
(2019) 02 GAU CK 0047
In the Gauhati High Court
Case No : Writ Appeal No. 322 Of 2017

Chapar Samabay Samity Ltd	Vs	APPELLANT
Puthimari Gaon Panchayat Level Samabay Samity Ltd And 6 Ors		RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Assam Co-operative Societies Act, 2007 — Section 13(5), 13(6)

Citation : (2019) 02 GAU CK 0047

Hon'ble Judges : A.S. Bopanna, CJ; Sanjay Kumar Medhi, J

Bench : Division Bench

Advocate : H Khan

Final Decision : Disposed Off

Judgement

A.S. Bopanna, CJ

Heard Mr. M.U. Mondal and Mr. Md. I.H. Khan, learned counsel for the appellant. Also heard Mr. U.K. Deka and Mr. R. Sarkar, learned counsel for Respondents No.1, 2, 3 and 4; and Mr. A.K. Azad, learned counsel for Respondents No.5, 6 and 7.

The appellant is before this Court in this intra-court appeal assailing the order dated 28.7.2017 passed in W.P.(C) No.4392 of 2016. Through the said order, the learned Single Judge has disposed of the writ petition by taking note of the fact that Respondent No.4 to the writ petition, namely the Chapar Samabay Samity Limited has been resolved to be bifurcated into four Co-operative societies, namely the four writ petitioners in W.P.(C) No.4392 of 2016. In that light, the learned Single Judge was of the opinion that the impugned notice issued by the Respondent No.4 in the writ petition dated 13.7.2016 is not sustainable and, accordingly, has quashed the same. The direction, in that light, is to enable the bifurcated petitioner societies to function in accordance with law. The Respondent No.4 to the writ petition claiming to be aggrieved is before us in this appeal.

Learned counsel for the appellant would contend that the consideration as made by the learned Single Judge is not justified. In that regard, it is the contention that the respondents herein had wrongly indicated to the learned Single Judge about the resolution said to have been adopted on 28.02.2010, as no such resolution was drawn out. The learned counsel further indicated the reference to another resolution dated 24.02.2010 in the said order and contended that even if taken into consideration, the same has not been given effect to, since by the said resolution what was resolved was to constitute a sub-committee for the purpose of bifurcation of the shares and, it is only thereafter, the bifurcation of the original Society, namely the appellant into four other cooperative societies would arise. In that light, it is contended that when the process of implementing the resolution in such manner had not been completed, the original society, namely the appellant, was justified in continuing with the affairs and, in that direction, it was also necessary to hold the Annual General Meeting as contemplated under law. Therefore, the notice dated 13.7.2016 issued was justified. Hence, it is contended that the order passed by the learned Single Judge is liable to be set aside.

Learned counsel for the respondents, more particularly Respondents No.1 to 4, would seek to point out to the resolution dated 24.02.2010 at Annexure-1 to the appeal papers. From the said resolution, it is pointed out that a decision was taken to bifurcate the Co-operative society and the same though not specifically given effect to, certain issues had arisen relating to the same. In that regard, a reference is made to Annexure-3, an order passed by the Registrar of Cooperative Societies dated 14.11.2013 in an appeal which had been preferred by the appellant herein. It is pointed out that on consideration, the authority having taken into account the resolution to bifurcate the society, had directed the appellant herein to return the shares in terms of the resolution. Hence, it is contended that the appellant would not be justified in seeking to contend that the bifurcation has not taken place thus far when the resolution had remained intact and necessary action in that regard was required to be taken. The learned counsel has also sought to rely on the provisions as contained in Section 13(5) and (6) of the Assam Co-operative Societies Act, 2007 and would contend that the original society will have to be deemed to be dissolved when such decision for bifurcation has been taken. Hence, he contends that the order passed by the learned Single Judge is justified and the same does not call for interference.

In the light of the rival contentions as put forth, a perusal of the order passed by the learned Single Judge, as already noticed by us, has referred to the resolution dated 24.02.2010 based on which the writ petitioners were before this Court in the said writ petition. On taking note that the appellant Co-operative Society had adopted the resolution dated 24.02.2010 for bifurcation, in that light, the learned Single Judge was of the opinion that the original society cannot, thereafter, subsist and has held that the notice dated 13.7.2016 issued to hold the General Body Meeting cannot be sustained and, accordingly had set aside the same. In that background, though the learned counsel for the appellant seeks to contend

that the resolution has not been given effect to in terms thereof, a perusal of the resolution dated 24.02.2010 (Annexure-1) would indicate that through Resolution No.1 adopted therein, a decision was taken with regard to bifurcation of the society of the appellant into three other societies and the original society has adopted a different name. Insofar as Resolution No.2, it is indicated that as per issue raised by the Chairman, it was resolved that a Sub-Committee would be formed with regard to bifurcation of the membership. The said resolution would only indicate that all that was required to be done was to assign the members of the original Co-operative Society to four of the different bifurcated societies, by the sub-committee. It is no doubt true that there is nothing on record to indicate that the sub-committee has met and a decision with regard to bifurcation of the shares had been taken. Even if that be the position, the order dated 14.11.2013 would disclose that an issue pertaining to the assignment of shares of the appellant Cooperative Society to one of the bifurcated Co-operative Society was considered by the Registrar of Cooperative Society. In the said proceeding, the Registrar has referred to the decision taken to bifurcate the Society and, in that light, the bifurcation of the share holders was also considered. Since only one of the bifurcated societies was before the Registrar in the said proceedings, the consideration was with regard to the share holding of such society.

In that view, when the resolution dated 24.02.2010 has not been assailed by the appellant herein in any other proceedings, the same has attained finality and the same is required to be given effect to. If in that light, the prayer as made in the writ petition by Respondents No.1 to 4 herein is noticed, they had sought for appropriate direction to the authorities to cancel the registration of the appellant herein so as to give effect to the resolution to enable the Respondents No.1 to 4 herein i.e., the four bifurcated co-operative Societies to function in an appropriate manner. In that background, a perusal of the provisions as contained in Section 13(5) and (6) of the Act of 2007 would indicate that when a decision is taken to bifurcate the society, the original society would stand dissolved and such a resolution is to be deemed. Such dissolution, in any event, would automatically take place subsequent to the bifurcation to be given effect and the shares are assigned to the bifurcated societies.

In the instant case, since we have noticed that there is no material on record to indicate that actual bifurcation of the members has not taken place and since we have also noticed that the resolution dated 24.02.2010 has remained intact, the appropriate course in the instant fact is to direct the competent authority, namely the Registrar of Cooperative Societies to keep in view the resolution dated 24.02.2010 and oversee the process of assignment of shares on bifurcation to the four societies, namely Respondents No.1 to 4 herein. Thereupon, the competent authority shall pass appropriate order to cancel the registration of the appellant herein and also shall take steps for issue of registration certificate in favour of Respondents No.1 to 4 herein. Thereupon, the Respondents No.1 to 4 shall continue to function in their individual capacities in

terms of the provisions as contained in the Assam Co-operative Societies Act, 2007. The process shall be undertaken and be completed by the Registrar of Cooperative Societies as expeditiously as possible, but not later than three months from the date of this order.

In view of the above conclusion and since we have already taken note that the resolution to bifurcate the society has remained in force, the appellant herein conducting the Annual General Meeting at this juncture, in any event, does not arise. Therefore, no meeting notice is certainly sustainable and the learned Single Judge was, therefore, justified in setting aside the same.

In terms therefore, this appeal stands disposed of.