

GAHC010211852022



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

Case No. : WP(C)/6726/2022

SRI SRI RADHA GOBINDA SEVASHRAM
PAULPARA, WARD NO. 9, DIST. BONGAIGAON, ASSAM, A SOCIETY
REGISTERED UNDER THE SOCIETIES ACT, 1860, REPRESENTED BY ITS
SECRETARY ASHUTOSH MALLICK, S/O- MAR CHAN MALLICK, RESIDENT
OF PAULPARA, WARD NO. 9, DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 17 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, POLITICAL (B) DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE REGISTRAR OF FIRM AND SOCIETIES ASSAM
BELTOLA
BANFUL NAGAR
GUWAHATI-781038.

3:THE DEPUTY COMMISSIONER
BONGAIGAON
PIN- 783380.

4:THE ADDITIONAL DEPUTY COMMISSIONER
BONGAIGAON
PIN- 783380.

5:THE EXECUTIVE MAGISTRATE
OFFICE OF THE DEPUTY COMMISSIONER
BONGAIGAON
PIN- 783380.

6:KAMANA SAGAR SAHA
S/O LATE RADHA RAMAN SAHA

R/O NETAJI NAGAR
WARD NO. 9
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

7:LAXMAN PAUL
S/O LATE DAGU MOHON PAUL
R/O BABUPAA WARD NO. 9
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

8:CHANDAN DAS
S/O LATE CITTARANJAN DAS
R/O PAULPARA WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

9:GUPAL GHOSH
S/O LATE ASHWINI GHOSH
R/O BABUPARA WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

10:NARAYAN SAHA
S/O LATE MUNINDRA SAHA
R/O PAULPARA WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

11:SUBASH CHANDRA SARKAR
S/O BANABASI SARKAR
R/O BABUPARA WARD NO. 11
P.O AND DISTRICT- BONGAIGAON
ASSAM
PIN- 783380.

12:ASHOK MONDAL (TUTON)
S/O LATE PARESH MANDAL
R/O BABUPARA
WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

13:BISHU DAS
S/O JAGADISH DAS
R/O PAULPARA WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

14:SAJAL KAR
S/O LATE BIREN KAR
VILL- PAULPARA WARD NO. 9
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

15:KHUKAN SEN
S/O LATE HARIPADA SEN
VILL- KHARIJA DOLAI GAON
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

16:NABIN SAHA
S/O PADA SAHA
R/O KHARIJA DULAIGAON
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

17:DULAL SAHA
S/O LATE NITYA GOPAL SAHA
R/O BABUPARA WARD NO. 11
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380.

18:RAMENDRA MALLIK
S/O LATE RAM DAYAL MALLIK
R/O NETAJI NAGAR
WARD NO. 9
P.O AND DIST- BONGAIGAON
ASSAM
PIN- 783380

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

06.03.2024

1. Heard Ms. R. Choudhury, learned counsel for the petitioner. Also heard Mr. S.R. Barua, learned counsel for the respondent nos.1 to 5 and Mr. N. Sarkar, learned counsel for the respondent nos.6 to 18.

2. The petitioner Sri Sri Radha Gobinda Sevashram, Paulpara in the Bongaigaon district is a society registered under the Societies Registration Act, 1860 and is being represented by its Secretary Sri Ashutosh Mallick. The petitioner is aggrieved by the order dated 19.09.2022 of the Executive Magistrate, Bongaigaon. As per the order of 19.09.2022, a meeting was held in the conference hall of the office of the Deputy Commissioner, Bongaigaon, where certain persons had participated. The meeting discussed a dispute between the persons who had approached the Executive Magistrate, Bongaigaon and the present committee members of the petitioner society. In furtherance of the meeting, the Executive Magistrate provided that the present committee of the petitioner society be dissolved and all the public, including the persons who had lodged the complaint before the Executive Magistrate be allowed to participate in such election.

3. The petitioner contends that it is a society which is governed by their own bye laws and they have a system of issuing membership and only the members who are accepted by the society are entitled to participate in any such election

for managing the committee and therefore, the order of the Executive Magistrate interferes with their right to conduct their own affairs.

4. The petitioner's counsel submits that the petitioner Society is governed through its Governing/Executive Body in terms of the Memorandum of Association-cum-Constitution. She submits that the private respondents have in the meantime surreptitiously entered into the premises of temple and taken control of all the documents. She submits that as the Executive Magistrate, Bongaigaon does not have the power to dissolve the Governing/Executive Body of the temple, the meeting minutes dated 19.09.2022 issued by the Executive Magistrate, Bongaigaon should be set aside.

5. Mr. N. Sarkar, learned counsel for the private respondent nos.6 to 18, on the other hand submits that the petitioner has been looking after the temple through the Governing/Executive Body since 2013, without holding any Annual General Meeting (AGM) and furnishing any Books of Accounts to the Members associated with the temple. He submits that in view of the above, the general public had taken over the temple and made the private respondents run the temple.

6. Mr. S.R. Barua, learned counsel for the respondent no.5 submits that there was no infirmity with the decision of the Executive Magistrate, Bongaigaon to dissolve the Governing/Executive Body of the temple, inasmuch as, the same had been made on the basis of the three reports made by a Government servant. In the report, it was stated that the Committee members of the

petitioner had not been able to manage the temple properly and was not able to give proper accounts of the management of the temple.

7. I have heard the learned counsels for the parties.

8. Without going into the various issues raised by the counsels for the parties, it is noticed that in terms of Clause 13(e) of the Memorandum of Association-cum-Constitution of the Sri Sri Radha Gobinda Sevashram (hereinafter referred to as "the Constitution"), the term of office of the Executive Body and it's Members is 3 (three) years. However, it can be dissolved/terminated early, only under special circumstances. Clause 13(e) of the Constitution is re-produced below as follows:

"13(e) The term of the office of the Executive Body and its members shall be three years. However, it may be dissolved/terminated early only under special circumstances.

Normally on completion of three years and after the election of New Executive Body, the old one shall continue to function till such time, the new one takes over the charges. The New Executive Body shall take over within thirty days from the date of election."

9. The concerned temple has been established in the year 1963. However, the petitioner has been looking after the temple through the Governing/Executive Body since 2013, without there being any further election for the various posts under the Executive Body, in violation of Clause 13(e) of the Constitution. In that view that matter, the validity of the Executive Body of

the temple having expired, they cannot be considered to be the executive body members any longer in violation of Clause 13(e) of the Constitution, As such, this Court is of the view that a new set of Office Bearers and Members of the Executive Body shall have to be constituted, in terms of Clause 13(c) of the Constitution, wherein it provided as follows:

“13(c) The office bearers and members of the Executive Body shall be elected by the primary members in the Annual General Meeting (AGM).”

10. In view of the expiry of the term of the Governing/Executive Body of the temple, this Court is not inclined to take a decision with regard to whether the Executive Magistrate, Bongaigaon had the power to dissolve the Committee of the petitioner, i.e. the Governing/Executive Body, as that would only be of academic interest. The fact however remains that as there is no legitimate Governing/Executive Body of the temple as on date, a new Governing/Executive Body of the temple would have to be constituted as per Constitution.

11. Accordingly, in view of the given facts and circumstances of the case, this Court directs that the election of the new Office Bearers and the Members of the Executive Body shall be held under the aegis of the Registrar (respondent no.2). Accordingly, the Registrar and/or his representatives shall also manage the affairs of the temple through his representatives, till a new Executive Body is formed in terms of the Constitution. The AGM for election of the Executive Body of the temple shall be called by the Registrar of Firms & Societies within a period of 1 (one) month from the date of receipt of a certified copy of this order. The entire exercise for conducting an election and declaration of the results

should thereafter be made within a further period of 2 (two) months.

12. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant