

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 236 OF 2015.

- 1 Shri Nelson Heredia,
major of age, resident of
Alto Porvorim, Bardez-
Goa.
 - 2 Shri Sachin Talwadkar,
major of age, resident of
Alto Porvorim, Bardez-
Goa.
 - 3 Shri Dr. Abel B.O.Da
Costa, major of age,
resident of Chogm, Alto
Porvorim, Bardez-Goa.
 - 4 Shri Philip Lobo, major of
age, resident of Chogm,
Alto Porvorim, Bardez-
Goa.
- Petitioners.

Versus

The Assistant Registrar of Co-
operative Societies, North
Zone, having his office at 1st
Floor, Government Building
Complex, Mapusa - Goa
403501.

..... Respondent.

Mr. A. Nigalye, Advocate for the petitioners.
Ms. S. Mordekar, Additional Government Advocate for the
respondents.

Coram:- K. L. WADANE,J.
Reserved on: 14th December, 2015.
Pronounced on:7th January, 2016.

JUDGMENT

The petitioners have challenged the order dated
8.1.2015 passed by the Assistant Registrar Co-operative

Societies, North Zone, Mapusa Goa, by which the petitioners are disqualified for a period of 5 years from the date of the order.

2. The brief facts of the case may be stated as follows:-

The petitioners were the members of the Board of Directors of M/s Sapana Garden Co-operative Housing Society Ltd. M/s Sapana Garden Co-operative Housing Society Ltd is a Co-operative Housing Society Ltd registered under Goa Co-operative Housing Societies Act, 2011("the Act" for short) The Board of Directors/Managing Committee of the society consist of 9 members. The new Board of Directors of the said Society was elected on 4.6.2014 and the petitioners are amongst 9 elected members. They were also members of the Board of Directors of previous committee.

3. The members of the Board of Directors of the society have their own businesses and professions and they are performing their duties as the members of the Board purely on honorary basis to help/run the affairs of the society for the benefit of its members. It is further stated that since the members of Board of Directors do part time work and are busy with their daily schedules, some times there is delay in complying with the procedural matters relating to work of society. It is further contended that Annual General Body Meeting of the society was required to be held before the end of September, 2013 however,

there was delay of 39 days in holding the said meeting and it was held on 9.11.2014. Similarly there was delay in auditing the Accounts of the Society and that work started after appointment of the auditor in the General Body Meeting. These were minor discrepancies and not a major defect in the work of the society so as to invoke disqualification of the members of its Board of Directors.

4. The respondent issued show cause notice dated 19.11.2014 on the ground that the society has failed to convey Annual General Body Meeting, secondly failed to file Annual Returns and conduct audit. The chairman of the society filed detailed reply dated 8.12. 2014 explaining as to the excess charges/penal interest in respect of the dues of one Mr. Sirakar. After receipt of the reply the respondent has passed an impugned order and declared that the Board of Directors of M/s Sapana Garden Co-operative Housing Society Ltd have incurred disqualification for a period of 5 years from the date of the order.

5. I have heard the arguments of Mr. Nigalye, learned Counsel appearing for the petitioner and Ms. S. Mordekar, learned Additional Government Advocate for the respondent.

6. During the course of the arguments Mr. Nigalye, learned

Counsel appearing for the petitioners has argued that Assistant Registrar of Co-operative Society have no jurisdiction to pass the orders under Section 61 of the Act as the powers to issue order under Section 61 of the Act are vested with the Registrar. Secondly, he argued that the action by the respondent is only against the petitioners which is contrary to the provisions of law. Thirdly, he argued that before passing of the impugned order no individual notices were issued to the petitioners, therefore, there was breach of principle of natural justice as the respondents had not given an opportunity of being heard.

7. As against this, Ms. S. Mordekar, learned Additional Government Advocate appearing for the respondent has argued that the Registrar has delegated its powers to the Assistant Registrar as per the order and notification dated 13.9.2012. Ms. Mordekar, learned Additional Government Advocate further argued that the disqualification as per the impugned order is in respect of entire board and the present petitioners were the members of the earlier board. They are re-elected, therefore, that disqualification is restricted to the present petitioners. During the course of arguments Ms. Mordekar, pointed out that the disqualification under Section 61 of the Act is a deemed disqualification on account of failure to convey Annual General Body Meeting and for non-submission of Audit to the respondent. Ms. Mordekar, further argued that show cause

notice was issued to the chairman of the board and it had replied. Hence, Ms. Mordekar has supported the impugned order and further submitted that there is no illegality/irregularity while passing the impugned order.

