

GAHC010038242023



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

Case No. : WP(C)/1025/2023

NIKHIL DEBNATH AND ANR
S/O LATE UPENDRA DEBNATH
R/O VILL- PUB DHANIRAM PATHAR
P.O. TALIBASTI,
P.S. HOJAI
DIST. HOJAI, ASSAM

2: HOBIBUR RAHMAN
S/O ABDUL MALIK
R/O VILL- PUB DHANIRAM PATHAR
P.O. TALIBASTI

P.S. HOJAI
DIST. HOJAI
ASSA

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVT. OF ASSAM,
CO-OPERATION DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022

3:THE ADDITIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022

4:THE DEPUTY COMMISSIONER

HOJAI
SANKARDEV NAGAR

DISTRICT HOJAI
ASSAM

PIN-782442

5:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES

HOJAI

DIST. HOJAI
ASSAM
PIN CODE- 782442

6:SANJIT DEBNATH
S/O LATE MANINDRA DEBNATH
EX-CHAIRMAN OF HOJAI
SAMABAY SAMITY LIMITED

VILL- PUB DHANIRAM PATHAR
P.O. TELEBASTI
P.S. HOJAI
DIST. HOJAI
ASSAM

7:SUJIT DAS
SL. NO. 1251
S/O SACHINDRA KUMAR NATH
R/O VILL-DHANIRAM BASTI
P.O. PADUMPUKHURI
DIST. HOJAI
ASSAM
PIN CODE- 782435

8:SRI SADHAN DEBNATH
SL. NO. 572
S/O LATE RAM CHARAN DEBNATH
R/O TELEBASTI
P.O. TELEBASTI
DIST. HOJAI
ASSAM
PIN CODE- 782435

9:SRI TILAK CHANDRA TANTI

SL. NO. 821
S/O LATE CHILIYA TANTIR/O VILL- FAKIRA BASTI

P.O. TELEBASTI
DIST. HOJAI
ASSAM
PIN CODE- 782435

10:SRI GIRINDRA DAS
SL. NO. 2431
S/O LATE HARA GOBINDA DAS
R/O VILL-JAMUHANDAL
P.O. PADUMPUKHURI
DIST. HOJAI
ASSAM
PIN CODE- 78243

Advocate for the Petitioner : MR. A K HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 24-02-2023

Heard Mr. A.K. Hussain, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department for the respondent nos. 1, 2, 3 & 5; and Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent no. 4.

2. Considering the grievances raised by the two petitioners herein and as agreed to by the learned counsel for the parties, the writ petition is taken up for final consideration at the motion stage itself, without issuance of notices to the other respondents impleaded in the writ petition.

2.1.The two petitioners have claimed that they are shareholders of M/s Hojai

Samabai Samittee Ltd. [‘the Society’, for short], a society registered under the Assam Cooperative Societies Act, 2007 [‘the Act, 2007’, for short]. According to the petitioners, the earlier Board of Directors of the Society wherein the respondent no. 6 was the Chairman, did not hold the Annual General Meeting [AGM] of the Society in the manner prescribed by the Act, 2007. By an order dated 15.06.2022, the respondent no. 5 dissolved the Board of Directors of the Society purportedly for violation of the provisions of Section 41[4] of the Act, 2007. Aggrieved by the order dated 15.06.2022, the respondent no. 6 herein approached this Court earlier by way of a writ petition, W.P.[C] no. 4404/2022 as the writ petitioner. When the writ petition, W.P.[C] no. 4404/2022 came up for consideration before the Court on 28.07.2022, the Court observed that the controversy raised in the writ petition rested primarily on several disputed question of facts which could not be adjudicated in a writ petition in exercise of the jurisdiction under Article 226 of the Constitution of India. The Court observed that there was an alternative remedy available to the petitioner therein [the respondent no. 6] which was of efficacious nature, and the writ petition was not entertained, granting liberty to the petitioner therein [the respondent no. 6] to prefer a statutory appeal against the order dated 15.06.2022 before the competent authority. It was further observed that after such appeal was preferred by the petitioner therein [the respondent no. 6], the same be taken on record and be decided and disposed of by following due process of law, after giving appropriate opportunity of being heard to all the interested parties including the petitioner therein [the respondent no. 6]. After disposal of the writ petition, W.P.[C] no. 4404/2022 by the order dated 28.07.2022, the respondent no. 6 herein had preferred an appeal under Section 111 of the Act, 2007. The respondent no. 3 had disposed of the appeal preferred by the respondent no. 6

