
(1969) 07 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 60 of 1969

Abdul Gafur Darbhuyan

APPELLANT

Vs

Mustakim Ali and Others

RESPONDENT

Date of Decision : 02-07-1969

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 34, 79(2)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 151

Citation : AIR 1970 Guw 96

Hon'ble Judges : M.C. Pathak, J

Bench : Single Bench

Advocate : M.H. Choudhury and M.S. Rahman, for the Appellant; B. Islam and D.P. Chaliha for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Pathak, J.—This is a revision petition u/s 115, Code of Civil Procedure, against an order of injunction issued by the Munsiff, Nowgong, which has been affirmed in appeal by the Assistant District Judge Nowgong.

2. The opposite party No. 1 as Plaintiff filed T. S. No. 114/68 against the Petitioner and opposite party No.2 as Defendants in the Munsiff's Court. Now gong, praying for declaration that the election of the Petitioner as the Chairman of the Daboka Marketing Co-operative Society Ltd., in its meeting held on 28-8-68 was void and illegal and that the Petitioner was not entitled to hold the office as the Chairman of the said Society. The opposite party No. 1 also filed ft petition under. Order 39 Rules 1 and 2, read with Section 151, Code of Civil Procedure, praying for issue of a temporary injunction restraining the Petitioner from taking over charge and functioning as the Chairman of the Daboka Co-operative Marketing Society and also restraining the opposite party No. 2 (Defendant No. 2) from handing over charge of the Chairmanship of the said Society to the Petitioner.

3. An interim order of injunction was issued in terms of the prayer, and the

Petitioner and the opposite party No. 2 were asked to show cause why the interim order should not be made absolute. Accordingly the Petitioner and the opposite party No. 2 showed causes separately. In his objection the Petitioner stated that the Plaintiff had no prima facie case and the suit was not maintainable in its present form that irreparable loss and damage to the Society and the public in general would be caused if the injunction were allowed to stay, that the election of the Petitioner was already approved by the Department and as such there could not be any reason to continue the injunction and that the suit was filed mala fide in collusion with Defendant No. 2-opposite party No. 2. The opposite party No. 2, in his objection stated that the suit was not maintainable and that there was no cause of action. That he was the outgoing Chair-man of the Daboka Co-operative Marketing Society and he had been functioning and performing the functions and duties of the society as caretaker of the Society with the aid and help of the former Managing Committee till the election of the new office bearers, that the new Board of the Society was elected on 6-4-68, and the Defendant No. 2 called the first meeting of the Board for election of Chairman and Vice-Chairman on 12-5-68 and the election was held and two persons were elected in the meeting, but the Assistant Registrar (E) refused to accept the election on some untenable plea's, that thereafter the Board's meeting was held on 23-8-68 at the instance of the Assistant Registrar (E) to elect a new committee in which the Petitioner was elected Chairman but till then the representative of the Financing Agency, Apex-Bank, had not named its representative and the Board was not fully constituted.

4. The learned Munsiff on a consideration of the facts and circumstances of the case made the interim injunction order absolute by his order dated 23-11-68. Against the said order the Petitioner filed an appeal before the Assistant District Judge who dismissed the appeal after considering the materials on record, Hence this revision petition.

5. Mr. M. H. Choudhury, the learned Counsel for the Petitioner, submitted that u/s 79(2) of the Assam Cooperative Societies Act, 1949 (Assam Act I of 1950), hereinafter called the Act. Civil Court had no jurisdiction to entertain the suit in question, that the Plaintiff (opposite party No. 1) had no cause of action, that the election was approved by the Registrar concerned and therefore the Petitioner could not be restrained from functioning as the Chairman by the civil court, and that the old committee could not be directed to function. He further submitted that the balance of convenience was for not issuing the injunction and by issuing the injunction order irreparable loss had been caused to the Society.

