

GAHC010014962023



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

Case No. : WP(C)/367/2023

SADEK ALI AND 6 ORS
S/O- ABDUL KUDDUS, R/O- VILLAGE -RUVI,
P.O- BALIKURI,
DIST- BARPETA

2: ALI AKBAR AHMED
S/O- JAMAT ALI
R/O- VILLAGE SONAPUR RUVI

P.O- BALIKURI

DIST- BARPETA

3: ABUL HOSSAIN
S/O- LATE KALU MIA
R/O- VILLAGE BALIGURI NC

P.O- BALIKURI

DIST- BARPETA
ASSAM

4: AKHIL CHANDRA GHOSH
S/O- LATE NARAYAN CH. GHOSH
R/O- VILLAGE BALIGURI NC

P.O- BALIKURI

DIST- BARPETA
ASSAM

5: ABDUR RAHMAN
S/O- LATE ABDUL ALI
R/O- VILLAGE BALIGURI K

P.O- BALIKURI

DIST- BARPETA
ASSAM

6: BASIRAN KHATUN
W/O- MIR HUSSAIN
R/O- VILLAGE SANPURA

P.O- JANIA

DIST- BARPETA
ASSAM

7: SAYED BHUIYAN
S/O- LEBU MIA BHUIYAN
R/O- VILLAGE MOHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF
ASSAM, COOPERATIVE DEPARTMENT, DISPUR, GUWAHATI-06. KAMRUP
(M), ASSAM

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

3:THE ADDL. REGISTRAR OF COOPERATIVE SOCIETIES (GEN)

ASSAM
KHANAPARA
GUWAHATI-781022.

4:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES

BARPETA

P.O AND DIST- BARPETA

ASSAM
PIN-781301

5:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES

BARPETA

P.O AND DIST- BARPETA
ASSAM
PIN-781301

6:THE SECRETARY
PASCHIM JANIA SAMABAI SAMITTEE LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-781314

7:THE RETURNING OFFICER
HOLDING THE AGM/ ELECTION OF PASCHIM JANIA SAMABAI SAMITTEE
LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-781314

8:ABUL KALAM
S/O- ABDUL KARIM
MEMBER BOARD OF DIRECTORS
PASCHIM JANIA SAMABAI SAMITTEE LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-781314

9:BASED ALI
S/O- RAIJUDDIN
MEMBER
BOARD OF DIRECTORS

PASCHIM JANIA SAMABAI SAMITTEE LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-781314

10:MOTALEB MIA @ MOTALEB
S/O-AMZAD ALI
MEMBER
BOARD OF DIRECTORS
PASCHIM JANIA SAMABAI SAMITTEE LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-781314

11:BIMALA KHATUN
W/O- ABU TALEB CHOUDHURY
MEMBER
BOARD OF DIRECTORS
PASCHIM JANIA SAMABAI SAMITTEE LTD.
MAHAMMEDPUR

P.O- KADONG

DIST- BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR D J HALOI

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 25-01-2023

Heard Mr. D.J. Haloi, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department for the respondent nos. 1 – 5.

2. Considering the nature of the disputes raised in this writ petition, this Court is of the view that the writ petition can be disposed of at the motion stage itself without issuing of notices to the respondent nos. 6 – 11.

3. The petitioner, 7 [seven] in nos., have approached this Court by the instant writ petition, preferred under Article 226 of the Constitution of India, alleging that irregularities were committed in the course of election process undertaken for electing the Board of Directors of the registered co-operative societies named M/s Paschim Jania Samabai Samiti Ltd., District – Barpeta [‘the Society’, for short]. The petitioners have claimed that they are the shareholders of the Society. Pursuant to a notice dated 19.12.2022, the Annual General Meeting [AGM]/Election of the Society for the year 2021-2022 was held on 08.01.2023. It is the case of the petitioners that the respondent nos. 8-11 submitted their nominations to contest the election held for electing the Board of Directors for the Society. The Returning Officer accepted their nominations and as a result, they were allowed to contest the election for the Board of Directors of the Society. It is the further case of the petitioners that in the Voters List prepared for conducting the Annual General Meeting [AGM]/Election on 08.01.2023 was incorrect as it contained a nos. of anomalies e.g. the names of some fictitious voters had figured in The Voters List. The further case of the

petitioners is that the respondent nos. 8 – 11 have been elected illegally as they had resorted to forgery and their signatures in the proceedings of Annual General Meeting [AGM]/Election of previous years were shown to be made in the proceedings despite their absence in those AGMs of the Society. The petitioners have stated that they have submitted two representations on 13.01.2023 and 17.01.2023 before the respondent no. 3 and the respondent no. 5 narrating all the illegalities allegedly committed during the election process resulting into the alleged incorrect Voters List for the AGM/Election, held on 08.01.2023. The petitioners have requested for rejection of the candidatures of the respondent nos. 8 – 11 as members of the Board of Directors of the Society but till date no action have been taken by the respondent authorities in the Co-operation Department. It is further submitted on behalf of the petitioners that the petitioners had preferred a representation/appeal before the Additional Registrar of Co-operative Societies [Gen], Assam on 17.01.2023 but the said authority is sitting over the matter. Despite the illegalities in the election process, the Assistant Registrar of Co-operative Societies, Barpeta had erroneously approved the proceeding of the AGM and the results of the Election, held on 12.01.2023.

4. From the nature of disputes raised, it is evident that to adjudicate the disputes raised by the petitioner, determination of certain factual aspects would be necessary. This Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India does not find any justification to adjudicate such disputes where disputed questions of fact would fall for determination. Section 111 of the Assam Co-operative Societies Act, 2007 [‘the Act’, for short] has provided for an appeal before the Registrar of Co-operative Societies, Assam from the decisions made under the Act or the rules framed thereunder by any

Government officer. The disputes raised by the petitioners herein have also touched upon various issues, which come under the Assam Co-operative Societies' Election Rules, 2019 [the Election Rules', for short], framed in exercise of powers conferred under Section 131[1] r/w Section 41 [3] of the Assam Co-operative Societies Act, 2007.

5. In the above view of the matter, the instant writ petition is not entertained, reserving the liberty to the petitioners to file an appeal under Section 111 of the Assam Co-operative Societies Act, 2007. The petitioners may do so within a period of 7 [seven] days from today. In the event of filing such an appeal by the petitioners, the Registrar of Co-operative Societies, Assam shall decide the same as expeditiously as possible, preferably within a period of 6 [six] weeks from the date of receipt of a copy of this order. The Registrar of Co-operative Societies, Assam before consideration of the appeal, if any, shall issue notices to all the stakeholders and the appeal thereafter, be disposed of by a speaking order after hearing all such stakeholders.

6. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant