

GAHC010270222023



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

Case No. : WP(C)/6974/2023

MUKTAR HUSSAIN
S/O LT. FATIK MIYA, R/O VILL-BAHARI RESERVE, P.O.-BAHARIHAT, P.S.-
TARABARI, DIST-BARPETA, ASSAM, PIN-781302

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ZONAL JT. REGISTRAR OF THE CO-OPERATIVE SOCIETIES
ASSAM
BHANGAGARH
GUWAHATI-781005

4:THE DISTRICT COMMISSIONER
BARPETA
P.O.-BARPETA
ASSAM
PIN-781301

5:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

6:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
BARPETA
ASSAM
PIN-781301

7:ATOWAR BHUYAN
S/O ABDUL BHUYAN
EX-PRESIDENT/CHAIRMAN OF UTTAR BAGURIBARI SAMABAI SAMITY
LTD.
VILL-BANDHALI
P.O.-JATRADIA
DIST-BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.04.2024

Heard Mr. J.I. Barbhuiya, learned counsel for the petitioner. Also Mr. S.K. Talukder, learned Standing counsel for the Cooperation Department representing respondent nos.1, 2, 3, 5 & 6. Mr. S. Baruah, learned Govt. Advocate for the respondent no.4 and Mr. J.M.A. Choudhury, learned counsel appearing on the respondent no.7.

2. By filing the writ petition under Article 226 of the Constitution of India, the petitioner has made the following four prayers-

*(i) Setting aside and quashing the impugned order dated 20.11.2023
passed by the respondent No.2*

(ii) Setting aside and quashing the impugned Annual General Meeting (AGM) held on 23.08.2023 by the President/ Chairman of Uttar Baguribari Samabai Samity Ltd.

(iii) Setting aside and quashing the impugned resolutions if any adopted after the Annual General Meeting (AGM) of the Board of Directors of Uttar Baguribari Samabai Samity Ltd. which was held on 23.08.23

(iv) Setting aside and quashing the impugned resolutions adopted in the Executive Committee Meeting dated 30.07.2023 under the Chairmanship of the respondent no.7.

3. In brief, the case of the petitioner is that the respondent No.7 has ceased to be the Chairman of Uttar Baguribari Samabai Samity Ltd., by the operation of Section 43 (3) of the Assam Co-Operative Societies Act, 2007. Nonetheless, the respondent no.7 had presided over the Executive Meeting held on 30.07.2023, and also held the Annual General Meeting of the said society on 23.08.2023. The petitioner claims that the aforesaid Executive Meeting as well as AGM to be illegal. It is projected that although the illegal activities of respondent no.7 was reported to the respondent authorities, no action was taken and therefore, the petitioner had filed a writ petition before this Court which was registered as WP(C) no.6290/2023.

4. This Court by order dated 19.10.2023 passed in WP(C) no.6290/2023, had directed the Registrar of Co-Operative Societies, Assam to dispose of the appeal filed by the petitioner within 6 (six) weeks.

5. Consequently, the two appeals filed by the respondent No.7 on

10.05.2023 and 17.06.2023 and an appeal filed by the petitioner on 16.08.2023 were taken up together. Hearing was conducted in the presence of parties as well as other authorities mentioned in the order. By the order dated on 20.11.2023, the Registrar of Co-Operative Societies had held that the annual general meeting/public election that was held on 28.08.2023 under the chairmanship of respondent no.7 was found to be valid. Accordingly, the order passed by the DRCS, Barpeta on 04.05.2023 and the letter dated 15.06.2023, were set aside and further direction was issued to the effect that the decision for appointing a permanent Secretary for the society is entrusted on the Board of Directors of the society.

6. Aggrieved by the said order dated 20.11.2023, the present writ petition has been filed with the prayers as already reflected above.

7. The learned counsel for the petitioner has submitted that by virtue of letter dated 15.06.2023, the respondent No.7 had ceased to be the Chairman of the Board of Directors of the Uttar Baguribari Samabai Samity Ltd. Therefore commenced from 15.06.2023 till the impugned order passed on 20.11.2023 on the respondent No.7 could not have acted as a Chairman of the said society and accordingly, it is submitted that the actions taken during those period by the respondent No.7 is illegal. It is also submitted that the petitioner is prejudiced by the direction of allowing the Board of Directors to take a decision to appoint a permanent Secretary. In this regard, it is submitted that the previously filed WP(C) no.2413/2023 to assail his removal as the secretary would become infructuous.

8. Per contra, the learned Standing counsel for the Co-operation Department

has submitted that under the scheme of Assam Co-Operative Societies Act, 2007, it is the Board of Directors of a Society which is otherwise competent to take any decision to appoint a permanent Secretary. Accordingly, it is submitted that as the petitioner already filled WP(C) no.2413/2023, his interest is otherwise protected.

9. Per contra, the learned counsel for the respondent No.7 has referred to the additional affidavit filed by the petitioner and it is submitted that in this writ petition, an order was passed on 08.12.2023, whereby the interest of the petitioner was protected by observing that the appointment made in terms of the impugned order dated 20.11.2023 will be subject to the outcome of the writ petition.

10. In so far as the challenge to the AGM held on 23.08.2023 is concerned, which is the prayer no. 2 and 3 made in this writ petition, the Court is disinclined to accept the challenge to the said proceedings of AGM held on 23.08.2023 as challenge to the proceedings is required to be made before the competent authorities under the Assam Co-Operative Societies Act, 2007 because there might be disputed questions of fact. Moreover, the minutes for the AGM held on 23.08.2023 appears to have been approved by the impugned order dated 20.11.2023 passed by the Registrar of Co-Operative Societies, Assam in view of the observations made in the order that the said authority has taken cognizance of the AGM held on 23.08.2023. It may be mentioned herein that the prayer made in the writ petition as well as in the copy of the notice (Annexure 9), the date of AGM is stated to be on 23.08.2023. Therefore, in this regard the Court is inclined to relegate the petitioner to challenge the AGM in an appropriate manner as per the Assam Co-Operative Societies Act, 2007.

11. In so far as the directions contained in impugned order dated 20.11.2023 is concerned wherein it has been provided that the decision for appointing a permanent Secretary for the society is entrusted on the Board of Directors of the society, the Court is of the considered opinion that the factual position in regard to the Uttar Baguribari Samabai Samity Ltd. is that the petitioner has been permanently removed by the resolution of the Board and the removal is the subject matter of challenge by the petitioner in WP(C) no. 2413/2023. Under such factual matrix, we cannot find fault with the entrustment given to the Board for appointment of the Secretary for the society. However, in view of the challenge against removal of the petitioner in sub-judice in WP(C) no.2413/2023, the Court is inclined to provide that the appointment of permanent secretary by the Board of Directors of Uttar Baguribari Samabai Samity Ltd. would be subject to the outcome of the said WP(C) no.2413/2023.

12. This observation is made just to prevent any contradictory or conflicting orders to come on record.

13. Accordingly, it is clarified that the Order no. GPSS.E:359712I/344036/2023 date 20.11.2023, in so far as it contains the direction allowing entrustment to the Board of Directors of the society for appointment of a permanent secretary is made subject to adjudication in WP(C) no. 2413/2023.

14. This writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant