

GAHC010195802019



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

Case No. : WP(C)/6068/2019

HANIFUDDIN SHEIKH AND 21 ORS.
S/O LATE ABDUL JALIL, R/O VILL-KUMRIPARA, P.O.-DARIDURIA, P.S. AND
DIST-GOALPARA, ASSAM

2: MD. RASHID ALI
S/O LATE BABOR ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

3: MD. ABDUL BAREK
S/O LATE KURBAN ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

4: MD. JAHANUDDIN
S/O LATE LALCHAN BEPARI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

5: MD. MOTLEB ALI
S/O LATE BAREK SK
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

6: MD. SAHEB ALI
S/O LATE SUNJAB ALI

R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

7: MD. JURAN ALI
S/O LATE JAMATULLAH
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

8: MD. NUR AMIN
S/O LATE MOYNAL HOQUE
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

9: MD. MOTIBOR
S/O LATE JOYNAL KHALIFA
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

10: MD. ROHMAN ALI
S/O LATE OSMAN ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

11: MD. SUBUR ALI
S/O LATE ABDUL BAREK
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

12: MD. FOZOR ALI
S/O LATE IMAN ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

13: MD. MONAF ALI

S/O LATE TURAPUDDIN SK.
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

14: MD. AMJAD ALI
S/O LATE MEGHER SK.
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

15: MD. MOZIBOR RAHMAN
S/O LATE JOBBAR BEPARI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

16: MD. SODAGOR ALI
S/O LATE MOFIZUDDIN
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

17: MD. SER ALI
S/O LATE LALCHAN BEPARI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

18: MD. ABDUL MOZID MOLLAH
S/O LATE KORIM MOLLAH
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

19: MD. SADOR ALI
S/O LATE NOKIRUDDIN
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

20: MD. HASAN ALI
S/O LATE MOKSED ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

21: MD. HASAN ALI
S/O LATE NOJIMUDDIN
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

22: MD. ABRAHIM ALI
S/O LATE OSMAN ALI
R/O VILL-KUMRIPARA
P.O.-DARIDURIA
P.S. AND DIST-GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, COOPERATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ADDITIONAL REGISTRAR OF COOPERATIVE SOCIETIES
KOKRAJHAR
P.O. AND DIST-KOKRAJHAR
ASSAM

4:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
GOALPARA
ASSAM

5:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
GOALPARA
ASSAM

6:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION

CHACHAL
VIP ROAD
GUWAHATI-781036
DIST-KAMRUP(M)
ASSAM

7:THAT KUMRIPARA MASMARA ARU JALGOTHA SAMABAY SAMITTEE
LTD.
HAVING ITS OFFICE AT VILL-KUMRIPARA
P.O.-DARIDURI
DIST-GOALPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 21-06-2023

Heard Mr. S.K. Goswami, learned counsel for the petitioners; Mr. V. Rajkhowa, learned Standing Counsel, Cooperation Department for the respondent nos. 1 – 5; and Mr. D. Das, learned counsel for the respondent no. 7.

2. The respondent no. 7 society viz. M/s Kumripara Masmara Aru Jalgotha Samabay Samity Limited [‘the respondent society’, for short] is a cooperative society registered under the provisions of Assam Cooperative Societies Act, 1949/2007 [‘the Cooperative Societies Act’, for short] with Registration no. G-01/1978-79 dated 11.07.1978 and with a definite area of operation within the district of Goalpara, Assam.

3. The petitioners herein, 22 in nos., have stated that they used to be members of the respondent no. 7 society. According to them, the affairs of the respondent society were properly run till the Financial Year : 2013-2014. But after the Financial Year : 2013-2014, the affairs of the respondent society are being run in clear violation of the provisions of the Cooperative Societies Act. It is the contention of the petitioners that the memberships of the

petitioners and some other members of the respondent no. 7 society who do not belong to the Scheduled Caste [SC] Community, had been cancelled unilaterally without issuing any kind of prior notices to them. It is contended that the persons, who were in charge of the affairs of the respondent no. 7 society, had resorted to such illegal actions purportedly to make the respondent no. 7 society a fishing cooperative society. Several complaints were filed on behalf of the petitioners before the respondent authorities in the Cooperation Department including complaints, dated 23.07.2018 & dated 06.04.2019, bringing the illegalities/irregularities committed in running the affairs of the respondent no. 7 society to their notices with the prayer to take appropriate action. Acting upon the allegations brought as regards the affairs of the respondent no. 7 society through those complaints, an inspection into the affairs of the respondent society had been conducted in terms of the provisions of Section 88 of the Cooperative Societies Act pursuant to an Order bearing no. GCG 25/2012/199 dated 06.05.2019 of the respondent no. 4.

4. The enquiry under Section 88 of the Cooperative Societies Act was conducted through a Senior Inspector/Auditor of Cooperative Societies, Goalpara and a Junior Inspector/Auditor of Cooperative Societies, Goalpara, who had submitted an Inspection Report on 10.10.2019 with the following observations :-

In our opinion, the expulsion of the complainant shareholders from the society was illegal and violation of Section 23 of the Assam Cooperative Societies Act, 2007. Moreover, there is no record to show whether new shareholders who attended the AGM of the society on 26.09.2017 were actually admitted in the society following procedures. More particularly, a new BOD of the society was constituted in the AGM of the society on 26.09.2017 with the new shareholders, whereas section 40[2] of the Act provides that a shareholders can be chosen as a Director if he has attended 2 [two] AGMs within preceding 5 [five] years. Hence, it was substantiated that the society defaulted in [i] expulsion of members [ii] admission of new members [iii] constitution of the BOD of the society in the AGM on 26.09.2017 and [iv] Non-transfer of membership to the nominees of the deceased members.

