

GAHC010034552022



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

Case No. : WP(C)/1323/2022

DAKSHIN BAGURIBARI SAMABAY SAMITY LTD. AND 4 ORS.
REP. BY ITS PRESIDENT SHAHIDUL ISLAM, AGED ABOUT 38 YEARS, SON
OF JUL HABEZ MULLAH, VILL.- KUCHUMARA NC, DIST.- BARPETA,
ASSAM

2: PASCHIM SARUKHETRI SAMABAY SAMITY LTD.

REP. BY ITS PRESIDENT ABDUL MANNAN ALI
AGED ABOUT 46 YEARS
SON OF ABDUL ABED ALI
VILL.- BAISHA
P.O. BHOGDIA
DIST. BARPETA
ASSAM

3: BAGHMARA CHAR SAMABAY SAMITY LTD.

REP. BY ITS PRESIDENT FAZAL HOQUE CHOUDHURY
S/O- KAZIMUDDIN
VILL. AND P.O. BAGHMARA CHAR
P.S. ALOPATI CHAR
DIST. BARPETA
ASSAM

4: BAUSI SAMABAY SAMITY LTD.

REP. BY ITS PRESIDENT ANOWAR HUSSAIN
AGED ABOUT 47 YEARS
SON OF MUSARAF HUSSAIN
VILL.- HABI RADHA KUCHI
P.O. RADHA KUCHI
BARPETA

ASSAM

5: PASCHIM MANDIA SAMABAY SAMITY LTD.

REP. BY ITS CHAIRMANAYNAL HOQUE
AGED ABOUT 44 YEARS
SON OF LATE AKBAR ALI
VILL. AND P.O. SATRAKANARA
P.S. BAGHBAR
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DEPUTY COMMISSIONER
BARPETA
ASSAM

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

5:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
BARPETA
ASSAM

6:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
BARPETA
ASSA

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 13.06.2023

Heard Mr. S. Banik, learned counsel for the petitioners. Also heard Mr. S.K. Talukdar, learned standing counsel for the Cooperation Department, representing respondent nos.1, 2, 4, 5, and 6, and Mr. C.K.S. Baruah, learned Govt. Advocate for the respondent no.3.

2. In brief, the case of the petitioners is that a new section 130 A was inserted in the Assam Cooperative Societies' Act, 2007 ('2007 Act' for short), which gave power to the State Govt. to exempt any registered cooperative society from the operation of the provision of section 39 and 41(2) of the Act for a period not exceeding 6 (six) months under exceptional circumstances like pandemic. The competent authority in exercise of power conferred under section 130 A of the 2007 Act issued a notification dated 27.01.2022, thereby granting exemption for a period from 01.10.2020 to 29.03.2021 to the societies whose names are mentioned in the said notification. The case of the petitioners is that by the time the notification was issued, the period of exemption has already been lapsed, for which the benefit could not be given to petitioners and that by operation of provisions of section 39 of the 2007 Act, there was a lapse on the part of the petitioners to hold the AGM within the time allowable under section 39 of the 2007 Act and that the petitioners also did not get the benefit under section 41(2) as during the said period, the elections of Board of Directors of the societies could not be held. In short, the benefit of the

notification dated 27.01.2022 could not be availed by the petitioners. Hence, the learned counsel for the petitioners has submitted that insofar as the petitioner nos.1 and 2 is concerned, as the Board has lapsed after expiry of 5 years term, the same shall not be construed as a disqualification to the members of the Board of Directors of the petitioner nos.1 and 2 societies to participate in the election. It is also submitted that in respect of petitioner nos.3, 4 and 5, adequate time be granted to the Board of Directors to hold the AGM as the term/tenure of the Board has not yet lapsed.

3. The learned standing counsel for the Cooperation Department has submitted that by operation of the provisions of section 31, as the term of the Board is prescribed to be 5 (five) cooperative years from the date of election of the Directors, for those societies where the election could not be held, the Board is already deemed to have lapsed by efflux of time and therefore, while it would be discretion of the Court to make the Directors eligible for re-election, such elections shall be conducted by the departmental officer under sub-section (6) of section 41 of the 2007 Act. Insofar as the petitioner nos.3, 4, and 5 are concerned, it is submitted that it would be discretion of the Court to extend time to the said societies for holding the AGM as their 5 (five) cooperative years would commence from the date of earlier election, whenever the same were held.

4. In view of the contents of the notification dated 27.01.2022, issued by the Additional Chief Secretary to the Govt. of Assam, Cooperation Department, the Court is inclined to observe that the intention of the Govt. was to exempt the societies from operation of section 39 and 41(2) of the 2007 Act. However, by the time the notification was issued, the exemption granted had

already expired. Under such circumstances, the Court is inclined to provide that the non-holding of AGM and/or elections by the petitioner nos.1 and 2 societies, namely, (1) Dakshin Baguribari Samabay Samity Ltd., and (2) Paschim Sarukhetri Samabay Samity Ltd. shall not be construed to have disqualified the present Board of Directors to participate in the next elections. However, it is provided that the elections would be held by the authorities assigned by the Registrar of Cooperative Societies to hold such elections, which would be done departmentally within an outer period of 50 days from today, which is inclusive of 5 (five) days time to the petitioners to produce certified copies of this order before the competent authorities, giving them 45 days period of time to hold such election.

5. Insofar as petitioner nos.3, 4 and 5 are concerned, namely, Baghmara Char Samabay Samity Ltd., Bausi Samabay Samity Ltd., and Paschim Mandia Samabay Samity Ltd., the Court is inclined to provide that within an extended period of within 30 (thirty) days from today, the said societies shall hold their AGM, if not already held, and the proceedings of the AGM shall be forwarded to the jurisdictional Assistant Registrar of Cooperative Societies for approval.

6. To the extent as indicated above, the writ petition stands allowed.

JUDGE

Comparing Assistant