courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(1999) 03 GAU CK 0026

Gauhati High Court

Case No: Civil Rule No. 5161 of 1997

Kumar Kaibarta Gaonmin Silpa Samabai Samity Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: March 9, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1999) 1 GLT 276

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Advocate: K.N. Choudhury and P. Bhowmick, for the Appellant; G.A., Assam, R. Lakshmi Gogoi, P.C. Gayan, N.C. Phukan, R. Phukan, H.P. Barman, P.G. Baruah, N.C. Das and K. Gogoi, for the Respondent

Judgement

D. Biswas, J.
This Writ Petition has been preferred by M/s Kumar Kaibarta Gaon Min Silpa Samabai Samity Ltd., controverting the legality and validity of the order passed by the Registrar of Co-operative Societies, Assam, on 28.8.97/1.9.97 (Anenxure-XII) whereby the Petitioner Society along with another has been held to be Co-operative Fishery Societies. By the said impugned order, the Registrar also directed the Petitioner to carry out amendment to repeal the earlier amendment registered by the Assistant Registrar of Co-operative Societies, Jorhat indicating the Petitioner Society as Fishery Co-operative Society.

2. For sometime past, the status of the Petitioner Society as Co-operative Fishery Society has been in controversy because of the challenge thrown by the Respondent No. 7 of this writ petition. Delivering the judgment in Civil Rule No. 3485 of 1995, the Learned Single Judge set aside the settlement order dated 27.7.95 made in favour of the Respondent

No. 7 (M/s Natun Maleng Min S.S. Ltd.) and further directed the authorities concerned to make fresh settlement of the Fishery by in accordance with the provisions of Rule 12 of the Rules. The aforesaid judgment was challenged before a Division Bench of this High Court in Writ Appeal (T) No. 582 of 1996. In the said writ appeal, the controversy relating to the status of the Petitioner of this writ petition as Co-operative Fishery Society was the main issue. The Division Bench after a thread-bare consideration of all documents placed before them decided that the Petitioner Society is a Co-operative Fishery Society for all purposes. For better appreciation, it is considered relevant to quote certain excerpts from the judgment rendered in Writ Appeal No. 5 82 of 1996:

On the last hearing of this case, the learned Counsel for the parties had been asked to produce the bye-laws of the societies and the bye-laws of the societies have been produced before us. A bare perusal of the bye-laws of the society of the Petitioner/Respondent would clearly show that the name of the society is "Kumar Koibarta Gaon Min Shilpa Samabay Samiti". It is therefore clear that this is a society which has been formed by the persons who are connected with fishery, that is why the user of the words "Min Shilpa". The object of the society is very clear, and that is that the society has been formed for bettering the conditions of its members. Even in the Government''s order a finding of fact is given that the society of the Petitioner/Respondent consists of 100 per cent fishermen, besides the finding that earlier for a number of years fisheries had been settled in favour of the society and that the members of the society live in the neighbourhood of the fishery in question which was settled by the Government....

It is thus clear that as far as the Petitioner/Respondent society is concerned, it had passed the requisite resolution incorporating the object in its bye-law, which is evident from the documents which have been filed in the Civil Rule and it is only the mechanical part which was left was not to incorporate it in the bye-laws of the society. The society has been carrying on the business of fishing for a number of years. It is a society of 100 per cent fisherman who living in the neighbourhood of the fishery in question. We are thus of the opinion that on these admitted facts the finding recorded by the State Government that the Society is only meant for carrying on the business of pisciculture, which will not include the business of getting settlement of fisheries by the Society, in our opinion, is perverse and liable to be set aside. On the materials which were on the records, it is clear that the society of the Petitioner/Respondent was a society of 100 per cent fishermen and its objects and activities clearly cover the taking of settlement of fisheries, which, as noticed above, the society has been doing in the past and which has been recognised by the Cooperative Department itself.

3. It would appear from the aforesaid judgment of the Division Bench that not only the finding of the State Government that the Society was incorporated for the purpose of business in pisciculture only was set aside, the Division Bench also held that it was the Society of 100 per cent fishermen with object and activities for taking settlement of the fishery. With the above observation, the Division Bench referred the matter back to the appropriate authorities for reconsideration of the matter relating to settlement of No. 11

Kokila Fishery of Jorhat District. On receipt of the aforesaid order of the Division Bench, the Respondents on re-examination settled the fishery with the Petitioner Society vide order dated 24.10.96.

