



GAHC010175472021

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

Case No. : WP(C)/5607/2021

JIABUR RAHMAN LASKAR
S/O- LATE NURUDDIN LASKAR, R/O- SAHABAD PART-II, P.O. SAHABAD,
DIST.- HAILAKANDI, ASSAM, PIN- 788163.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
COOPERATION DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GHY-781022.

3:THE ADDITIONAL REGISTRAR (I/C)
OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GHY-22.

4:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR
CACHAR
PIN- 788001.

5:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
HAILAKANDI
ASSAM
P.O. HAILAKANDI
PIN- 788151.



6:THE OFFICER ON MANAGEMENT OF RONGPUR
SAMABAY SAMITY LTD.
RONGPUR
P.O. SAHABAD
DIST.- HAILAKANDI
ASSAM
PIN- 788163.

7:NILOY BHUSAN SINGHA
S/O- NRIPENDRA SINGHA
R/O- VILL.- RONGPUR PT-III
P.O. SAHABAD
DIST.-HAILAKANDI
ASSAM
PIN- 788163

Linked Case : WP(C)/86/2022

JIABUR RAHMAN LASKAR
S/O LT. NURUDDIN LASKAR R/O SAHABAD PART-II P.O. SAHABAD
DIST. HAILAKANDI PIN-788163

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ASSAM
P.O. HAILAKANDI
PIN-788151

5:THE BRANCH MANAGER OF UNION BANK OF INDIA



KATLICHERRA BRANCH
P.O. KATLICHERRA DIST. HAILAKANDI
ASSAM
PIN-788161
6:THE OFFICER ON MANAGMENT OF RONGPUR
P.O. SAHABAD DIST. HAILAKANDI ASSAM
PIN-788163
7:NILOY BHUSAN SINGHA
S/O NRIPENDRA SINGHA R/O VILL. RONGPUR PT-III P.O. SAHABAD
DIST. HAILAKANDI
ASSAM
PIN-788163

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner : Mr. M.K. Choudhury Senior Advocate.
Mr. M. Khan. ... Advocate

For the respondent : Mr. S.K. Talukdar SC,
Cooperation Department Cooperation Department.

For the respondent no.7 : Dr. B. Ahmed
Mr. M.J. Quadir Advocates.

Date of hearing & judgment : 10.02.2022

JUDGMENT AND ORDER

Heard Mr. M.K. Choudhury, the learned Senior Counsel assisted by Mr. M. Khan, the learned counsel appearing on behalf of the petitioner. Mr. S.K. Talukdar, the learned Standing Counsel, Cooperation Department representing the officials Respondents. Dr. B.



Ahmed, the learned counsel appears for the on behalf of the private respondent no.7. None appears for the Union of India.

2. Both the writ petitions being interrelated are taken up for disposal together.

3. The writ petition being WP(C) 5607/2021 arises out of an order dated 08.10.2021 whereby the appeal filed by the Petitioner was disposed of holding that the order issued by the Zonal Joint Registrar of Cooperative Societies, Silchar Zone, Cachar dated 15.07.2020 was null and void and till the next resolutions taken by the regular Board, the private respondent who is the Respondent No.7 be allowed to function as the Secretary of the Society.

4. The second writ petition i.e. WP(C) 86/2022 arises out of an order dated 22.11.2021 passed in I.A.(C) No.1916/2021 whereby the interim order dated 25.10.2021 in WP(C) 5607/2021 was directed to remain in force subject to the writ petitioner shall not take any major decisions pertaining to the financial matters of the Society and on the basis of the said order the Respondent No.5 Bank was not permitting the Petitioner to operate the bank account maintained in the said Bank.

5. The brief facts of the instant case is that the respondent No.7 in both the writ petitions on 08.09.2010 was given the charge of the Secretary by the then Board of Directors of a Cooperative Society in the name and style of Rongpur Samabai Samity Limited (for short 'the Society'). Thereupon on 20.09.2010 the Registrar of the Cooperative

Societies approved the said charge being handed over to the Respondent No.7 as the Secretary. In the year 2011, the Board of Directors were dissolved and a Government Officer was appointed as the Secretary along with an Officer-on-Management was also appointed. At this stage it may be relevant to take note of Section 41(6) of the Assam Co-operative Societies Act, 2007 (for short 'the Act of 2007'). The said Sub-Section for the sake of convenience is quoted hereinbelow as the same has a relevance to adjudication of the disputes involved in the instant proceeding :

“41(6). Where a Board fails to arrange for holding election before the expiry of the term of the Board or delegates or where there are no Directors remaining on the Board, the Registrar shall convene a General Meeting by appointing an Officer of the Co-operative Department for Constitution of the Board within ninety days from the date of such appointment and the officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Society”.

A reading of the said Sub-Section would show that where a Board fails to arrange for holding election before the expiry of the term of the Board or delegates or where there are no Directors remaining on the Board, the Registrar shall convene a General Meeting by appointing an Officer of the Co-operative Department for Constitution of the Board within ninety days from the date of such appointment and the said officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Society meaning thereby that the officer so appointed in the general meeting his appointment shall be for a period of ninety days and during this period of ninety days apart from taking up all functions of the Board, it is also the duty of



such officer to take steps for constitution of the Board within the said period.

6. In the backdrop of the above, it would be seen that in the year 2011 the Board of Directors of the Society in question was dissolved and some officer was appointed in terms with Section 41(6) of the Act of 2007. We are in the year 2022 and till now there has been no constitution of the Board but it appears from the perusal of the records that in violation to the provisions of Section 41(6) of the Act of 2007 as quoted hereinabove, some officers have been appointed from time to time and the prescriptive period of ninety days as stipulated in the said Sub-Section has not at all been followed by the Registrar.

7. This is a sheer case of aberration to the provisions of the Act of 2007 which has resulted in the malady as would be seen from the events narrated herein below. The record reveals that the Petitioner was appointed on 18.01.2019 as Salesman-cum-Assistant Secretary to the said Society. It also reveals that the person so appointed by the Government as the Secretary of the Society was withdrawn and vide an order dated 18.03.2020 the Respondent No.7 being the senior-most employee of the Society was directed to take over the charges of the Secretary of the Society with immediate effect. The charge was handed over to the Respondent No.7 on 14.04.2020 along with the Proceeding Books by the outgoing Secretary as would be apparent from Annexure-10 to I.A.(C) 1916/2021. It further reveals from the records that on 11.05.2020, the writ petitioner was promoted and appointed as the

Salesman-cum-Assistant Secretary of the Society.

8. Disputes arose on and from 10.07.2020 wherein a purported resignation letter dated 10.07.2020 was said to be issued by the Respondent No.7 to the Respondent No.6 seeking release from the post of the Secretary expressing his inability to discharge his duty on account of his physical ailment and other personal difficulties. The record further reveals that the Respondent No.6 had accepted the said purported resignation letter by making due endorsement on the same day itself. However contrary to such acceptance a meeting was also purportedly said to be held on 14.07.2020 at 11 a.m. wherein it was recorded that the Respondent No.7 had expressed his difficulties in continuing with the charge of the Secretary and the Petitioner having agreed to accept the charge of the Secretary and having received the support from the Members present in the meeting the Officer-on-Management decided to place the matter before the Zonal Joint Registrar, Cachar, Silchar for taking appropriate decision. In fact a perusal of the said purported Minutes dated 14.07.2020 enclosed as Annexure-5 to the writ petition would show that the interpretation so sought to be given that the resignation of the Respondent No.7 was accepted by the Officer-on-Management on 10.07.2020 cannot be termed to be factually correct.

9. Subsequent thereto on 15.07.2020 the Zonal Joint Registrar of Cooperative Society had in the interest of public service allowed the Petitioner to take over the charge of the Secretary and to function as the



Secretary of the Society temporarily until further orders.

10. It is the case of the Petitioner as would be reflected from the writ petition itself that at the time of handing over charge there were certain discrepancies upon physical stock verification being made as regards shortage of 309.65 quintals of rice and this aspect of the matter as per the Petitioner could be seen from the purported communication dated 20.07.2020 issued by the Respondent No.7 to the Officer-on-Management of the Society.

11. To the surprise of the Petitioner on 23.07.2020, the order dated 15.07.2020 whereby the Petitioner was allowed to take over the charge of the Secretary was withdrawn. There was no rhyme or reason assigned in the said order as would be apparent on a perusal thereof. The Petitioner being aggrieved challenged the said order dated 23.07.2020 by filing a writ petition which was registered and numbered as WP(C) 3077/2020 wherein this Court vide an order dated 11.08.2020 stayed the order dated 23.07.2020 till the returnable date. It was also mentioned that once the Board of Directors is formed after the ensuing election the order dated 15.07.2020 shall become redundant as stated in the order as the Board is empowered to appoint suitable person as the Secretary. It is also apparent that the Respondent No.7 filed an application for vacation, modification or alteration of the order dated 11.08.2020 passed in the WP(C) No.3077/2020. This Court without going into the factual aspect of the case vide an order dated 27.08.2020 permitted the Respondent No.7 to withdraw the said application seeking

vacation, modification or alteration of the order dated 11.08.2020. Thereupon it further reveals that another writ petition was filed, this time by the Respondent No.7 challenging the order dated 15.07.2020. Both the WP(C) No.3077/2020 and WP(C) No.3506/2020 were taken up for consideration by this Court and vide an order dated 18.01.2021 on the basis of the consensus arrived at by the parties and taking into consideration the provisions of Section 111 of the Act of 2007 permitted both the petitioner as well as the Respondent No.7 to file appeals within a period of 10 (ten) days from the date of the said order and it was also made clear that until such time, the Petitioner herein was allowed to continue in the Office of the Secretary of the Society without however creating any right in his favour. It was also mentioned that the said appeal ought to be disposed of within a period of 60 days.

12. Thereupon on 08.02.2021, the Registrar of Cooperative Societies, Assam disposed of both the appeals filed by the Petitioner as well as the Respondent No.7 before it thereby upholding the order dated 23.07.2020 and permitted the Respondent No.7 to function as the Secretary of the Society.

13. The Petitioner thereupon again approached this Court by filing a writ petition being registered and numbered as WP(C) 1065/2021. This Court vide an order dated 18.02.2021 issued Notice and directed that till the next returnable date *status quo* in respect to the post of Secretary of the Society shall be maintained. Thereupon vide an order dated 16.08.2021 in the writ proceedings after taking into consideration the



contention of the writ petitioner in the said proceedings that the hearing was conducted by the Respondent No.3 and the order was passed by the Respondent No.2, this Court directed the Respondent No.2 to take up both the appeals and decide afresh by affording opportunities of hearing to the parties and by passing a reasoned order. It was also directed that the said appeals shall be disposed of within a period of 6 (six) weeks and accordingly until such time, the Petitioner herein was allowed to continue to hold the charge of the Secretary of the Society without however creating any right in his favour as has already been observed vide the order dated 18.01.2021 passed in WP(C) 3077/2020.

14. Thereupon after hearing the parties on 08.10.2021 the impugned order was passed. It is apparent from a perusal of the impugned order that the Respondent No.2 had held the order dated 15.07.2020 as null and void on account of that no proceedings of the meeting dated 14.07.2020 at 11 a.m. of the employees of the Society to appoint the Petitioner as Secretary of the Society was found in the Proceeding Book of the Society. It further appears from the said impugned order that the order dated 23.07.2020 was passed on the basis that about 150 shareholders of the Society approached the Zonal Joint Registrar on 21.07.2020 and requested him not to allow the Petitioner to act as the Secretary of the Society as he is the junior-most employee of the Society having no experience of AGM/election process and the Zonal Joint Registrar of the Cooperative Society who is the Respondent No.4 herein had on the basis of the request and representation of the shareholders of the Society have withdrawn the order dated 15.07.2020. From the impugned order, it appears that till the next resolutions are taken by the



regular Board, the Respondent No.7 was allowed to function as the Secretary of the Society.

