

GAHC010026142024



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

Case No. : WA/41/2024

MOKBUL HOSSAIN AND 9 ORS
S/O LATE JHOSMAT ALI SK., R/O VILL- ROWA PT-III (SIMLAKANDI), P.O.-
TIAMARI, DIST-DHUBRI, ASSAM

2: MONSUR ALI SK.
S/O LATE ANOWAR HUSSAIN
R/O VILL- TIAMARI PART-I
P.O.-TIAMARI
DIST-DHUBRI
ASSAM

3: FIROJ UDDIN
S/O LATE ROSUL HOQUE
R/O VILL- MADHUSOULMARI PT-I
P.O.-MADHUSOULMARI
DIST-DHUBRI
ASSAM

4: ZAKIR HUSSAIN
S/O LATE ABDUL ZOBBER ALI
R/O VILL- KHUDMARI
DIST- DHUBRI
ASSAM

5: MOINUL HOQUE
S/O LATE ESAR UDDIN SK.
VILL- TIAMARI PT-II
P.O.-TIAMARI
DIST-DHUBRI
ASSAM

6: SIRAJUL HOQUE
S/O LATE FOMIR SK.
R/O VILL-SHAJUAR KUTI

P.O.-SHILERPAR
DIST-DHUBRI
ASSAM

7: WAHED ALI
S/O LATE AHOR UDDIN
R/O VILL- CHARALDANGA
P.O.-GOUIPUR
DIST- DHUBRI
ASSAM

8: ABDUL MANNAN SK
S/O LATE ABDUL BARI SK
R/O VILL-MADHUSOULMARI PT-II
P.O.-MADHUSOULMARI
DIST-DHUBRI
ASSAM

9: ENSAN ALI
S/O LATE KASEM ALI
R/O VILL- MATIABAG
P.O.-GOURIPUR
DIST- DHUBRI
ASSAM

10: MONOWAR HUSSAIN
S/O LATE GOLAP UDDIN
VILL-MADHUSOULMARI PT-I
P.O.-MADHUSOULMARI
DIST-DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-6

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

3:THE ADDL. REGISTRAR OF COOPERATIVE SOCIETIES
KOKRAJHAR
P.O. AND DIST- KOKRAJHAR
ASSAM
PIN-783370

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
P.O. AND DIST-DHUBRI
ASSAM
PIN-783301

5:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
P.O. AND DIST-DHUBRI
ASSAM
PIN-783301

6:THE RETURNING OFFICER/ONE MAN COMMITTEE
MADHUSOULMARI SAMABAI SAMITY LTD.
GOURIPUR
DIST-DHUBRI
ASSAM
PIN-783331

7:THE SECRETARY
MADHUSOULMARI SAMABAI SAMITY LTD.
GOURIPUR
DIST- DHUBRI
ASSAM
PIN-78333

For the Appellant : Mr. P.K. Roychoudhury, Advocate
For the Respondents : Mr. S.K. Talukdar, SC, Cooperative Dept.
Mr. R. Karim, Advocate

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 19-04-2024
(Vijay Bishnoi, CJ)

This *intra-court* appeal is filed by the appellants being aggrieved with the order dated 05-02-2024 passed by the learned Single Judge in W.P.(C) No. 548/2024 whereby

while issuing notice to the respondents in the aforesaid writ petition, the learned Single Judge had refused to pass any interim order to allow the appellants to contest the election for the post of Director of the Madhusoulmari Samabai Samity Ltd. in the Annual General Meeting (AGM) fixed on 08-02-2024.

2. The learned Single Judge has observed that it is not the case of the appellants that they have fulfilled the condition of attending at least two AGMs of the Society in the previous five years. It has also been observed by the learned Single Judge that taking into consideration of the said fact, in the event the prayer of the appellants, in the form of interim relief is granted to contest in the election, to the Board of Directors of the Society despite the restriction under Sub-Section [2] of Section 40 of the Assam Cooperative Societies Act, 2007 would amount to an order in violation of the statutory prescription contained therein. The learned Single Judge was of the view that no mandamus lies for issuing directions to act contrary to a statutory provision and any such directions may result in destruction of rule of law.

3. Having heard the learned counsel for the appellants as well as the counsel for the respondents, we do not find any illegality in the impugned order passed by the learned Single Judge as it is settled that no mandamus can be issued in violation of the statutory provisions. In such circumstances, we do not find any case for interference with the order of the learned Single Judge.

4. Writ appeal is dismissed.

5. However, taking into consideration the issue involved in the writ petition, we

request the learned Single Judge to decide the writ petition expeditiously.

The interim order passed by this Court vide order dated 07-02-2024 is hereby vacated.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant