GAHC010069962023

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

Case No. : WP(C)/1863/2023

MOHIZUR RAHMAN AND 7 ORS
S/O- LATE NURRUZZAMAN

RESIDENT OF VILLAGE- GERAMARI PT-I

P.O.- ALOMGANJ
DIST.- DHUBRI
ASSAM

ERSTWHILE CHAIRMAN OF THE BOARD OF DIRECTORS OF ALOMGANJ S.S. LTD1.

2: JOYNAL HOQUE
S/O- LT. AHMED ALI

VILL.- GERAMARI PT-2

P.O.- GERAMARI
P.S.- GAURIPUR

DIST. DHUBRI
ASSAM.

3: SOKER
S/O- LT. ABDUL GONI MOLLAH

VILL- GHAGERALGA

PO- GERAMARI
DIST.- DHUBRI

ASSAM.

4: SOLIM UDDIN
S/O- LT. SHOHAR ALI

VILL- DEBOTTAR RAIPUR

PO- GERAMARI
DIST. DHUBRI.

5: NASIR UDDIN SK
VILL GERAMARI PT-1
PO- GERAMARI

DIST.- DHUBRI.

6: NAZRUL HOQUE
SO- LT. HOSEN ALI

VILL.- DAMPUR PT-2
PO- ALOMGANJ

DIST.- KOKRAJHAR.

7: LOKMAN ALI
S/O- NOWSHAD ALI

VILL.- DAMPUR PT-2
PO- ALOMGANJ

DIST.- KOKRAJHAR.

8: SHAHER ALI
S/O- LT. KETU SK

VILL- ALOMGANJ PT-V
PO- ALOMGANJ

DIST.- DHUBRI.
VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM

CO-OPERATION DEPARTMENT

DISPUR
GUWAHATI-6.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.
3:THE ADDITIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES
BTC
KOKARJHAR

P.O. AND DISTRICT- KOKRAJHAR

ASSAM
PIN- 783370.
4:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
P.O. AND DISTRICT- DHUBRI
ASSAM

PIN- 783301.
5:THE DEPUTY COMMISSIONER
DHUBRI
P.O. AND DISTRICT- DHUBRI
ASSAM

PIN- 783301.
6:ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
P.O. AND DISTRICT- DHUBRI
ASSAM

PIN- 783301.

Advocate for : MR. S K DAS
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 19.06.2023

Heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. S.K. Das, learned counsel for the petitioners. Also heard Mr. S.K. Talukdar, learned

standing counsel for the Cooperation Department.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the order dated 18.03.2023 issued by the Addl. Registrar of Cooperative Societies cum CHD, BTC, Kokrajhar. By the said order, the management of the Alomganj S.S. Ltd., located in the Dhubri district was dissolved.

3. The case projected by the petitioners is that they are elected Board of Directors of the said society. The Board of Directors had adopted a resolution to hold the annual general meeting/ election of the Board prior to the expiry of five year term i.e. on 08.06.2022. It is submitted that in earlier round of writ petitions, this Court had protected the interest of the Board of Directors of the said society by providing that no coercive action would be taken against the Board. It is projected that the authorities in the Cooperation Department did not grant permission to the petitioners to hold election by citing Covid-19 protocol and did not grant such permission even after 15.02.2022, when all Covid-19 protocols were relaxed. The learned senior counsel for the petitioners has submitted that the earlier round of writ petitions involved interpretation of section 130 A which has been incorporated in the Assam Cooperative Societies Act, 2007. Nonetheless, despite the interim order passed in the previous writ petitions, the respondent no.3 had passed the impugned order dated 18.03.2023, thereby dissolving the Board and appointing an One Man Committee to administer the affairs of the said society.

4. The learned senior counsel for the petitioners has submitted that he has instruction to the effect that if the determination of the present writ petition takes some more time, it would frustrate the intention of the petitioners to have

the new Board of Directors reconstituted and therefore, it is submitted that in this case, this Court may be pleased to direct the One Man Committee to hold the elections of the Board of Directors of the said society within a period of thirty days, failing which the petitioners, being the members of the erstwhile Board of Directors be permitted to hold the election within the said time frame.

5. The learned standing counsel for the Cooperation Department opposes the prayer to allow the erstwhile Board of Directors to hold the election. However, he has no objection if the One Man Committee is directed to hold the AGM/ Election meeting within the time frame.

6. From the provision of the Assam Cooperative Societies Act, 2007 and rules framed thereunder, it appears that to hold an AGM for the purpose of election, fifteen days notice is required. Therefore, the Court is of the considered opinion that ends of justice would be met by directing the One Man Committee appointed by the Addl. Registrar of Cooperative Societies cum C.H.D., BTC, Kokrajhar to ensure that the elections for the Board of Directors of the Alomganj S.S. Ltd. should be held within a period not exceeding thirty days from the date of receipt of certified copy of the order by observing all the requisite formalities.

7. In order to avoid unnecessary delay, it is also provided that notice would be served to the members of the society by fixing a notice in the office of the petitioners' society. In addition to such notice, it would be open to the respondent no.3 to adopt any alternative and/ or other measure as per bye-laws to serve notice on the members and to hold the election of the Board of Directors of the said society.

8. On a consideration of the projection made in this writ petition that prior to dissolution of the Board of Directors, the resolution was adopted to hold the AGM/ elections but at that relevant time, due to Covid-19 protocol, the permission to hold election/ AGM was not granted. Under such circumstances, the Court is inclined to hold that due to non-holding of election within the time provided, the erstwhile Members of the Board of Directors including the petitioners would not suffer disqualification as provided under Section 40 (4)(a) and (e) and 41(4) of the Assam Cooperative Societies Act, 2007 and they will be entitled to participate in the ensuing elections of the Board of Directors of the said society.

9. In view of the discussions above, this writ petition stands allowed to the extent as indicate above.

10. There shall be no order as to cost.

JUDGE

Comparing Assistant