

GAHC010269652022



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

WP(C)/8002/2022

HANUMAN ANCHALIA AND 4 ORS
S/O- MULKORON ANCHALIA

R/O- VILLAGE JAMIRA BAGAN BOSTI

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

2: SWAPAN DAS
S/O- LATE DHIRENDRA CHANDRA DAS

R/O- VILLAGE JEKABPUR

P.O- GHARMURA
DIST- HAILAKANDI
ASSAM
PIN-788162

3: JOSIM UDDIN MAZUMDAR
S/O-LATE SIRAJUDDIN MAZUMDER

R/O- VILLAGE DAMCHERRA F.V

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

4: BISWAJIT ROY
S/O- LATE BIRENDRA CHANDRA ROY

R/O- VILLAGE JAMIRA BAGAN BOSTI

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

5: NAZMUL HUSSAIN
S/O- LATE MUZAMIL ALI MAZUMDER

R/O- VILLAGE JAMIRA PART III

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162
VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
COOPERATIVE DEPARTMENT
DISPUR
GUWAHATI-06. KAMRUP (M)
ASSAM

2:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022.

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES

SILCHAR ZONE
SILCHAR
P.O- SILCHAR
DIST- CACHAR
ASSAM
PIN-788001

4:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES

HAILAKANDI
P.O AND DIST- HAILAKANDI ASSAM
PIN-788152

5:THE SECRETARY
JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR

DIST- HAILAKANDI
ASSAM
PIN-788162
6:THE CHAIRMAN
JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162
7:THE VICE CHAIRMAN
JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162
8:JAKIR HUSSAIN LASKAR
S/O- LATE NUR UDDIN
R/O- VILLAGE JAMIRA PART I

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162
9:NOOR UDDIN LASKAR
S/O- ABDUL HOQUE LASKAR
R/O- VILLAGE JAMIRA PART VI

P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

Advocate for : DR. B AHMED
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 8 ORS

Link Case : I.A.(Civil)/2/2023

JAKIR HUSSAIN LASKAR AND ANR.
S/O- LATE NUR UDDIN, R/O- VILLAGE JAMIRA PART I,
P.O- JAMIRA BAZAR, DIST- HAILAKANDI, ASSAM, PIN-788162

2: NOOR UDDIN LASKAR

S/O- ABDUL HOQUE LASKAR

R/O- VILLAGE JAMIRA PART IV
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

VERSUS

HANUMAN ANCHALIA AND 11 ORS
S/O- MULKORON ANCHALIA, R/O- VILLAGE JAMIRA BAGAN BOSTI, P.O-
JAMIRA BAZAR, DIST- HAILAKANDI, ASSAM, PIN-788162

2:SRI SWAPAN DAS

S/O- LATE DHIRENDRA CHANDRA DAS
R/O- VILLAGE JEKABPUR

P.O- GHARMURA
DIST- HAILAKANDI
ASSAM
PIN-788162

3:SRI JOSIM UDDIN MAZUMDER

S/O-LATE SIRAJUDDIN MAZUMDER
R/O- VILLAGE DAMCHERRA F.V
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

4:SRI BISWAJIT ROY

S/O- LATE BIRENDRA CHANDRA ROY
R/O- VILLAGE JAMIRA BAGAN BOSTI
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

5:NAZMUL HUSSAIN MAZUMDAR

S/O- LATE MUZAMIL ALI MAZUMDER
R/O- VILLAGE JAMIRA PART III
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

6:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
COOPERATIVE DEPARTMENT
DISPUR
GUWAHATI-06. KAMRUP (M)
ASSAM

7:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022.

8:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES

SILCHAR ZONE
SILCHAR
P.O- SILCHAR
DIST- CACHAR
ASSAM
PIN-788001.

9:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES

HAILAKANDI
P.O AND DIST- HAILAKANDI ASSAM
PIN-788152.

10:THE SECRETARY

JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

11:THE CHAIRMAN

JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

12:THE VICE CHAIRMAN

JAMIRA SAMABAY SAMITY LTD
JAMIRA
P.O- JAMIRA BAZAR
DIST- HAILAKANDI
ASSAM
PIN-788162

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER

Date : 31-03-2023

The petitioners, 5 [five] in nos., have joined together to institute the instant writ petition under Article 226 of the Constitution of India seeking inter alia a writ in the nature of certiorari to set aside an order dated 19.10.2022 passed by the respondent no. 3 i.e. the Zonal Joint Registrar of Co-operative Societies, Silchar Zone, Silchar, whereby the petitioners were directed to be removed from the Board of Directors of M/s Jamira Samabay Samity Ltd.