herein by an order dated 03.12.2022 thereby, affirming the order dated 15.06.2022 passed by the respondent no. 5. The order dated 03.12.2022 has reflected that the said order was passed after hearing the parties, indicated therein, and after going through all the relevant documents, reports, etc.

3. While disposing of the appeal affirming the order dated 15.06.2022 passed by the respondent no. 5, the respondent no. 3 had also observed in the order dated 03.12.2022 that the members of the dissolved Board of Directors of the Society would be allowed to participate in the ensuing Annual General Meeting [AGM]/Election of the Society to be convened by the Departmental Officer. The two petitioners herein are aggrieved by this part of the order dated 03.12.2022 whereby the members of the previous Board of Directors of the Society, since dissolved, have been allowed to participate in the ensuing Annual General Meeting [AGM]/Election to be convened by the Departmental Officer.

4. Mr. Hussain, learned counsel for the petitioners has submitted that the Annual General Meeting [AGM]/Election of the Society is going to be held on 16.03.2023. The two petitioners have come to know about passing of the order dated 03.12.2022 only in the month of February and immediately thereafter, the two petitioners along with others, had submitted a Representation before the respondent no. 2 by bringing to his notice that as per Bye-Law no. 24[a][2] of the Bye-Laws of the Society, the members of a dissolved Board of Directors of the Society would be not eligible for re-election to the next Board of Directors of the Society for the next five years and according to Mr. Hussain, the said Bye-Law is in conformity with Section 41[8] of the Assam Co-operative Societies Act, 2007.

5. Mr. Talukdar, learned Standing Counsel, Co-operation Department has submitted that though the two petitioners were not heard at the time of passing

the order dated 03.12.2022 and since they have claimed themselves to be shareholders of the Society they might be in the position of interested/aggrieved persons in the affairs of the Society. If the petitioners are aggrieved as members of the Society, then they can seek appropriate remedy under the Act, 2007.

6. Having heard the learned counsel for the parties and upon going through the provisions of the Act, 2007, it is noticed that as per sub-section [2] of Section 111 of the Act, 2007, the Registrar may review any order passed by him at any time within sixty days from the communication of such order. As per Section 111[4] of the Act, 2007, the Registrar in case of review may pass any stay order pending any review. Since the petitioners as shareholders of the Society; have claimed themselves to be interested persons in the affairs of the Society; are aggrieved by the consequences likely to be emanated from the order dated 03.12.2022 passed by the respondent no. 3 and for redressal of the grievances, they have already submitted a Representation before the respondent no. 2 on 09.02.2023 immediately after having knowledge about the passing of the order dated 03.12.2022, this Court is of the view that the petitioners can approach the respondent authorities, more particularly, the respondent no. 2 and the respondent no. 3, as the case may be, by availing the remedy provided under sub-section [2] of Section 111 of the Act, 2007 on or before 01.03.2023. In the event any such application for review is preferred by the two petitioners herein on or before 01.03.2023, the respondent no. 2 and the respondent no. 3, as the case may be, shall consider such application on its own merits and in accordance with law and dispose of the same as expeditiously as possible preferably within a period of 10 [ten] days from 01.03.2023 by putting the stakeholders of M/s Hojai Samabai Samittee Ltd. including the respondent no. 6 herein, on notice of hearing, as Mr. Talukdar, learned Standing Counsel, Co-

operation Department has submitted that a period of about 10 [ten] days from 01.03.2023 would be a reasonable period for consideration of the application for review. The concerned authority shall thereafter, dispose of such application by passing a reasoned order in accordance with law.

7. This order disposes of the writ petition.

JUDGE

Comparing Assistant