5. On receipt of the Inspection Report, the respondent no. 4 wrote to the Chairman/Secretary of the respondent no. 7 society vide a letter bearing no. GCG.25/2012/206 dated 07.11.2019 with a copy of the Inspection Report. The contents of the letter dated 07.11.2019 are reproduced hereinbelow for ready reference :-

With reference to the above and enclosing herewith a copy of the Inspection Report submitted by the officers engaged for inspection of your society U/S-88[1] of the Assam Cooperative Societies Act, 2007 vis-à-vis the complaint petitions dated 19.07.2018, 23.07.2018, 21.11.2018 and 06.04.2019 received from one Sri Hanifuddin Sheikh and others, you are hereby directed to take necessary action as indicated in the report for [i] Restoration of membership; [ii] Transfer of shares of dead shareholders to their nominees; [iii] scrutiny of the eligibility of the new members; and [iv] removal of your society within 60 [sixty] days from the date of receipt of this communication in compliance with the provisions of Section 88 [4] of the Act with intimation to this office.

6. Mr. Goswami, learned counsel for the petitioner has submitted that despite submission of the Inspection Report and the direction given by the respondent no. 4 to the respondent no. 7 society on 07.11.2019, none of the steps so directed, have been carried out by the persons who are in charge of the affairs of the respondent no. 7 society since 2017 till date. It is in such obtaining fact situation, the petitioners have to prefer the instant writ petition seeking inter alia a direction to the respondent authorities in the Cooperation Department, more particularly, to the respondent no. 2 to take appropriate action in terms of the provisions of the Cooperative Societies Act.

7. Mr. Rajkhowa, learned Standing Counsel, Cooperation Department has submitted that the respondent no. 4 has, in the meantime, referred to the entire matter to the respondent no. 2 vide a letter bearing no. GCG[A] 58/89/Pt/27 dated 14.06.2023 with a request to take necessary action against the Board of Directors of the respondent no. 7 society. Thus, the writ petition can be disposed of with appropriate direction to the respondent no. 2.

8. Mr. Das, learned counsel representing the respondent no. 7 society has refuted the contentions made on behalf of the petitioners and has referred to the statements and averments made in the affidavit-in-opposition filed by the respondent no. 7 herein.

9. It is submitted by the learned counsel for the parties that the dispute is related to running of the affairs of the respondent no. 7 society. According to the petitioners, the present body who is running the affairs of the respondent no. 7 society, have been acting in total violation of the provisions of the Cooperative Societies Act and in clear disobedience of the direction of the respondent no. 4 made on 07.11.2019. Mr. Das, learned counsel for the respondent no. 7 society has, however, refuted such allegations. Be that as it may. It is noticed that the respondent no. 4 by its letter dated 14.06.2023 has already referred the entire matter to the respondent no. 2 i.e. the Registrar of Cooperative Societies, Assam with a request to take necessary and appropriate action.

10. Under Section 3 of the Assam Cooperative Societies Act, 2007, the Registrar of Cooperative Societies, Assam has been vested with the power, authority and jurisdiction for the entire State in respect of the matters relating to registration, supervision, assistance, counsel and for the all-round development of the State with such other powers and responsibilities vested by the other provisions of the Cooperative Societies Act. As the entire matter in relation to the affairs in the respondent no. 7 society is presently before the respondent no. 2, this Court is of the considered view that this writ petition can be disposed with a direction to the respondent no. 2 to consider the entire matter regarding running of the affairs of the respondent no. 7 society by taking into account of the entire facts and circumstances including [i] the complaints filed by the petitioners; [ii] the Inspection Report submitted by the Senior Inspector/Auditor of the Cooperative Societies, Goalpara and the Junior Inspector/Auditor of the Cooperative Societies, Goalpara under Section 88, pursuant to the order dated 06.05.2019 of the respondent no. 4; [iii] the direction made by the respondent no. 4 to the Chairman/Secretary to the respondent no. 7 society vide letter dated 07.11.2019; and [iv] the actions taken or not taken by the Board of the respondent no. 7 society since 07.11.2019 till date. To facilitate the respondent no. 2 to take a decision as regards the running of the affairs of the respondent no. 7 society, the petitioners' side as well

as the present Board of the respondent no. 7 society shall report at the office of the respondent at 11-00 a.m. on 10.07.2023 and on such appearance of the parties before him on 10.07.2023, the respondent no. 2 shall proceed with the matter by fixing a date of hearing in order to enable the parties/stakeholders to present their respective cases and such other dates, he considers necessary for such enquiry/hearing. The respondent no. 2 shall thereafter, proceed to decide the dispute regarding the affairs of the respondent no. 7 society as expeditiously as possible, preferably within a period of 6 [six] weeks from 10.07.2023.

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

JUDGE

Comparing Assistant