

GAHC010195802024



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

Case No. : WP(C)/4827/2024

BARANGABARI SAMABAI SAMITY LTD AND ANR
REPRESENTED BY ITS CHAIRMAN,
SRI INDRESWAR BORA,
RESIDENT OF VILLAGE AND PO BARANGABARI, PO AND PS
KUMURAGURI, ASSAM, 782105

2: SRI BHABESH KUMAR DEKA
SECRETARY OF BARANGABARI SAMABAI SAMITTEE LTD.
RESIDENT OF VILLAGE AND PO BARANGABARI
PO AND PS KUMURAGURI
ASSAM
78210

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY ITS CHAIRMAN AND SECRETARY, GOVT. OF ASSAM, CO
OPERATIVE DEPARTMENT, DISPUR GUWAHATI 781006

2: THE REGISTRAR
CO OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI 781022

3: THE DISTRICT COMMISSIONER

MORIGAON
ASSAM 782105

4: THE ADDITIONAL DISTRICT COMMISSIONER

MORIGAON
ASSAM 782105

5:THE ZONAL JOINT REGISTRAR

CO OPERATIVE SOCIETIES
GUWAHATI ZONE
BHANGAGARH
GUWAHATI 781005

6:THE DISTRICT DEPUTY REGISTRAR
CO OPERATIVE SOCIETIES
DIST NAGAON
ASSAM 782001

7:THE ASSISTANT REGISTRAR

CO OPERATIVE SOCIETIES
MORIGAON
ASSAM 78210

Advocate for the petitioner(s): Mr. S Chauhan

Advocate for the respondent(s): Mr. V Rajkhowa

For respondent Nos.1, 2, 5, 6 and 7

Mr. H Sarma

Addl. Senior Government Advocate, Assam

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

04.10.2024

Heard Mr. S Chauhan, the learned counsel appearing on behalf of the petitioners. Also heard Mr. V Rajkhowa, the learned Standing Counsel, Cooperation Department, Government of Assam and Mr. H Sarma, the learned

Additional Senior Government Advocate, Assam for the District Administration, Morigaon.

2. The petitioners herein have challenged the orders dated 30.08.2024 and 05.09.2024 passed by the learned Additional District Magistrate, Morigaon whereby the proposed election which was duly notified in respect of the Barangabari Samabai Samity to be held on 15.09.2024 was stalled thereby directing that the nominations to be held on 05.09.2024 to be stopped.

3. It is relevant to take note of that the Barangabari Samabai Samity is a cooperative society registered under the provisions of the Assam Cooperative Societies Act, 2007 (for short, 'the Act of 2007'). A perusal of the said Act of 2007 shows that the powers have been conferred upon the specified authorities, however, there is no power conferred upon the Additional District Magistrate to act in terms with the Act of 2007 or to intermeddle with the functioning of a Cooperative Society. It is also seen that it is the Registrar of Cooperative Societies or the Officers who have been permitted by the Registrar of Cooperative Societies, who can take appropriate steps in respect to the regulations and functioning of the Cooperative Societies. It is also pertinent to mention herein that the Society in question in its meeting held on 15.08.2024 had finalized that the annual general meeting as well as the elections would be held on 15.09.2024. This aspect of the matter has also been approved by the Assistant Registrar of the Cooperative Societies, Morigaon. In accordance thereto, a notice was issued on 30.08.2024, thereby setting in motion the election process to be held on 15.09.2024. The date of nomination was also mentioned as 05.09.2024 from 10 A.M. to 1 P.M.

4. Under such circumstances, in the opinion of this Court, the Additional District Magistrate, Morigaon could not have exercised the powers as was done

by passing the order dated 30.08.2024 as well as the order dated 05.09.2024. Accordingly, both the orders dated 30.08.2024 and 05.09.2024 impugned in the instant proceedings are set aside and quashed.

5. It is also very pertinent to take note of that on account of not holding the AGM within the term prescribed under the Act of 2007, certain disqualification accrue upon the Board of Directors.

6. Taking into account that it is on account of an authority having no jurisdiction who had stopped the election process, this Court observes that the share holders, who were the Board of Directors of the Society in question during the period from 2019 to 2024 shall not incur any disqualification on account of not holding the AGM within the time prescribed under the Act of 2007.

7. This Court also further takes note of that pursuant to the completion of the term, on 03.10.2024, a One-Man Committee was appointed by the Zonal Joint Registrar of Cooperative Societies. The said power which is to be exercised by the One-Man Committee in terms with Section 41(6) of the Act of 2007 and as per the said provision, the requirement of holding the election is within 90 days from the date of such appointment.

8. Accordingly, the instant writ petition, therefore, stands disposed of with the following observations and directions:

(i). The orders dated 30.09.2024 and 05.09.2024 passed by the Additional District Magistrate Morigaon are without jurisdiction and accordingly both are set aside and quashed.

(ii). The Board of Directors of the Society i.e. Barangabari Samabai Samity during the period from 2019-2024 shall not incur any disqualification for being elected as Directors in the ensuing elections on account of not

holding election within the time prescribed under the Act of 2007.

(iii) The One-Man Committee so appointed vide the order dated 03.10.2024 is directed to complete the election process within 90(ninety) days from 03.10.2024.

9. With the above observation(s) and direction(s), the instant writ petition stands disposed of.

JUDGE

Comparing Assistant