

GAHC010088702024



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

Case No. : I.A.(Civil)/1333/2024

TILESWAR SAIKIA AND 4 ORS
S/O LATE JAYANTA SAIKIA, R/O VILLAGE BISWANATH DAGAON, P.O.-
PANIBHARAL, PIN- 784176, DIST.- BISWANATH, ASSAM.

2: SRI DOLAN BORA
S/O LATE SUBIPAL BORA
R/O VILLAGE BISWANATH DAGAON
P.O.- PANIBHARAL
PIN- 784176
DIST.- BISWANATH
ASSAM.

3: SRI BIREN BORAH
S/O LATE BENUDHAR BORA
R/O VILLAGE BISWANATH DAGAON
P.O.- PANIBHARAL
PIN- 784176
DIST.- BISWANATH
ASSAM.

4: SRI KAMAL HAZARIKA

S/O LATE THANURAM HAZARIKA
R/O VILLAGE BISWANATH DAGAON
P.O.- PANIBHARAL
PIN- 784176
DIST.- BISWANATH
ASSAM.

5: SRI DEBOJIT SAIKIA
S/O LATE PODUSH SAIKIA
R/O VILLAGE BISWANATH DAGAON
P.O.- PANIBHARAL
PIN- 784176

DIST.- BISWANATH
ASSAM

VERSUS

PRADYUT HAZARIKA AND 7 ORS
S/O- TILA NATH HAZARIKA, R/O- NO. 9 DAGAON, P.O.- PANIBHARAL, PIN-
784176, DIST.- BISWANATH, ASSAM. FORMER PRESIDENT OF THE
BISWANATH DAGAON KRISHIPAM SAMABAI SAMITY LTD. HAVING ITS
REGISTERED OFFICE AT DAGAON, P.O.- PANIBHARAL, PIN- 784176, DIST.-
BISWANATH, ASSAM.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 781022

ASSAM.

4:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
TEZPUR ZONE
TEZPUR
PIN- 784001
ASSAM.

5:THE DEPUTY COMMISSIONER
BISWANATH
DIST.- BISWANATH
ASSAM

PIN- 784176.

6:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
SONITPUR
TEZPUR
PIN- 784001
ASSAM.

7:THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES
BISWANATH CHARIALI

BISWANATH
PIN- 784176
ASSAM.

8:THE SR. INSPECTOR/ AUDITOR OF CO-OPERATIVE SOCIETIES

OFFICE OF THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES

BISWANATH CHARIALI
BISWANATH

PIN- 784176
ASSAM

Advocate for the Petitioner : MR. M HOSSAIN

Advocate for the Respondent : MR. P BORDOLOI

Linked Case : WP(C)/6467/2023

PRADYUT HAZARIKA
S/O- TILA NATH HAZARIKA

R/O- NO. 9 DAGAON
P.O.- PANIBHARAL
PIN- 784176

DIST.- BISWANATH
ASSAM.

FORMER PRESIDENT OF THE BISWANATH DAGAON KRISHIPAM SAMABAI
SAMITY LTD.

HAVING ITS REGISTERED OFFICE AT DAGAON
P.O.- PANIBHARAL

PIN- 784176
DIST.- BISWANATH
ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE

GOVERNMENT OF ASSAM

FOOD

CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT

DISPUR

GUWAHATI- 781006.

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ASSAM

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ASSAM.

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OFFICE OF THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES

BISWANATH CHARIALI

BISWANATH

PIN- 784176

ASSAM.

Advocate for : MR. P BORDOLOI

Advocate for : SC

CO OP appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

18.07.2024

Heard Mr. M. Hossain, learned counsel for the applicant. Also heard Mr. M.D. Bora, learned Standing Counsel for the respondents No. 2, 6, 4, 7 & 8 and Mr. P. Bordoloi, learned counsel for the respondent No. 1/writ petitioner.

This interlocutory application has been filed by the applicants who seek impleadment in the writ petition being W.P.(C) No. 6467/2023.

The writ petition has been filed by the petitioner Shri Padyut Hazarika challenging the impugned order dated 10.10.2023 issued by the Zonal Joint Registrar of Co-operative Societies appointing the Departmental Officer as an one-man committee to manage the affairs of the society and to hold the AGM/Election within a period of 90 days from the date of the issue of the order.

The petitioner claims to be the President of the said society who was duly elected and therefore the impugned order passed by the Zonal Joint Registrar of Co-operative Societies is contrary to the provisions of the Act and therefore he submits that the same should be interfered with and he being elected democratically under the provisions of the Act and he should be allowed to function as the President of the Co-operative Society.

This Court by order dated 17.11.2023 while issuing notice was pleased to direct the interim that though the dissolution of the society is not stayed, no steps be taken to hold the AGM/Election of the Society in question till the next returnable date and the society would be continued to run by the one-man committee.

