

GAHC010217812024



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

Case No. : CRP(IO)/413/2024

MANORANJAN HALOI SOWARANI KALA PARISHAD @ MANORANJAN
KALA PARISHAD AND 2 ORS
A SOCIETY HAVING ITS OFFICE AT VILL AND P.O.- KAKAYA, MOUZA-
DHARMAPUR, P.S.-BELSOR, DIST-NALBARI, ASSAM, PIN-781304,
REPRESENTED BY ITS PRESIDENT SRI DIGANTA HALOI, AGE 38 YEARS

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-78130

VERSUS

SURABHI SANGHA, KAKAYA AND 5 ORS
A SOCIO-CULTURAL ORGANIZATION, 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, P.O.- KAKAYA,
DIST-NALBARI, ASSAM, PIN-781304

2:KAKAYA HIGHER SECONDARY SCHOOL MANAGING AND

DEVELOPMENT COMMITTEE
VILL AND P.O. - KAKAYA
P.S.-BELSOR
DIST-NALBARI
ASSAM
PIN-781304

3:UDAY BARMAN
PRESIDENT OF KAKAYA HIGHER SECONDARY SCHOOL MANAGING AND
DEVELOPMENT COMMITTEE
VILL AND P.O. - KAKAYA
P.S.-BELSOR
P.O.- KAKAYA
DIST-NALBARI
ASSAM
PIN-781304

4:SUSHIL MAZUMDAR
SECRETARY CUM PRINCIPAL IN CHARGE OF KAKAYA HIGHER
SECONDARY SCHOOL MANAGING AND DEVELOPMENT COMMITTEE
VILL AND P.O. - KAKAYA
P.S.-BELSOR
P.O.- KAKAYA
DIST-NALBARI
ASSAM
PIN-781304

5:KAMAL CH. THAKURIA
GAONBURHA/GAM PRADHAN OF 34 NO. KAKAYA VILLAGE
P.S.-BELSOR
DIST-NALBARI
ASSAM
PIN-781304

6:ANITA NATH
GAONBURHA/GAM PRADHAN OF 34 NO. KAKAYA VILLAGE
P.S.-BELSOR
DIST-NALBARI
ASSAM
PIN-78130

Advocate for the Petitioner : MR. P K DAS,

Advocate for the Respondent : ,

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

ORDER

Date : 08.10.2024

Heard Mr. P.K. Das, learned counsel for the petitioners.

2. By filing this application under Article 227 of the Constitution of India, the petitioners have assailed the order dated 05.10.2024 passed by the learned Civil Judge (Junior Division) No.2, Nalbari in Misc.(J) Case No. 134/2024 arising out of TS No. 133/2023. By the said order, the prayer for ad-interim injunction of the petitioners was rejected.

3. It is further submitted by the learned counsel for the petitioner that he is conscious of the fact that an appeal would otherwise lie against the impugned order under Order XLIII Rule 1(r) CPC, but as 05.10.2024 was the last working day for Civil Court, the petitioners could not file an appeal and therefore, as there is no forum for the petitioners to go, the present application has been filed under Article 227 of the Constitution of India.

4. The learned counsel for the petitioners has submitted that the documents which are filed along with the written statement and/ or objection by the petitioners were not considered in its proper perspective by the learned trial Court, while refusing injunction. It is submitted that merely because the petitioners had submitted a copy of the order dated 17.10.2023 passed in CRP(IO) 338/2023, which related to claim for holding a theatre in the same school ground, the learned trial Court took a view that the said order related to the year 2023 and not for the year 2024. It is submitted that the learned trial Court had also erred in law and in facts in rejecting the prayer for injunction by not considering the effect of the resolution dated 08.09.2018 passed by the

SMDC/RMSA of Kakaya Higher Secondary School whereby it was decided that Hengool Theatre and Sudarshan Theatre would be able to perform their shows/ drama in the southern direction of the school field and further providing that except for the space allotted Rajtilak Theatre, both the theaters parties shall divide the remaining space.