2. The events leading to the passing of the impugned order by the respondent no. 3 need a brief narration of the previous events.

3. M/s Jamira Samabay Samity Ltd. [hereinafter referred to as 'the Society', for short] is a co-operative society registered under the provisions of the Assam Cooperative Societies Act, 2007 ['the Act, 2007' and/or 'the 2007 Act', for short]. The Annual General Meeting [AGM]/Election of the Board of Directors of the Society for the year : 2022-2023 was held on 16.05.2022 pursuant to a notice dated 11.04.2022 for the same. As per the schedule of the AGM/Election for the year : 2022-2023, the petitioners submitted their nomination papers and the petitioners were declared eligible to contest for the Election for directorship in the Society. Accordingly, the petitioners contested the Election and after the counting process, it was declared that the petitioners had received the requisite nos. of votes to be elected as the Directors of the Society in the Election so held on 16.05.2022. The Returning Officer for the Election had accordingly issued respective Certificate of Winner in favour of the petitioners

certifying that the petitioners were elected as Directors of the Society.

4. After the AGM/Election of the Society for the year : 2022-2023, the first meeting of the newly elected members of the Board of Directors of the Society was held on 24.05.2022 wherein the newly elected members of the Board of Directors of the Society had unanimously elected one Sri Nihar Ranjan Das as the Chairman and one Sri Abdus Salam Laskar as the Vice-Chairman of the Board of Directors of the Society. The proceedings of the AGM/Election dated 16.05.2022 and the first meeting dated 24.05.2022 of the newly elected Board of Directors of the Society were approved by the concerned authority and accordingly, the newly elected Board of Directors of the Society started functioning.

5. On 12.09.2022, 11 [eleven] members of the Board of Directors of the Society including the petitioners, had submitted a requisition/letter before the respondent no. 3 expressing want of confidence in the Chairman of the Board of Directors of the Society and requested the respondent no. 3 to take necessary action for removal of the Chairman of the Board of Directors of the Society. On receipt of the requisition/letter dated 12.09.2022, the respondent no. 3 vide his letter dated 13.09.2022 forwarded the requisition/letter dated 12.09.2022 to the respondent no. 4 i.e. the Assistant Registrar of Cooperative Societies, Hailakandi with a request to look into the matter.

6. Finding that no action was taken on the requisition/letter dated 12.09.2022, 10 [ten] nos. of Directors of the Society including the petitioners, had again submitted a requisition/letter dated 07.10.2022 to the respondent no. 5 i.e. the Secretary of the Society stating that they had lost confidence in the Chairman of the Board of Directors of the Society and expressing that they had withdrawn their support from him, requested the respondent no. 5 to convene a meeting of the Board of Directors of the Society in terms of sub-section [2] of Section 43 of the Act, 2007. The requisition/letter dated 07.10.2022 was duly received by the respondent no. 5 on that day itself.

7. It transpires that immediately after submission of the requisition/letter dated 12.09.2022 [supra], two stakeholders of the Society i.e. the respondent no. 8 and the respondent no. 9 submitted an appeal/representation dated 13.09.2022 to the respondent no. 3 stating inter alia that 9 [nine] nos. of Directors in the present Board of Directors of the Society including the 5 [five] petitioners herein were absent in two AGMs of the Society out of the AGMs held during the previous 5 [five] years.

8. On receipt of the said appeal/representation, the respondent no. 3 issued a notice dated 13.09.2022

to the concerned stakeholders including the petitioners, informing that a hearing on the appeal/representation was scheduled at 12 O'clock [noon] on 22.09.2022 at his office chamber and the notices were requested to attend the hearing with relevant documents. By a subsequent notice dated 16.09.2022, the stakeholders including the petitioners were notified that the date of hearing had been re-scheduled at 12 O'clock [noon] on 20.09.2022.

9. The respondent no. 3, after hearing the parties and upon purported perusal of the records produced before him, had passed the impugned order on 19.10.2022. From the impugned order dated 19.10.2022, it appears that the respondent no. 3 had reached a finding that the petitioners herein did not possess the eligibility criteria to contest the Election to the Board of Directors of the Society and after reaching such finding, the said authority directed the Management of the Society to remove the petitioners from the Board of Directors of the Society.

