) No.2, Nalbari in Misc. (J) Case No. 122/2023 arising in connection with T.S. No. 133/2023. The said misc. case was filed by the respondent- plaintiff under Order XXXIX, Rules 1 and 2 read with Section 151 of the CPC, praying for ad interim injunction.

3) At the outset, the learned counsel for the petitioner had submitted that 13.10.2023 was the last working day of the civil court before Durga Puja vacation and that the civil courts would reopen on 30.10.2023. Accordingly, it was submitted that on 13.10.2023, order of ad interim injunction was passed, thereby directing both sides to maintain status quo prior to the issuance of NOC dated 05.09.2023, issued by the Principal, Kakaya H.S. School. It was submitted that the effect of the said order is that the petitioner has been restrained from holding their mobile theater exhibition in the play-ground of Kakaya H.S. School at Kakaya, under Belsor P.S., in the district of Nalbari. It was also submitted that he is aware that an appeal would lie against the order impugned herein under Order XLIII, Rule 1(r) CPC, but due to the Court

holidays from 14.10.2023 to 29.10.2023, the petitioner cannot file an appeal. Hence, it was submitted that as the petitioner has no forum to go, and having no option, this application has been filed under Article 227 of the Constitution of India.

4) The learned counsel for the petitioners has submitted that the petitioner no. 1 is a social organization based in Kakaya Village of Nalbari District and as a part of Durga Puja celebration, mobile theatre shows are conducted every year. However, the petitioners had come to know that the School Managing and Development Committee of Kakaya H.S. School had taken a resolution on 08.09.2018 to allow the respondent no. 1 to organize/ conduct mobile theatre shows in the play-ground of the said school. However, a general meeting was convened on 06.08.2023, whereby the resolution of 08.09.2018 was recalled. Thereafter, the Principal of the said school had granted no-objection dated 05.09.2023 for holding mobile theatre shows in the southern part of the play-ground of the said school on October 20 to 22, 2023. Accordingly, the petitioners had booked a particular theatre. On 15.09.2023, the petitioners had submitted a representation before the Deputy Commissioner for granting permission to hold the event and in the said connection, a report was called for from the Circle Officer, Paschim Nalbari. On 06.10.2023, a meeting was convened by the Circle Officer, Paschim Nalbari and a permission dated 13.10.2023 was issued for holding of theatre organized by the petitioners on 20th, 21st and 22nd October, 2023 and to the respondent no. 1 for holding theatre on 23rd, 24th and 25th October, 2023 in the play-ground of Kakaya H.S. School. It was submitted that the Kakaya Barowary Durga Puja Committee had also issued their no objection in favour of the petitioners to convene mobile theatre shows on 20th, 21st and 22nd October, 2023.

5) However, on 12.10.2023, the petitioners were served with a court notice to appear before the Court of Civil Judge (Junior Division) No.2, Nalbari on 13.10.2023 in connection with Misc. (J) Case No. 122/2023. It was submitted by the learned counsel for the petitioners that upon appearing in the matter, the petitioners had prayed for time to file objection, which was allowed by order dated 13.10.2023, but the Court proceeded to pass order of status quo.

6) Accordingly, it was submitted that the learned Trial Court had committed grave error in granting adjournment and yet granting injunction in form of order to both sides to maintain status quo prior to the issuance of the NOC dated 05.09.2023, issued by the Principal, Kakaya H.S. School. Moreover, it was submitted that the impugned order had infringed the right of the petitioners to hold mobile theatre shows on 20th, 21st and 22nd October, 2023. It was submitted that by virtue of the said order, there was discrimination against the petitioners, because others were granted permission to organize fairs and programmes in the said school play-ground, against which no complaint was made by the respondent no.1.

7) Per contra, the learned counsel for the respondent no. 1 has submitted that the School Managing and Development Committee of Kakaya H.S. School had taken a resolution on 08.09.2018 to allow the respondent no. 1 to organize/ conduct mobile theatre shows in the play-ground of the said school. The said resolution was not recalled, rescinded or revoked by the said Committee. It was submitted that the so called general meeting was not called or conducted by the School Managing and Development Committee of Kakaya H.S. School to modify the resolution dated 08.09.2018 and to allow the respondent no. 1 to organize/ conduct mobile theatre shows in the play-ground

of the said school, but the said meeting was called by some third parties.

8) It was submitted that while the resolution taken on 08.09.2018 by the School Managing and Development Committee of Kakaya H.S. School to allow the respondent no. 1 to organize/ conduct mobile theatre shows in the play-ground of the said school contains a signature with date of 08.09.2018, with seal/ rubber stamp of President/ Secretary of School Managing and Development Committee (SMDC for short)/ RMSA of Kakaya H.S. School. However, the resolution dated 06.08.2023 in the so called general meeting is signed by only one person, whose capacity/ status/authority is not disclosed. Moreover, the copy of resolution does not contain any official seal of any authority concerned with the School Managing and Development Committee of Kakaya H.S. School. However, from the contents thereof, it appears that the said general meeting was convened by "Manuranjan Kala Parishad under Presidency of Gaon Panchayat President", without disclosing the name of the Gaon Panchayat. Accordingly, it was submitted that the respondent no. 1 was not bound by the decision of the Circle Officer vide order dated 16.10.2023, because the matter is *sub judice* before the civil court having jurisdiction and that the suit was filed on 11.10.2023.

9) In reply, the learned counsel for the petitioners has submitted that he has the copy of entire resolution signed by a lot of concerned residents of Kakaya Village, which run into several pages, but as this application was filed hurriedly, all the signed pages were not annexed due to over-sight and it would have been a time-consuming exercise to type out English translation of names of the signatories.