5. Accordingly, it is submitted that the petitioners have applied before the School Managing Committee of Kakaya Higher Secondary School for allotment of a part of the school field to hold theatre. In this regard, by referring to the objection filed by the School authority in connection with Misc. (J) Case No. 134/2024, it is projected that vide resolution no. 1 of SMDC meeting held on 18.09.2024, permission was granted to the petitioners herein for holding the said mobile theatre at northern part of Kakaya Higher Secondary School play ground. Accordingly, it is submitted that this Court would be pleased grant liberty to the petitioners to approach the School Managing Committee for holding the mobile Hengooli theatre at the school play ground. The learned counsel for the petitioners has also prayed for setting aside the order impugned in this application.

6. Examined the materials available on record. It appears that the petitioners are the second parties in the Deed of Agreement dated 18.08.2024, which is between Hengool Theatre as first party and the petitioner no.1, namely, Manoranjan Haloi Sowarani Kala Parishad @ Manoranjan Kala Parishad as the second party. By clause 16 of the said agreement, the petitioners, as second party, had agreed to arrange for a field of 250 ft. X 200 ft. for conducting public show by Hengool Theatre and there shall be a motarable road through passage with capacity of bearing 14 tone loaded truck or lorry with other conditions as contained in the said agreement.

7. Under such circumstances, when the parties to the said agreement had made the agreement on 18.08.2024, the Court is unable to accept that there is any infirmity in the order of the learned trial Court not to take cognizance of the resolution dated 08.09.2018 by the School Management Committee to allow Hengool Theatre to perform shows at the space mentioned in the said resolution.

8. The reason to arrive at the said opinion is based on the fact that if by resolution no.1, the School Management Committee had already agreed to give land to Hengool Theatre, the petitioner no.1 who is a second party to the agreement, who undertook to provide space for the performance of Hengool theatre leads to the only conclusion that the Hengool Theatre has waived its right to enforce resolution no.1 dated 08.09.2018. A suit not being a suit in a representative capacity, even the petitioner no.1 cannot take a defence on behalf of the Hengool Theatre based on the resolution no.1 dated 08.09.2018.

9. Moreover, there is another situation which is required to be more explained by the petitioners. Admittedly, the suit was filed in the year 2023 being TS 133/2023. In this application, there is material to disclose that the agreement dated 18.08.2024 is sought to be enforced in defence. Therefore, in the considered opinion of the Court, the agreement dated 18.08.2024 is not and cannot be a subject matter of adjudication in TS 133/2023. Therefore, if the learned trial Court is not found to have committed any infirmity in not granting injunction in connection with Misc. (J) Case No.134/2024 arising out of TS No. 133/2023. The petitioners have failed to disclose their enforceable right to have the school space allotted for the Hengool Theatre.

10. Admittedly, the petitioners are not having the ownership or any proprietary right over the Hengool Theatre. As per the agreement dated

18.08.2024, the petitioner no. 1 who is the second party has agreed to provide a space to Hengool Theatre to hold a theatre on 09.10.2024, 10.10.2024 and 11.10.2024. Therefore, in connection with Misc.(J) Case No.134/2024, the first prayer is to allow the petitioners to hold Hengool Theatre in any part of Kakaya Higher Secondary School appears to be a relief which is in representative capacity. The said theatre company has not approached the Court to enforce its rights, if there be any. Accordingly, the Court does not find any merit in the challenge to the impugned order 05.10.2024 passed by the learned Civil Judge (Junior Division) No.2, Nalbari in Misc.(J) Case No. 134/2024 arising out of TS No. 133/2023. Accordingly, this writ petition stands dismissed at the motion stage without issuance of notice to the respondents.

11. The Registry shall transmit a copy of this order to the learned Civil Judge (Junior Division) No.2, Nalbari to make it a part of record.

JUDGE

Comparing Assistant