15. Being aggrieved and dissatisfied, the Petitioner filed WP(C) 5607/2021. To the said writ petition an affidavit-in-opposition has been filed by the Respondent No.7 wherein it was stated that there was no resignation letter submitted by the Respondent No.7 as alleged in the writ petition and also denied that there was any meeting held on 14.07.2020 at 11 a.m. He also denied issuance of the letter dated 20.07.2020 being issued to the Respondent No.6 as regards shortage of 309.65 quintals of rice as alleged in the writ petition. It was also submitted in the affidavit-in-opposition that the Respondent No.2 has taken into consideration all the relevant aspects of the matter and as such no interference is called for under Article 226 of the Constitution of India. It may be relevant to note down that in the affidavit-in-opposition filed by the Respondent No.7 he had at paragraph 5 stated that on 2nd July 2020 as the Respondent No.7 was not feeling well and taking advantage of that, the Officer-on-Management took certain signatures of the Respondent No.7 in some blank papers to be used when necessary for functioning of the Society in absence of the Respondent No.7 due to health reasons.

16. To the said affidavit-in-opposition an affidavit-in-reply has been filed refuting to the various statements made in the affidavit-in-opposition which were contrary to the statements made in the writ petition. It may also be relevant to take note of that in the affidavit-in-



reply it was specifically mentioned the falsity case of the Respondent No.7 that he had not submitted the purported resignation letter can be discerned on the basis of the fact that the Respondent No.7 did not file any FIR against the purported resignation letter dated 10.07/2020. It was also mentioned that the purported resignation letter dated 10.07.2020 as well as the purported resolution held on 14.07.2020 at 11 a.m. were duly enclosed to the writ petition but in spite thereof the Respondent No.7 did not take any steps for filing any FIR or did not file any application before the higher authority which clearly shows that the statements made in the affidavit-in-opposition are incorrect.

17. It may also be relevant herein to mention that an interlocutory application was also filed before this Court under Article 226(3) of the Constitution of India seeking for alteration/modification/vacation of the order dated 25.10.2021 passed by this Court which was registered and numbered as I.A.(C) 1916/2021. It is also relevant to take note of that another interlocutory application was filed by the Petitioner which was registered and numbered as I.A.(C) No.2049/2021, whereby the Petitioner sought for extension of the order dated 25.10.2021. As already mentioned herein that as the Petitioner was not permitted to operate the bank account maintained with the Union Bank of India wherein the Petitioner Society's account is maintained the Petitioner had filed the writ petition being WP(C) No.86/2022. It also appears from the records that another interlocutory application was also filed by the Petitioner which was registered and numbered as I.A.(C) 150/2022 wherein modification and alteration of the order dated 22.11.2021



passed in I.A.(C) No.1916/2021 arising out of WP(C) No.5607/2021 was sought for on the ground that as the operation of the bank account was not permitted it was difficult to continue with the functioning of the Society in question.

18. I have heard the learned counsels for the parties at length.

19. Mr. M.K. Choudhury, the learned Senior Counsel appearing on behalf of the Petitioner submits that a perusal of the order impugned dated 08.10.2021 would clearly go to show that the said Appellate Authority had taken into consideration irrelevant materials while ignoring relevant materials at arriving the said decision. He submits that from a perusal of the order dated 08.10.2021 as well as also the earlier order dated 08.02.2021 shows that the order dated 23.07.2020 issued by the Respondent No.4 is on account of request of the shareholders which cannot be a consideration for nullifying the order dated 15.07.2020. He further submits that on 10.07.2020 the Respondent No.7 had submitted his resignation and the same was accepted on the same date. Thereafter in the Resolution adopted on 14.07.2020 at 11 a.m. the Respondent No.7 even after being requested to continue as In-charge Secretary, refused to do so and as such the matter was referred to the Respondent No.4 for appropriate decision for giving the charge to the Petitioner as the Secretary to which all the Members present in the said meeting held on 14.07.2020 at 11 a.m. have also supported the said decision. He submits that although in the affidavit-in-opposition a statement has been made to that effect that there were certain blank



papers on which the Respondent No.7 had signed and that advantage was taken by the Respondent No.6 but the fact remains that the Respondent No.7 had never filed an FIR against the alleged fabrication or fraud being committed which categorically shows that the entire exercise now taken by the Respondent No.7 to again take over the charge of the Secretary is only to hide the manipulations/misappropriation which he had done in respect to 309.65 quintals of rice which he had admitted in the communication dated 27.02.2020. These matters ought to have been taken into consideration by the Respondent No.2 in deciding the said appeal which however was not done so for which the said order dated 08.10.2021 is liable to be interfered with. He further submits that apart from the above it would also show that the order passed on 08.10.2021 also clearly shows the total non-application of mind to the facts of the case more so because a perusal of the order dated 23.07.2020 would show that there is no reason assigned as to why the 15.07.2020 order has been withdrawn. The Respondent No.2 being the Appellate Authority ought to have taken into consideration that aspect of the matter and having not done so the impugned order is liable to be interfered with. As regards the writ petition registered as WP(C) 86/2022, Mr. M.K. Choudhury, the learned Senior Counsel submits that in view of the order being passed by this Court in I.A.(C) 1916/2021 whereby although the Petitioner was permitted to continue as the Secretary but it was also mentioned that the writ petitioner shall not take any major decision pertaining to financial matters of the Society. The use and operation of the bank account cannot be termed to be a financial matter of the Society in as much as, the operation of the bank account is

required for the purpose of running the Society. He submits that in view of the actions of the Respondent No.5 Bank of not allowing the Petitioner to operate the bank account has caused great hardship to the running of the Society in question.

20. On the other hand, Dr. B. Ahmed, the learned counsel appearing on behalf of the Respondent No.7 submits that the instant writ petition is not maintainable on the ground that a Writ of Certiorari cannot be issued in matters as in the instant case. In that regard he refers to various judgments of this Court in the cases of (1) *Risheswar Neog vs. The State of Assam and Others* reported in 1993 (1) GLR 184; (2) Unreported judgment in the case of *Md. Kaysor Ahmed vs. The State of Assam and Others* in WP(C) No.3184/2013; (3) *Jyoti Prasad Sarma vs. State of Assam and Others* reported in 2019 (3) GLR 396; (4) *Lakhiram Bora and 22 Others vs. State of Assam and Others* reported in 2019 (2) GLT 1019 and (5) *Dhiraj Chandra Roy vs. Assam Minorities Development Board and Others* reported in 2011 (5) GLR 76. He further submitted that adjudication of the instant writ petition would involve disputed questions of facts and as such this Writ Court ought not to exercise the jurisdiction under Article 226 of the Constitution of India in the instant matter. In that regard he referred to the judgment of the Supreme Court in the cases of (i) *Parry and Company Ltd. Vs. Commercial Employees Association, Madras* reported in AIR 1952 (SC) 179; (ii) *T.C. Basappa vs. T. Nagappa* reported in AIR 1954 (SC) 440 and (iii) *State of Maharashtra vs. Raghunath Gajanan Wainganka* reported in (2004) 6 SCC 584. He also submitted that before issuance of a Writ it is necessary to record reasons why the Court intends to re-consider the finding of fact and in

support of that he referred to the judgment of the Supreme Court in the case of *Management of Maduratnakam Co-op Sugar Mill Ltd. Vs. S. Viswanathan* reported in (2005) 3 SCC 193 as well as *State of U.P. vs. Lakshmi Sugar and Oil Mills Ltd. and Others* reported in (2013) 10 SCC 509. He further submits that the facts involved in the instant case are disputed as to whether the Respondent No.7 had submitted a resignation letter or whether the same was duly accepted or whether there was a Resolution adopted on 14.07.2020 at 11 a.m. and these aspects of the matter cannot be taken into consideration by this Writ Court under Article 226 of the Constitution. Mr. S.K. Talukdar, learned Standing Counsel for the Cooperation Department submits that the impugned order is a result of an order being passed under Section 111 of the Act of 2007. Even if there is an error in the said order, Writ of Certiorari shall not lie unless the error is such which is apparent on the face of the record.

