

GAHC010140282024



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

Case No. : CRP(IO)/232/2024

SRI SRI BATADRAVA THAN PARICHALANA SAMITTEE, BATADRAVA AND
ANR
REP. BY PRESIDENT JOGENDRA NARAYAN DEV MAHANTA, AGED 82
YEARS, AT OFFICE
SRI SRI BATADRAVA THAN,
MOUZA- BATADRAVA, P.O- BATADRAVA, P.S- BATADRAVA, DIST- NAGAON,
ASSAM, PIN-782122

2: PRABHAT CHANDRA KALITA
S/O- LATE BADAN CHANDRA KALITA
(EXECUTIVE PRESIDENT)

SRI SRI BATADRAVA THAN PARICHALANA SAMITTEE

AT OFFICE
SRI SRI BATADRAVA THAN
MOUZA- BATADRAVA
P.O- BATADRAVA
P.S- BATADRAVA
DIST- NAGAON
ASSAM
PIN-78212

VERSUS

BIRAJ MONI BORDOLOI AND ANR
S/O- TARUN CHANDRA BORDOLOI,
R/O- RUDRAM BORDOLOI ROAD,
P.O- HAIBORGAON,
P.S- SADAR, DIST-NAGAON, ASSAM, PIN-782002

PRESIDENT,
SRI SRI BATADRAVA THAN PARICHALANA SAMMITTEE (ADHOC),
MOUZA- BATADRAVA, P.O- BATADRAVA, P.S- BATADRAVA, DIST- NAGAON,

ASSAM, PIN-782122

2:SAILEN SAIKIA
SECRETARY
SRI SRI BATADRAVA THAN PARICHALANA SAMITTEE (ADHOC)
BATADRAVA (ALIPUKHURI)

MOUZA- BATADRAVA
P.O- BATADRAVA
P.S- BATADRAVA
DIST- NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR G BHARADWAJ

Advocate for the Respondent : FOR CAVEATOR

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

19.07.2024

Heard Mr. K.N. Choudhury, learned senior counsel for the petitioners as well as Mr. K.K. Mahanta, learned senior counsel representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 01.07.2024 passed by the learned Civil Judge (Sr. Div.), Nagaon in Misc. Appeal No.15/2024 arising of the order dated 20.06.2024 passed by the learned Civil Judge (Jr. Div.) No.1, Nagaon in Misc.(J) Case No.84/2024 (T.S. 172/2024).

3. The petitioners filed a suit in the court of the learned Civil Judge (Jr. Div.) No.1, Nagaon against the respondents praying for a decree declaring that Shri Shri Batadrava Than Management Committee headed by the petitioners will continue to discharge to its duties and functions till its tenure comes to end on 15th May, 2025. They also prayed for a decree of a

permanent injunction against the members/office bearers of Shri Shri Batadrava Than Management Committee (ad-hoc) constituted by the respondents debarring them from entering Shri Shri Batadrava Than, Ai-Khersuti Cultural Project and other institutions.

4. Along with the plaint, the petitioners filed an application [Misc.(J) 84/2024] under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order of temporary injunction.

5. The learned trial court passed an *ex parte* order of injunction under Order 39 Rule 3 of the Code of Civil Procedure and issued notices to the respondents.

6. Thereafter, challenging the *ex parte* injunction order, the respondents filed an appeal being Misc. Appeal No.15/2024 in the court of Civil Judge (Senior Division), Nagaon under Order 43 Rule 1(r) of the Code of Civil Procedure.

7. The learned appellate court, on 01.07.2024, stayed the *ex parte* order of injunction passed by the Civil Judge (Jr. Division) No.1, Nagaon and called for the lower court records.

8. Mr. Choudhury has submitted that since the *ex parte* injunction was granted by the trial court under Order 39 Rule 3 of the Code of Civil Procedure, the appeal under Order 43 Rule 1 (r) of the said Code is not maintainable.

9. Mr. Mahanta, on the other hand, submits that the entire scheme granting temporary injunctions is covered by Order 39 Rule 1 and 2 of the Code of Civil Procedure. According to Mr. Mahanta, under the aforesaid scheme, courts can grant *ex parte* injunction under Rule 3 and therefore, an appeal under Order 43 Rule 1(r) is maintainable.

10. I have considered the submissions made by the learned senior counsels.

11. I have found that there are many material aspects that are to be examined by the trial court. This Court is of the opinion that the trial court should be given the opportunity to examine the material aspects of the case.

12. For this reason, the respondents are advised to appear before the trial court of Civil Judge (Jr. Division) No.1 at Nagaon to contest the injunction application filed by the petitioners and thereafter the trial court shall hear the parties and shall dispose of the application in accordance with the procedure as laid down by law.

13. Consequently, the order dated 01.07.2024 passed by the learned Civil Judge (Sr. Div.),

Nagaon in Misc. Appeal No.15/2024, is set aside.

14. It is further directed that till disposal of the injunction application by the trial court, both sides shall maintain status quo as on today in respect of all the relevant material aspects.

The revision petition stands disposed of accordingly.

JUDGE

Comparing Assistant