

IN THE HIGH COURT OF BOMBAY AT GOA.**Writ Petition No.182/2015**

Mrs. Samira Cardoso,
 d/o Alleluia Pereira,
 Major of age,
 R/o H.No.13/H,
 Hill View,
 Goulloy, Nuvem – Goa.

Petitioner**Versus**

- 1] State of Goa
 Through Chief Secretary,
 Having office at
 Legislative Assembly Complex,
 Porvorim, Goa.
- 2] Village Panchayat of Nuvem,
 Salecete – Goa,
 Through its Secretary,
 Having office at
 Nuvem, Salcete – Goa.
- 3] Mrs. Freda Dsa,
 W/o Wilfred Dsa,
 Major of age,
 R/o H.No.31, Dongorim Nuvem,
 Salcete – Goa.

Respondents

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Shri Galileo Francisco Teles, Advocate for the petitioner.

Shri R. Shivalkar, AGA for the respondent no.1.

Shri D.J. Pangam, Advocate with Ms. Ketki Naik, Advocate for the respondent no.2.

Shri. C.A.Coutinho, Advocate with Shri S. Redkar, Advocate for the respondent no.3.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ**DATE : 01/08/2016.****ORAL JUDGMENT (PER F.M. REIS, J):**

1] Heard Shri Teles, learned counsel appearing for the petitioner, Shri Shivalkar, learned AGA appearing for the respondent no.1, Shri Pangam, learned counsel appearing for the respondent no.2 and Shri Coutinho, learned counsel appearing for the respondent no.3.

2] The above petition, inter alia, prays for a direction to the respondent no.3 to forthwith discontinue functioning as a member of the Respondent no.2 - Village Panchayat and also for a declaration that the respondent no.3 is disqualified under Section 12 (1) (d) read with Section 55 (4) of the Goa Panchayat Raj Act, 1994 ("the Act" for short).

3] Shri Teles, learned counsel appearing for the petitioner has pointed out that in terms of Section 12 (1) (d) of the Act, a member of the Panchayat ceases to be a member when he has voted in a Resolution contrary to the provisions of Section 55(4) of the Act where he has a pecuniary interest. The learned counsel points out that the husband of the respondent no.3 had constructed a bungalow on which a complaint was lodged to the Local Panchayat on the ground that such bungalow was constructed in contravention of the statutory provisions. It is further pointed out that a complaint to that effect was also lodged before the Town and Country Planning Authority with regard to

the subject construction. The learned counsel further points out that this complaint was discussed in a meeting of the Panchayat on 2nd May, 2014 wherein the petitioner was present and a Resolution was passed to hold a site inspection. It is further pointed out that in the meanwhile thereafter the Planning Authorities had come to the conclusion that the subject bungalow was illegal and directed the Local Panchayat to take necessary action. It is further submitted that thereafter there was a meeting of the Local Panchayat on 10th July, 2014 wherein the Panchayat resolved to issue a show cause notice to the husband of the respondent no.3. It is further pointed out that thereafter on 15th September, 2014 the show cause notice was withdrawn based on the response from the concerned party. The learned counsel further points out that though the records reveal that the respondent no.3 was not present for the meetings held on 10th July, 2014 and 15th July, 2014 when the subject Resolution was passed, nevertheless the very fact that the respondent no.3 participated in the meeting held on 2nd May, 2014 wherein a decision was taken to hold a site inspection would itself suggest that the petitioner has incurred disqualification in terms of Section 55 (4) of the Act as he has pecuniary interest in such Resolution. The learned counsel further points out that there is conclusive evidence on record to point out that the petitioner had participated in the said Resolution, and as said the petitioner is

entitled for the reliefs sought as above. It is further submitted that even the contention of the respondent no.3 that he was not present during the discussion of the Resolution passed on 15th April, 2014 is incorrect as according to him, the records do not suggest that in fact when the discussion took place, the respondent no.3 had recused herself from participating in the meeting. The learned counsel as such submits that the petition be allowed and it be declared that the respondent no.3 is disqualified from continuing to be a member of the concerned Panchayat.

4] On the other hand, Shri Coutinho, learned counsel appearing for the respondent no.3 has submitted that the basis on which the petitioner's claim that the respondent no.3 incurred disqualification to continue to be a member is on the basis that the respondent no.3 had participated and taken part in the Resolution passed in the meeting held on 15th September, 2014. It is further pointed out that the records clearly reveal that the respondent no.3 had not participated in the Resolution with regard to the subject show cause notice issued to the husband of the respondent no.3. The learned counsel further points out that the petitioner has deliberately suppressed part of the Resolution held on 15th September, 2014 which clearly reveals that the respondent no.3 had not participated in the discussion in respect

of the Resolution passed in connection with the subject show cause notice. The learned counsel has further taken us through the records produced by the petitioner which clearly shows that the petitioner has deliberately produced an incomplete document to claim that the respondent no.3 was present at the time of the Resolution held on 15th September, 2014. It is further pointed out that in any event, though the respondent no.3 disputes that he participated in any discussion held on 2nd May, 2014 nevertheless according to him, merely taking part in the Resolution to hold the site inspection would not incur disqualification in terms of Section 55 (4) of the Act as it did not lead to any pecuniary interest to the respondent no.3. The learned counsel further points out that the proceeding to hold an inspection is in the context of the duties imposed on the members of Panchayat which by itself cannot lead to any pecuniary interest in terms of Section 55(4) of the Act. The learned counsel further points out that the petitioner has failed to establish that the respondent no.3 has incurred disqualification of continuing to be a member of the subject Panchayat.

5] Shri Pangam, learned counsel appearing for the respondent no.2 has pointed out that the respondent no.3 had recused herself from the Resolution passed on 15th September, 2014. The learned counsel further points out that merely

participating in a Resolution to hold a site inspection would not by itself lead to any pecuniary interest to the concerned member. The learned Additional Government Advocate appearing for the respondent no.1, has submitted to the orders of this Court.

6] We have considered the submissions of the learned counsel and gone through the records. The relief sought by the petitioner is in exercise of an extraordinary jurisdiction under Article 226 of the Constitution of India. It is now well settled that to obtain such relief the petitioner has to truthfully produced all the documents on which he relies to put up his claim. On meaningful reading of the averments in the petition, it is contended by the petitioner that the respondent no.3 has incurred disqualification from continuing to be a member of the concerned Panchayat on the ground that she had participated in a Resolution passed on 15th September, 2014 wherein it was resolved to withdraw the show cause notice. In fact, in support of such contention, the petitioner has produced a copy of the Resolution passed on 15th September, 2014. On perusal of the said Resolution, we find that the petitioner has only produced the first part of the Resolution at page 277 and deliberately did not produce the continuation of the Resolution at page 278. In fact, the petitioner has produced a truncated copy of the Resolution at page 278 in the Minute Book of the Local Panchayat. On perusal

of the Resolution at page 278, it is recorded therein that the respondent no.3 had not participated in the Resolution in connection with the subject show cause notice. On this ground alone, the question of exercising extraordinary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner would not at all arise. As already pointed out hereinabove, the petitioner has deliberately suppressed the entire Resolution held on 15th September, 2014. Considering the averments in the petition and the Minutes of the meeting held on 15th September, 2014 which discloses that the respondent no.3 did not participate in the subject Resolution dealing with the show cause notice, the question of contending that the respondent no.3 has incurred disqualification in terms of Section 55 (4) of the Act as she had a pecuniary interest in the subject matter of the Resolution would not arise.

7] With regard to the contention of Shri Teles that in any event, the petitioner has incurred disqualification for participating in the meeting held on 2nd May, 2014, we find that though the respondent no.3 has disputed the presence on the said date, nevertheless merely being part of a meeting where a decision was taken to perform statutory functioning as prescribed under the Act would not necessarily lead to any pecuniary interest to the concerned member and as such would suffice the ingredients

provided in Section 55 (4) of the Act to be disqualified from continuing as a member of the concerned Panchayat. There is nothing on record to suggest that participation in such Resolution would incur any pecuniary interest to the respondent no.3. In such circumstances, we find that there is no case made out by the petitioner to grant any relief in the above petition. The petition is accordingly rejected. Rule stands discharged.

NUTAN D. SARDESSAI, J

F.M. REIS, J

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