21. What transpires from the materials on record as well as the contentions made by the parties before this Court is that in the year 2011 the Board of Directors were dissolved and in exercise of the powers under Section 41(6) of the Act of 2007 an officer was appointed to perform all functions of the Board including to take steps for constitution of a Board within ninety days from the date of such appointment. Eleven years have gone by but till date there has been no constitution of the Board as mandated under the provisions of the Act of 2007. On a specific query being made to the counsel appearing for the Cooperation Department as to who is presently exercising the functions of the Board, Mr. S.K. Talukdar candidly and with all fairness submits

that an Officer-on-Management has been appointed from time to time by the Cooperation Department though strictly not in terms with the provisions of Section 41(6) of the Act of 2007. He also submits that these appointments which are being made as Officer-on-Management are also not for a period of ninety days as contemplated under the provisions of Section 41(6) of the Act of 2007 but they are appointed and continued at the pleasure of the Department.

22. At this stage it may also be relevant to take note of Section 38(2) of the Act of 2007 which stipulates the powers and functions of the Board. Sub-Section (2) of Section 38 stipulates that the Board shall have the power to nominate, elect or appoint and remove the Chief Executive provided he is not a Government appointee. By virtue of Section 41(6) in absence of the Board it is the officer so appointed who is to perform the functions of the Board though for a limited period time of 90 days. Admittedly the said officer had not appointed the Petitioner or the Respondent No.7 or had given any charge to either the Petitioner or the Respondent No.7 to be in-charge of the post of the Secretary.

23. To a pointed query to all the counsels appearing for the parties as to whether the post of Secretary is conceived in the Act of 2007, the learned counsels submit that the post of Secretary is equivalent to the post of the Chief Executive who is appointed in terms with Section 38(2) of the Act of 2007 and in that regard it has been submitted that a perusal of Section 49 would clearly shows that there shall be Chief Executive by whatever designation called of every Cooperative Society



and in the instant case the Secretary is the Chief Executive for the purpose of the Society in question. Section 49 stipulates the powers and functions of the Chief Executive and staff. A perusal of Sub-Section (1) (a) of Section 49 stipulates that the appointment of the Chief Executive shall be by the Board or by the State Government and in the event of the appointment of the Chief Executive by the Board, the person concerned has to be a full time employee of the Society. There is no embargo however, if the State Government appoints. Sub-Section (2) of Section 49 stipulates various powers and functions of the Chief Executive and a perusal thereof would show that the functions of the Chief Executive of a Society is pivotal to the functioning of the Society and as such an appointment to the post of Chief Executive has to be done in consonance to the provisions of Section 49 of the Act of 2007.

24. As would appear from the facts as narrated hereinabove that on 18.03.2020 the Secretary who was appointed by the State Government was withdrawn and thereafter the Respondent No.7 was made to take charge of the post of Secretary by the Respondent No.4. It is not known under what basis that the Respondent No.4 had exercised the power to permit the Respondent No.7 to take charge of the Secretary. Similarly in the case of the Petitioner also it is not known under what authority the Respondent No.4 had permitted the Petitioner to be the Secretary of the said Society. Even in the impugned order, the Respondent No.2 has permitted the Respondent No.7 to be the Secretary till Resolution taken by the regular Board. The Act of 2007 does only stipulate that it shall be the Board or the State Government who can appoint the Chief Executive Officer or the Secretary as in the instant case. There is no materials on

record placed that the Respondent No.4 or the Respondent No.2 have been delegated with the powers by the State Government to exercise under Section 49 of the Act of 2007. Dr. B. Ahmed, learned counsel during the course of hearing placed various orders of the State Government delegating the powers of various sections. But a perusal thereof does not show that the State Government had delegated the powers under Section 49 of the Act of 2007 to the Respondent Nos. 2 to 5.