10. I have heard Mr. K. Uddin, learned counsel for the petitioners; Mr. S.K. Talukdar, learned Standing Counsel, Cooperation Department for the respondent nos. 1 – 4; Mr. K.R. Patgiri, learned counsel for the respondent nos. 5 & 6; and Mr. M. Khan, learned counsel for the respondent nos. 8 & 9. The respondent no. 7 is the Vice Chairman in the Board of Directors of the Society. But, none has appeared for the said respondent.

11. The writ petition is taken up for final consideration at the admission stage at the request of the learned counsel for the parties, who have submitted that the sustainability or otherwise of the impugned order hinges on the legal provisions contained in the 2007 Act.

12. Mr. Uddin, learned counsel for the petitioners has submitted that the respondent nos. 8 & 9 submitted their nominations for the directorship in the Board of Directors of the Society in the AGM/Election held on 16.05.2022 but they were not declared elected for the directorship as they secured lesser number of votes in the Election. The said two respondents as disgruntled members of the Society had submitted a appeal/representation dated 13.09.2022 before the respondent no. 3 questioning the eligibility of the 5 [five] petitioners and 4 [four] others to be elected as Directors to the Board of Directors of the Society without any material basis. The respondent no. 3 after taking the appeal/representation dated 13.09.2022 on board, had erroneously interpreted the provisions of sub-section [2] of Section 40 of the Act, 2007 and had passed the impugned order. It is his further submission that the respondent no. 3 did not have the authority and jurisdiction on the matter of removal of any Director from the Board of Directors of a registered cooperative society under the Act,

2007.

13. Mr. Patgiri, learned counsel for the respondent no. 5 and the respondent no. 6 has submitted that after passing of the impugned order dated 19.10.2022 by the respondent no. 3, a meeting of the Board of Directors of the Society was convened on 03.11.2022 but the said meeting could not be completed due to dispute between the Chairman and the Vice-Chairman of the Society with regard to the matter as to who shall preside over the meeting and as a result, the meeting had to be postponed. Another meeting of the Board of Directors of the Society was held on 04.11.2022 which was presided over by the Chairman of the Board of Directors of the Society and the same was attended by 8 [eight] Directors of the Board of Directors of the Society. The petitioners were absent in the said meeting of the Board of Directors of the Society convened on 04.11.2022. In the Board Meeting dated 04.11.2022, the consequential decision for removal of the petitioners was taken and the decision so taken, was communicated to the petitioners. In the affidavit-in-opposition filed by the respondent no. 5, it is averred that during the hearing before the respondent no. 3, all relevant records including the resolutions of the AGMs of the previous 5 [five] years and after examining the records, the respondent no. 3 had passed the impugned decision. It is further averred that the decision to remove the petitioners was not a decision of the Board of Directors of the Society and the said decision to remove the petitioners was of the respondent no. 3.

14. Mr. Khan, learned counsel for the respondent nos. 8 & 9 had submitted that as the petitioners were found absent in two AGMs of the Society in the previous five years, they had incurred the ineligibility as laid down in sub-section [2] of Section 40 of the Act, 2007 and as such, the petitioners were rightly directed to be removed from the directorship in the Society by the respondent no. 3.

15. Apart from the affidavit-in-opposition filed by the respondent no. 5, the respondent no. 8 and the respondent no. 9 have preferred an interlocutory application, I.A.[Civil] no. 02/2023 raising the contentions on their behalf.

16. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

17. The issue raised in this writ petition lies in a narrow compass. What has fallen for consideration is the sustainability or otherwise of the impugned order dated 19.10.2022 passed by the respondent no. 3 on the appeal/representation dated 13.09.2022 filed by the respondent nos. 8 & 9. It needs reiteration

that in the appeal/representation dated 13.09.2022, the respondent nos. 8 & 9 had alleged that the petitioners herein did not have the eligibility to be elected as Directors in the Board of Directors in the Society, a cooperative society registered under the provisions of 2007 Act. From the impugned order dated 19.10.2022 itself, it is discernible that the respondent nos. 8 and 9 had questioned the eligibility of 9 [nine] Directors of the Society including the 5 [five] petitioners herein, who were elected to the Board of Directors of the Society in the AGM/Election held on 16.05.2022 on the premise that they did not fulfill the conditions of eligibility laid down in sub-section [2] of Section 40 of the Act, 2007. The respondent no. 3, after hearing the stakeholders and after perusal of the records, as amply indicated in the impugned order dated 19.10.2022, came to a finding that out of the 9 [nine] nos. of Directors in the Board of Directors of the Society, elected on 16.05.2022, 5 [five] nos. of Directors i.e. the 5 [five] petitioners herein were absent in 2 [two] AGMs in the previous 5 [five] years of the Society. After reaching such finding, the respondent no. 3 had observed that the petitioners herein did not possess the eligibility criteria to contest the AGM/Election to the Board of Directors of the Society and the Management of the Society was directed to remove the petitioners from the Board of Directors of the Society.

18. As the impugned order was passed taking resort to sub-section [2] of Section 40 of the Act, 2007, a look at the provisions contained in Section 40 appears necessary. Section 40 of the 2007 Act has provided for the eligibility for a Director in a registered cooperative society. Sub-section [2] of Section 40 of the Act, 2007 has provided that subject to such other conditions as may be specified in the bye-laws, a member of a cooperative society shall be eligible for being chosen as a Director of the cooperative society, if such member has patronised the services of the cooperative society during the previous financial year to the extent and in the manner specified in the bye-laws and has attended at least two Annual General Meetings in the previous five years. In other words, Section 40 [2] of the Act, 2007 has prescribed that a member of a cooperative society must attend at least 2 [two] AGMs of the Society in the previous 5 [five] years to be eligible to be elected as a Director in the Board of Directors of a registered cooperative society. It does not prescribe that if a member does not attend two AGMs in previous five years he would be ineligible to contest for a Director in the Board of Directors in the Society. Non-attendance in two AGMs does not automatically translate into a situation to infer that the same member did not attend other three AGMs of the Society held in the previous 5 [five] years. The respondent no. 3 in the impugned order dated 19.10.2022 had reached a finding that the petitioners herein were absent in 2 [two] AGMs in the previous 5 [five] years. There is no finding in the impugned order to the effect that the petitioners herein had not attended at least 2 [two] AGMs in the remaining 3

[three] years of the previous 5 [five] years. Without going into the question as regards the power, authority and jurisdiction of the respondent no. 3 to pass an order like the impugned order dated 19.10.2022 as raised by the petitioners herein, the impugned order is *ex facie* bad in the absence of a finding to the effect that the petitioners did not attend at least 2 [two] AGMs/Elections in the previous 5 [five] years.

19. Having regard to the findings reached by the respondent no. 3 in the impugned order dated 19.10.2022 qua the provisions of Section 40[2] of the Act, 2007, this Court is of the unhesitant view that the impugned order dated 19.10.2022 is unsustainable in law in the absence of the finding that the petitioners did not attend at least 2 [two] AGMs in the previous 5 [five] years. It is settled that if it is a manifest error on the face of the proceedings for example, when it is based on clear ignorance or disregard of a statutory provision, the writ of certiorari under Article 226 of the Constitution of India is available for the Court to issue it. Manifestation of such an error is clearly discernible from the impugned order dated 19.10.2022 passed by the respondent no. 3. Consequently, the impugned order dated 19.10.2022 is set aside and quashed. With the setting aside of the order dated 19.10.2022, all consequential orders are also set aside. As a result, the petitioners are to be restored in their positions as Directors in the Board of Directors of the Society.

20. The respondent no. 3 is directed to re-visit the matter of eligibility or ineligibility of the petitioners to be elected as the Directors in the Board of Directors of the Society after giving due opportunity of hearing to all the stakeholders including the petitioners, and upon perusal of the relevant records. As the petitioners have also raised the issue of power, authority and jurisdiction of the respondent no. 3 to pass an order of removal on the ground of ineligibility under the provisions of Section 40 of the 2007 Act, the petitioners are at liberty to raise all such contentions before the respondent no. 3 during the hearing and the respondent no. 3 shall consider the same in accordance with law and on its own merits. The entire exercise shall be completed by the respondent no. 3 as expeditiously as possible, preferably within a period of 6 [six] weeks from the date of receipt of a certified copy of this order from the petitioners. The question of continuance of the petitioners as Directors of the Board of Directors of the Society will abide by the decision to be taken by the respondent no. 3, in terms of the directions made above.

21. With the finding arrived at as regards the sustainability of the impugned order dated 19.10.2022, the observations made and directions given above, the writ petition is allowed to the extent indicated

above. The interlocutory application, I.A.[Civil] no. 02/2023 is accordingly dismissed. There shall be no order as to cost.

JUDGE

Comparing Assistant