4. The aforesaid settlement was again challenged in Civil Rule No. 5385 of 1996. The Learned Single Judge on consideration of different aspects of the controversy rejected the writ petition upholding the settlement of the fishery in favour of the writ Petitioner,

5. In the meantime, the Petitioner Society had filed another petition under Article 226 of the Constitution being number C.R. 2416 of 1995 challenging the order dated 16.11.94 whereby the status of the Petitioner as Cooperative Fishery Society was questioned. The Learned Single Judge disposed of this Civil Rule vide order dated 19.9.95 with the following observation:

Accordingly I set aside the Annexure-F letter dated 16.11.94. If any action is required to be taken, the Registrar of Co-operative Societies, Assam, Guwahati shall give full opportunity of hearing to the Petitioner Society enabling it to produce documents before him that the Petitioner Society is a Fishery Cooperative Society and thereafter the Registrar of Co-operative Societies, Assam, Guwahati may pass order in accordance with law.

6. On receipt of the aforesaid order, the Registrar of Co-operative Societies passed the impugned order dated 28th August, 1997 denuding the Petitioner Society of its status of Co-operative Fishery Society and directed it to delete the amendment incorporated in the bye-laws with the approval of the Asst. Registrar of Co-operative Societies. Shri K.N. Choudhury, Learned Counsel for the Petitioner Society submitted that the status of the Petitioner Society as a Co-operative Fishery Society having been finally adjudicated by the Division Bench of this High Court in Writ Appeal No. 582/96, the same matter could not have been reopened by the Learned Single Judge while disposing of Civil Rule No. 2416/95. According to Sri Choudhury although the matter was referred to the Registrar of Cooperative Societies and the registrar of Cooperative Societies had taken a decision afresh regarding the status of the Petitioner Society, the Registrar was not free to decide beyond what is observed by the Division Bench of this Court Shri Choudhury further argued that the copy of the judgment of the Writ Appeal was also furnished to the Registrar of Cooperative Societies, but no where in the impugned order any reference thereof is available.

7. In the background as stated above, and on consideration of the decision of the Division Bench rendered in Writ Appeal (T) No. 582 of 1996, the conclusion that follows is once the status of the Petitioner Society was decided by the Division Bench and the said decision having not being assailed in the Apex Court, the Registrar of Co-operative Societies could not have decided anything contrary to that decision.

8. Shri Chutia, Learned Government Advocate, however, did not controvert the submission made by Shri Choudhury and according to him, the decision rendered by the Division Bench has to be treated as final and, therefore, the order passed by the Registrar of Co-operative Societies in deviation thereof cannot be sustained. Learned Counsel for the Respondent No. 7 tried to justify the order passed by the Registrar on various grounds of which first I Like to deal with the matter relating to registration of the Society.

9. It has been argued that the Government vide order dated 23.6.1982 (Annexure-2 to the affidavit-in-opposition) directed the Registrar of Co-operative Societies to keep all cases of registration of new Fishery Co-operative Societies pending until a final decision in this matter is arrived at In view of the ban imposed by the State Government, according to the Learned Counsel for the Respondent No. 7, registration of the Petitioner Society during that period cannot be upheld as valid.

10. A careful scrutiny of the order dated 23.6.1982 (Annexure-2) would show that the said order can only be treated as an Executive direction having no force of law. This order cannot over-ride the provision of the Act in force. Therefore, any registration made during the continuance of the aforesaid ban imposed by an Executive Order cannot nullify the registration of a Society made under the provisions of the Act.

11. Learned Counsel for the Respondent No. 7 vehemently argued that the registration has been made in violation of the provisions of the Act, this Court shall not interfere with the orders passed by the Registrar in order to allow continuance of an illegal order passed earlier by the Assistant Registrar. This argument by way of defence was also made before the Learned Single Judge while disposing of the Civil Rule No. 5385/96. A reading of the judgment rendered in Civil Rule No. 5385/96 makes it abundantly clear that after consideration of the legality and illegality of the registration of the Petitioner Society, the learned Single Judge rejected the writ petition upholding the settlement of the Fishery in favour of the Petitioner Society. That being the position, I feel that at this stage the question cannot be reagitated before this Court. I have given due consideration to the pleadings and documents placed before me. It is not understood as to how the Respondent No. 7 is aggrieved on registration of the Petitioner Society as Fishery Co-operative Society. At best, it is a matter between the writ Petitioner and the State Government and in the absence of any cogent reason having adverse affect on the right of the Respondent No. 7, the objection raised by him as to the status of the writ Petitioner Society cannot be legally entertained.

12. Under the circumstances, this writ petition is allowed. The impugned order passed by the Registrar of Co-operative Societies, Assam on 28.8.97/1.9.97 is hereby set aside.

No order as to cost.