6. Mr. B. Islam, the learned Counsel appearing for the opposite party No. -1, on the other hand, submitted that the Managing Committee was not constituted in accordance with Bye-law No. 28 of the Bye-laws of the Daboka Marketing Cooperative Society Ltd., and as such the election of the Petitioner as Chairman was without jurisdiction and the Plaintiff therefore had a prima facie case to go to trial and that the mischief or inconvenience to arise from withholding

injunction would be greater than which was likely ? to arise from granting it and that irreparable loss would be caused if injunction were withheld. He further submitted that the learned Courts below had considered all the aspects of the matter and had come to definite findings that there was a prima facie case to go to trial and that the balance of convenience was for issuing the injunction and that if injunction were refused, the suit as itself would be infructuous, and that the Petitioner therefore was not entitled to any remedy in this revision petition.

7. On a scrutiny of the respective cases of the parties, the main point that arises for consideration is whether the Managing Committee which elected the Petitioner as the Chairman was constituted in accordance with law or not. If the Managing Committee in question was constituted according to the relevant provision of law, there would be no valid ground for issuing injunction in the case and the order of the Courts below might be challenged as passed in exercise of jurisdiction illegally and /or with material irregularity.

8. Bye-law No. 18 of the Daboka Marketing Co-operative Society. Ltd., is

The Managing Committee shall consist of the following:

- (a) Six A Class members
- (b) Two B Class members
- (c) One nominee of the Central Financing Agency
- (d) One nominee of the Regional or Apex Marketing Society; and
- (e) Three representatives of the State Government

From the objection filed by Defendant No. 2 (Opposite Party No. 2) in the case, it is found that on 28-8-68 when the Board's meeting was held to elect the Chairman the nominee of the Central Financing Agency, Apex Bank, had not been named. It is therefore clear that when the meeting of the Board was held on 28-8-68, the Central Financing Agency had not yet nominated their representative in the Managing Committee required under Bye-law No. 28. Section 34 of the Act lays down that the Administrative Council, the managing body and committees of a society shall be constitute in accordance with the bye-laws of the society which shall specify the composition of such bodies their powers functions duties, method of summoning meetings and procedure. That being the position, the members may have to be elected or nominated for constitution of the Managing Committee. In the instant case, the allegation of the Plaintiff is that on 28-8-1968 when the Managing Committee was summoned to elect the Chairman, the constitution of it was not complete as required under bye-law No. 28.

9. The suit is for declaration of the election of the Defendant No. 1 as Chairman of the Society as illegal. So whether the constitution of the Managing Committee is legal or not will have to be decided in the suit. Even though the election of the Petitioner might have been approved by the Registrar, it would be a matter for

consideration in the suit itself whether such approval could re-move the alleged illegality or irregularity in the constitution of the Managing Committee, if there be any. In the circumstances, I find that the learned Courts below were correct in their finding that the Plaintiff had a prima facie case to go to trial. The point whether the suit is barred u/s 79 (2) of the Act or not will have to be decided by the trial Court and I refrain from expressing any opinion in this regard at this stage.

10. Section 79 (2) of the Act reads as follows:

Save as provided in this Act, no order, decision or award under this Act or working of the affairs of a registered society shall be liable to be challenged, get aside, modified, revised or declared void in any court on any ground whatsoever except on grounds of jurisdiction.

So Civil Court's jurisdiction is not barred where the question of jurisdiction is involved regarding the subject matter of the suit. Hence the suit cannot be said to be prima facie barred u/s 79 (2) of the Act.

11. Bye-law No. 31 of the said Co-operative Society's Bye-laws provides as follows:

The Managing Committee elected by the General Assembly shall hold office till another Board is elected. Vacancies on the Managing Committee occurring during its term of office on account of death or any other cause shall be filled by co-option.

Under this bye-law, the Managing Committee, may continue to hold office till another Managing Committee is elected or constituted. Since the legality of the constitution of the Managing Committee which elected the Petitioner as Chairman is questioned in the suit, the injury or inconvenience likely to arise from refusing the injunction would be greater than that likely to arise from granting it. In the circumstances, I hold that the injunction] order issued by the Courts below is neither without jurisdiction nor bad in law.

11-A. This revision petition, therefore, has no substance and it is dismissed without costs.