25. From the above discussions what therefore appear is the Officer-on-Management appointed under Section 41(6) of the Act of 2007 can take over the functions of the Board within the period as mentioned in Section 41(6) of the Act of 2007. Although there is an Officer-on-Management the said Officer-on-Management have not exercised the powers of the Board in terms with Section 49. The statutory mandate of 90 days as stipulated in Section 41(6) of the Act of 2007 having not been followed, it is in doubt whether such Officer on Management is entitled to continue. Neither the Respondent No.2, 3 & 4 have any authority to appoint the Secretary unless specifically delegated by the State Government to exercise the powers under Section 49 of the Act of 2007. At this stage it may be further relevant to take note of that admittedly there is no Board since 2011 and it becomes a statutory duty and responsibility of the State Government to exercise the powers under Section 49 to appoint a Secretary and it is no longer *res integra* that when a statutory duty is imposed upon an authority and the said authority does not exercise such jurisdiction or duty it would be within the ambit of the powers under Article 226 of the Constitution to compel



the said authority to exercise such powers under Section 49 of the Act of 2007 as in the instant case.

26. Now coming to the question as regards the disputed question of facts and the maintainability of the writ petition as contended by Dr. B. Ahmed, the learned counsel for the Respondent No.7. The judgments so placed by Dr. Ahmed no doubt relates to matters pertaining to the internal affairs of the Society and how it is to be managed but the said judgments does not take into consideration or are not in respect to inaction of the concerned State Government in not exercising the statutory duty and power imposed under Section 49 of the Act of 2007. Further to that, a perusal of the impugned order dated 08.10.2021 would show that the Appellate Authority have confirmed the order dated 23.07.2020 on the ground that the said order was passed at the request of 150-200 shareholders that the Petitioner would not be in a position to carry out the functions of the in-charge Secretary rather the Respondent No.7 would be. Neither the order dated 23.07.2020 nor the order dated 08.10.2021 takes into consideration the well established principle of law that the respondent authorities are to function as per the legal framework and no at the pressure or behest of any other person. No materials have been placed before this Court to show that the shareholders have a say as to who should be the Secretary or the Secretary in-charge. It is the opinion of this Court taking into consideration the post of the Chief Executive/Secretary herein being pivotal to the functioning of the Society after taking into account the vivid functions the Secretary has to perform as enumerate in Sub-Section (2) of Section 49 of the Act of 2007, the best person to function



as the Secretary or the Chief Executive has to be chosen on the basis of his capability and experience and it is believed that the State Government in exercise of its powers under Section 49 shall do so in the right earnest till a Board is formed as in the instant case.

27. Considering the above, this Court is therefore of the opinion that the order impugned dated 08.10.2021 or the order dated 23.07.2020 or even the order dated 15.07.2020 are in excess of the jurisdiction conferred under the Act of 2007 in as much as, neither the Respondent No.2 or the Respondent Nos.3 and 4 have the authority to appoint or give even the charge of the Secretary to any person. It has to be either done by the Board or in absence of the Board by the officer appointed under Section 41(6) or the State Government who has the authority to appoint the Chief Executive/ Secretary of the Society. Consequently this Court therefore directs the State Government to appoint the Secretary/Chief Executive of the Society in question within a period of 20 (twenty) days from the date of the instant judgment.

28. As regards the grievances made in the WP(C) 86/2022, it is the opinion of this Court that taking into consideration that the State Government has been directed to appoint a Chief Executive/Secretary within a period of twenty days of this judgment, the Petitioner shall be permitted to carry out the functions of the Secretary (In-charge) of the Society till such time. Difficulties expressed that on account of stopping of the operation of the bank, the salary of the employees of the Society and the transportation charges could not be made, it is directed that the



Officer-on-Management shall operate the bank account with the approval of the Zonal Joint Registrar i.e. Respondent No.4 herein till such time the State Government makes appointment as directed hereinabove. The respondent no. 4 while granting the approval shall take into consideration that this direction for operating the Bank account is in the interim till a regular appointee is made by the State Govt.

29. With the above observations both the writ petitions stand disposed of. A copy of the instant judgment shall be served upon Mr. S.K. Talukdar, the learned counsel for ensuring compliance to the observations made hereinabove.

JUDGE

Comparing Assistant