

GAHC020001652023



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

Case No. : WP(C)/71/2023

LOTHA BAPTIST CHURCHES ASSOCIATION MISSION CENTRE
VANKHOSONG
GOVT. REGD. NO.RS 988, P.O. BOX - 04, WOKHA - 797111,
NAGALAND, REPRESENTED BY ITS PRESIDENT, REV.DR. E. NRIO
EZUNG AND EXECUTIVE SECRETARY, REV. KHONBEMO P. KIKON

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE HOME COMMISSIONER,
NAGALAND, KOHIMA

2:THE COMMISSIONER
NAGALAND
KOHIMA

3:THE ADDITIONAL SECRETARY AND EX-OFFICIO REGISTRAR OF
SOCIETIES
NAGALAND
KOHIMA

4:THE DEPUTY COMMISSIONER

WOKHA
NAGALAND

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

Date : 11-12-2023

Heard Mr. Limawapang, learned counsel appearing on behalf of the petitioner. Also heard Ms. V. Suokhrie, learned Additional Advocate General appearing on behalf of the respondent Nos. 1 to 4.

2. The instant writ petition has been filed challenging the order dated 01.05.2023, passed by the Home Commissioner, Nagaland, whereby the dispute between the members of the petitioner Society was referred to the Registrar of Societies to inquire and give a decision within one month from the date of the said order. Further to that, vide the impugned order, all the properties of the petitioner Association, including those which have been used as office or official residences at its Headquarter in Vankhosong, Wokha were directed to be vacated and sealed by the District Administration. The Commissioner, Nagaland was appointed as the interim custodian of the properties of the petitioner Association at Vankhosong, Wokha including the movable properties, such as the official vehicles belonging to the petitioner Association.

3. From the materials on record, it reveals that the petitioner is an Association registered under the provisions of The Societies Registration Act, 1860. There were certain internal disputes amongst the members of the petitioner Association, which led to an organization in the name and style of Lotha Hoho issuing a memorandum dated 18.03.2022. On the basis of the said Memorandum, the State respondents took certain steps which led to the filing of two writ petitions before this Court, i.e. WP(C)/294/2022 and WP(C)/215/2022. This Court, vide judgment and

order dated 04.04.2023, disposed of both the writ petitions by interfering with the impugned orders dated 30.09.2022 and 07.10.2022. The State Government was directed to examine the legality or otherwise of the Memorandum dated 18.03.2022, passed by the Lotha Hoho along with the opinions rendered by the respondent No. 2 and to take a decision in accordance with law as early as possible, and until such decision was taken, the status quo was directed to be maintained by the parties, vide communication dated 10.06.2022. It was also observed that depending upon the decision to be taken by the State Government, the parties shall be at liberty to avail any legal recourse permissible by law, including those that might be available under The Societies Registration Act, 1860.

4. Pursuant to the said order, the matter was placed before the State Government. The Home Commissioner, vide notification dated 01.05.2023 observed that the Memorandum of the Lotha Hoho, dated 18.03.2022 lapsed and ceased to remain in force and under such circumstances the Memorandum dated 18.03.2022 had become infructuous.

5. At this stage, this Court finds it relevant to observe that in view of the said decision taken by the Government of Nagaland in its notification dated 01.05.2023, the parties, therefore, were required to take action before the appropriate forum as under the remedies available under The Societies Registration Act, 1860. The State Government or its functionary could not have taken any further decision in the matter till the parties duly refer or approach the appropriate forum.

6. However, on the very same day, the Home Commissioner, Nagaland, had passed an order dated 01.05.2023 which have been impugned in the instant proceedings. Vide the said order, as already stated supra, the

Home Commissioner, Government of Nagaland referred the dispute to the Registrar of Societies, Nagaland under The Societies Registration Act, 1860 for an early resolution. The Registrar of Societies was directed to hear the matter and give a decision within one month from the date of the order. Vide the impugned order, the Home Commissioner, Nagaland further attached the properties of the petitioner Association at its Headquarters in Vankhosong, Wokha and appointed the Commissioner, Nagaland as the interim custodian of the properties of the petitioner Association.

7. Being aggrieved, the petitioner Association has approached this Court assailing that the Home Commissioner, Nagaland could not have passed the said order in view of the judgment and order dated 04.04.2023, passed in WP(C)/294/2022 and WP(C)/215/2022, in as much as in the said judgment it was clearly mandated that pursuant to the decision so taken on the Memorandum by the Lotha Hoho dated 18.03.2022, the parties were to approach the appropriate forum including the remedies available under The Societies Registration Act, 1860. Apart from that, the learned counsel appearing on behalf of the petitioner, Mr. Limawapang had submitted that the petitioner Association is an Association registered under The Societies Registration Act, 1860 and has its own Memorandum, and the internal affairs of the said Association can only be decided as per the said Memorandum. He further submitted that even a perusal of The Societies Registration Act, 1860 as well as the amendments which have been brought into effect in the said Act, by the Nagaland Amendments would show that the only power reserved upon the Registrar of Societies is to cancel the registration and nothing more.

8. Ms. V. Suokhrie, learned Additional Advocate General appearing on

behalf of the respondent Nos. 1 to 4 submitted on the basis of the affidavit so filed, that pursuant to the notification dated 01.05.2023, issued by the Home Commissioner, Government of Nagaland, whereby it was held that the Memorandum of the Lotha Hoho dated 18.03.2022 has ceased to have effect and have become infructuous, and there being no other disputes being pending, the Home Commissioner, Government of Nagaland had referred the matter to the Registrar of Societies for the decision on the disputes keeping in view the interest of the members of the petitioner Association. She further submitted that the attachment of the properties of the petitioner Society at Vankhosong, and the appointment of the Commissioner, Nagaland as the interim custodian, were done keeping in view the interest of the members of the petitioner Association.

9. I have heard the learned counsels for the parties and have also perused the pleadings and the documents attached thereto. A perusal of the judgment and order dated 04.04.2023, passed in WP(C)/294/2022 and WP(C)/215/2022, reveals that the impugned orders dated 13.09.2022 and 07.10.2022 was set aside and quashed and vide the said judgment a direction was issued to the State Government only to examine the legality or otherwise of the Memorandum dated 18.03.2022, passed by the Lotha Hoho, along with the opinion rendered by the respondent No. 2 therein and take a decision in accordance with law. In Paragraph-19 of the said judgment, it was categorically made clear that depending upon the decision to be taken by the Government of Nagaland on the said Memorandum dated 18.03.2022, the parties shall be at liberty to avail any legal recourse permissible in law, including those available under The

Societies Registration Act, 1860.

10. The Home Commissioner, Government of Nagaland have taken a decision that the Memorandum dated 18.03.2022 had ceased to have effect and lost its force and this aspect of the matter was notified, vide notification dated 01.05.2023. It is the opinion of this Court that thereafter, the Home Commissioner, Government of Nagaland had no business to again refer the matter to the Registrar of Societies and to attach the properties of the petitioner Association in as much as this Court had categorically observed that pursuant to the decision taken by the State of Nagaland, the parties shall avail such remedies as available under law, if so aggrieved. Therefore, on this count alone, the impugned order dated 01.05.2023 is bad in law and accordingly deserves to be set aside and quashed.

11. This Court also finds it very pertinent to note that the date of decision in respect of Memorandum dated 18.03.2022, was taken and notified, i.e. on 01.05.2023. It shocks and surprises this Court as to why on this very same date, the Home Commissioner, Government of Nagaland had passed the impugned order. On this count alone also it is the opinion of this Court that the impugned order dated 01.05.2023 suffers from malice in law, for which the said is required to be interfered with.

12. Apart from the above, this Court also finds it relevant to observe that the petitioner Association is a Society under The Societies Registration Act, 1860 and has a set of byelaw in the form of a memorandum. Section 16 of The Societies Registration Act, 1860 stipulates that the governing body shall be the governors, councils, directors, committee, trustees or other body to whom by the rules and

regulations of the society the management of its affairs is entrusted. Under such circumstances, as regards the management on how to carry out the management of the affairs of the society, it is absolutely within the contours of the byelaws/memorandum of the said society how it is to be done. Internal disputes, if any, amongst the members of the society can only be decided as per the said memorandum/the byelaws of the society. The power which is available to the Government or the Registrar of Societies are cancellation of registration, dissolution of the society or supercession of the societies on fulfillment of the conditions stipulated in the statute. However, this power so conferred cannot be extended to interfere or deal with the internal affairs of the society. Therefore, the direction which have been given by the Home Commissioner to the Government of Nagaland vide the impugned order for the Registrar of Societies to make inquiry and decide is contrary to The Societies Registration Act, 1860 as have been applied to the State of Nagaland. Consequently, the attachment, which has been made to the properties of the petitioner and the interim custodian being appointed of the properties of the petitioner Association, is also non est.

13. In that view of the matter, this Court, therefore, sets aside and quashes the impugned order dated 01.05.2023 issued by the Home Commissioner, Government of Nagaland bearing No. GAB-1/COURT/194/21/171.

14. Before parting, this Court further finds it relevant to observe that the setting aside of the impugned order and the above observations so made hereinabove shall not preclude the members of the petitioner Association to take recourse to such remedies available under law.

15. WP(C)/71/2023 accordingly stands disposed of.

JUDGE

Comparing Assistant