The present applicants have approached this Court to submit that they are

also shareholders of the said society and although the Zonal Joint Registrar of the Co-operative Societies had appointed one-man committee to run the society, however, till date the one man committee has not been able to take over the affairs of the co-operative society and run and manage the co-operative society in the absence of the relevant records being handed over by the Secretary of the society. The further submissions of the applicants are that as they are the shareholders of the society and they are also concerned with the welfare of the society and therefore the one man committee should proceed to hold the AGM as per the provisions of the law and accordingly that not being done, they are aggrieved and are therefore, necessary parties and are therefore seeking impleadment in the said writ petition.

The learned counsel for the petitioner as the opposite party has objected the prayer of the applicants by filing necessary objection. It is submitted that they are not necessary parties and therefore their prayer for being impleaded ought not to be permitted.

The state counsel appearing for the Co-operation department does not object to the prayer made for impleadment.

The learned counsel for the parties have been heard. The pleadings available in the interlocutory application are perused.

From the pleadings, it is seen that there is no dispute raised by the writ petitioner that the present applicants are the shareholders. It is also seen that pursuant to the orders passed by the Zonal Joint Registrar of Co-operative Societies appointing the one-man committee, the one-man committee was required to take over and manage the co-operative society and hold election. By virtue of the interim order although dissolution of the society was not stayed till the next returnable date it was directed that the election or AGM is not required to be held

by the one-man committee.

It is also necessary to note the submissions of the applicants that they are the shareholders and are concerned with the welfare of the Co-operative society cannot be disregarded. The further submission of the applicants is that although the one-man committee has been directed to take over of the functioning of the society and that he has not able to take over the affairs of the society in the absence of the records being handed over by the Secretary are also duly considered.

The contention of the applicants that the One-man Committee has not taken over the affairs of the Co-operative Society is not specifically disputed by the writ petitioner. The writ petitioner submits that to decide the challenge in the writ petition being to the dissolution of the Co-operative Society of which he was elected as the President, the impleadment of the applicants are not necessary. However, it is not disputed that the applicants are also shareholders of the said Co-operative Society and they equally interested in the welfare and the smooth functioning of the said Co-operative Society.

In *Tractor and Farm Equipment Ltd. Vs Secretary to the Government of Assam, Department of Agriculture and Ors*, reported in (2004) 2 GLR 56, it has been held that in a civil suit or proceeding, the Court considers the question of necessary party keeping in view the litigation before it and the litigants appearing before it or available on the record. Whereas a writ Court takes a birds eye view of the whole matter and in such a process its vision embraces not only those, who are litigating before it, but also those, who are likely to be affected by the decision in a litigation. In a civil suit, so long as the question of granting of relief, sought for, can be decided in the presence of the parties appearing before the Court, the Civil Court will not consider anyone other than such a litigant as a necessary party, but

a decision emanating from a writ Court reverberates, at times, far beyond the litigants and affects a large section of the people. Hence, the writ Court cannot keep itself confined merely to the litigants appearing before it or on the record nor will it keep itself confined only to the us before it, but will also take into account the consequences or the effect, which the decision will have or is likely to have on the interest of others, who may not be wholly necessary for decision of the issue at hand, but whose interest would be vitally affected in consequences of the decision rendered in the writ petition. Viewed from this angle, the concept of necessary party in a purely civil suit and a writ petition cannot be one and the same. Far from this, the scope of necessary party in a writ petition will be much wider than the civil suits.

It has also been held that for considering as to whether a person is or is not a necessary party in a writ application under Article 226, there can be no condition precedent that the person concerned must be an authority or person under Article 226. Even if a person is an authority or a person within the meaning of Article 226, yet in the given set of facts and circumstances, impleading of such a person may become necessary and such a person has to be regarded and treated as a necessary party. In such a case, it will be immaterial as to whether the writ petitioner has asked for any relief against such a party or from such a party or not.

Under such circumstances, this Court is of the view that the applicants being shareholders of the Co-operative society, they would indeed have an interest in the society being properly managed and run.

Accordingly, this Court considers it necessary that the applicants ought to be arrayed as party respondents in the writ petition. This interlocutory application is therefore allowed overruling the objections raised by the writ petitioner.

The applicants namely Shri Tileswar Saikia, Sri Dolan Bora, Sri Biren Borah,

Sri Kamal Hazarika and Sri Debojit Saikia are directed to be arrayed as respondents No. 8 to 12 in the W.P(C) No. 6467/2023.

The applicants will file amended cause title within a period of one week from today before the Registry and thereafter the Registry will make necessary endorsements in the writ petition and the same shall be listed thereafter.

Interim order passed in W.P(C) No. 6467/2023 shall continue.

The interlocutory application is accordingly allowed and disposed of.

JUDGE

Comparing Assistant