10) Considered this application, additional affidavit filed by the petitioners on 17.10.2023 and affidavit-in-opposition filed by the respondent.

Also considered the submissions made by the learned counsel for the parties.

11) As the civil court is on Durga Puja holiday from 14.10.2023 to 29.10.2023, without intending this order to be a precedent, the Court is inclined to entertain this application under Article 227 of the Constitution of India.

12) On the submissions made by the learned counsel for the petitioners that the learned Trial Court had granted ad interim injunction while granting time to them to file objection, we do not find any infirmity. The civil court has the power to grant *ex parte* injunction and also to grant *ad interim* injunction after service of notice on the opposite party/parties. It is not the case of the petitioners that the order of ad interim injunction was made absolute without giving opportunity to the petitioners to file their written objection. Therefore, the Court does not find the impugned order to be vitiated on this count.

13) The petitioners have not been able to show how a general meeting organized by "Monoranjana Kala Parishad under Presidency of Gaon Panchayat President" could take a resolution dated 06.08.2023, to over-ride the resolution dated 08.09.2018, taken by the School Management and Development Committee.

14) Be that as it may, it appears that it is not in dispute that the Principal, Kakaya H.S. School, Kakaya had granted the following two no objection certificates, viz., (i) no objection certificate dated 05.09.2023 to the Monoranjana Kala Parishad (petitioner no.1) to hold theatre of the group whose name is reflected therein in the southern part of the School field on 20th, 21st and 22nd October, 2023; (ii) no objection of the school authority in favour of President/ Secretary of Siva Mandir Management Committee to hold cinema in

the school field if space is available on 21st, 22nd and 23rd October, 2023.

15) It is not in dispute that as per resolution dated 08.09.2018 taken by the School Management and Development Committee, it had been resolved not to allow any other theatre party except the theatre party invited by the Surabhi Sangha (respondent) during Durga Puja.

16) It could not be demonstrated that the Principal, Kakaya H.S. School, Kakaya had been vested with power and authority to over-ride the resolution dated 08.09.2018 by the School Management and Development Committee and act in derogation to the said resolution. It has not been shown that the said resolution had been annulled by any competent authority or had been recalled/ rescinded and revoked by the School Management and Development Committee and/or by any other competent authority.

17) The petitioners have not be able to demonstrate that before passing of the order dated 16.10.2023 (Annexure-10 appended to the additional affidavit filed by the petitioner), the Deputy Commissioner, Nalbari had obtained consent of the School Management and Development Committee. Moreover, as the learned Civil Judge (Junior Division) No.2, Nalbari had passed an order dated 13.10.2023, in Misc. (J) Case No. 122/2023, the order dated 16.10.2023, passed by the Deputy Commissioner will have to give way to the order passed by the learned civil Court. Nonetheless, the legality of the said order dated 16.10.2023 by the Deputy Commissioner, Nalbari is not under challenge.

18) Therefore, as the resolution dated 08.09.2018 by the School Management and Development Committee, Kakaya H.S. School is still in force, the Court is of the considered opinion that the impugned order dated 13.10.2023, in Misc. (J) Case No. 122/2023 does not suffer from any perversity

or jurisdictional error.

19) It appears from the copy of the Misc. (J) Case No. 122/2023, arising in T.S. No. 133/2023, that the schedule of suit land is described as follows (reproduced as typed out in the said case):-

“Kakaya Higher Secondary School field a plot of land measuring 100 square meter situated at of revenue Village: Kakaya, under Mouza: Dharampur, P.S.- Belsor, the District of Nalbari, Assam which is bounded by:

North: Land of village man.

South: Road.

East: Durga Mandir.

West: Road.”

20) Therefore, the Court is of the considered opinion that being the administrative head of the District, the Deputy Commissioner would have power to ensure that the respondent, namely, Surabhi Sangha be allowed unfettered right to hold their proposed theatre in the 100 (one hundred) square meter area of play-ground of Kakaya H.S. School, Kakaya during Durga Puja festivities, which is the subject matter of the suit.

21) After reserving 100 (one hundred) square meter area in the play-ground of Kakaya H.S. School, Kakaya, which is the suit land described in Schedule of Misc. (J) Case No. 122/23, in terms of order dated 13.10.2023, passed by the learned Civil Judge (Junior Division), Nalbari, if the Deputy Commissioner, Nalbari is of the opinion that there is space in the said play-ground to allow the petitioner to hold their mobile theatre show on 20th, 21st and 22nd October, 2023 without adversely affecting the law and order situation, this Court is inclined to clarify that the impugned order dated 13.10.2023, passed by the learned Civil Judge (Junior Division), Nalbari in Misc. (J) Case No. 122/2023, shall not be a bar for the Deputy Commissioner, Nalbari to pass such

order as the said authority may deem fit and proper.

22) This order and the pendency of TS No. 122/2023 before the Civil Judge (Junior Division) No.2, Nalbari shall not be a bar for the Deputy Commissioner, Nalbari to call for a meeting of the interested persons and groups, Principal, Kakaya HS School, Kakaya and members of the School Management and Development Committee of the said school for amicable resolution of all their differences and disputes for this upcoming Durga Puja festivities and for maintaining mutual peace and harmony in the locality. The impugned order dated 13.10.2023, passed by the learned Civil Judge (Junior Division), Nalbari in Misc. (J) Case No. 122/2023, stands modified to the extent as indicated herein before.

23) As both sides has been heard, and considering that the proceedings of Misc. (J) Case No. 122/2023 in TS No. 122/2023 is pending before the Civil Judge (Junior Division) No.2, Nalbari, the Court is inclined to close this application in the 'motion stage' by partly modifying the impugned order dated 13.10.2023, as morefully referred above, without issuance of notice on the respondent.

JUDGE

Comparing Assistant