8. Considering the rival contentions of both the parties and arguments advanced on behalf of them, following points arise for my determination:-

- i. Whether the action of the Respondent of disqualifying Petitioners Nos. 1 to 4 is without jurisdiction, since he has no authority under Section 61 of the Act to disqualify any person as a member of the Board of Director of the Society.
- ii. Whether the action of the Respondent disqualifying individual members of the aboard of Director is contrary to the provision of Section 61 of the Act, since Section 61 provides for disqualification of the Board of Directors and not of individual members of the Board?
- iii. Whether the action of the respondent is arbitrary, unreasonable and illegal as order was passed without issuing show cause notice and without giving right of hearing to the Petitioners?

9. During the course of arguments Ms. Mordekar has placed on record the copy of the order/notification dated 13.9.2012 issued by the Department of Co-operation, Office of the Registrar of the Co-operative Societies and Ex-Officio Joint Secretary to the Government of Goa by which all the powers of the Registrar under the Act and Rules made thereunder are delegated to the Assistant Registrar of the Co-operative Societies (Head Quarters), Panaji, except (a) Sections 10(3), 66, 67(2), 68, 69, 71, 74, 76, 76A, 77, 79, 82, 100, 119, 120(3) and 123 and (b) Rules 43, 52 to 111, 114, 125, 129(10) and 130.

10. The impugned order is passed by the respondent under Section 61 of the Act, therefore, the respondent has powers to pass the order under Section 61 of the Act.

11. On perusal of the impugned order it appears that it relates to the entire Board of Directors of M/s Sapana Garden Co-operative Housing Society Ltd. The present petitioners were members of the earlier committee and again they were elected and they became the members of the Managing Committee/Board of Directors. Other members of the committee were not elected. Therefore, there was deemed disqualification by the impugned order.

12. On perusal of the contents of the show cause notice, it

appears that it is addressed to the chairman of the M/s Sapana Garden Co-operative Housing Society Ltd and in the show cause notice specifically it was informed to the chairman that the erstwhile managing committee has failed to perform their duties due to which books of account remained to be audited for last 2 years i.e from 2012-2013 and 2013-2014. It is also observed that last General Body meeting was conveyed on 20.10.2013, however, statutory auditor has not been appointed to clear the pendency of the audit which shows that books of accounts and other records might have not been written or maintained. So the respondents by its show cause notice dated 19.11.2014 has made it clear about allegations, however, in reply given on behalf of the chairman of said society only it contains in detail regarding allegations in respect of dues of Mr. Sirakar. However, there is no explanation from the chairman/members of Board of Directors as to why they have not conveyed Annual General Body Meeting and why they have not submitted Annual Returns of the accounts of the society. Only it has mentioned in the reply that there has been minor deviation and discrepancies in the procedure and they are in process of correcting it. Further more in the petition in paragraph no. 8 itself the petitioners have contended as follows:-

“The Petitioners state that the Annual General Body Meeting of the Society was required to be held before the end of the September, 2014. However,

there was delay of 39 days in holding the said meeting and it was held on 9.11.2014. Similarly, there was delay in the auditing the Accounts of the Society and that work started after the appointment of the Auditor in the General Body Meeting. These were minor discrepancies and not major defects in the working of the Society so as to invoke disqualification of the members of its Board of Directors.”

13. From the above contents, it is crystal clear that the petitioners/then board of members have failed to convey Annual General Body Meeting and also failed to audit the accounts of the society within stipulated time. So even from the contents of the petitioners in the petition itself, it is clear that the then Board of Directors had incurred a disqualification contemplated under Section 61 of the Act. Provisions of Section 61 of the Act reads as follows:-

“Disqualification of all directors of the board.

— Notwithstanding anything contained in the foregoing section, all the directors of the board shall, be deemed to have incurred disqualification for a period of five years for being chosen as directors and shall be ineligible to continue as directors of the society, if, during their term as

directors of the society,—

- (a) they did not conduct the annual general meeting within nine months of closure of the society's accounting year;
- (b) they did not conduct a requisitioned general meeting within the specified time;
- (c) they did not place the accounts for the preceding co-operative year before the general body at its annual general meeting."

14. On perusal of the above contents coupled with the impugned order, it appears that there is deeming provision in case of a contravention of any of the provisions relating to the Annual General Body Meeting and submission of Annual Returns of the accounts of the society. The order passed under Section 61 of the Act is in regard to the cumulative inaction on the part of the members of the Board of Directors, therefore, I am of the opinion that no individual notice is required to be issued to every directors.

15. In the present matter, the respondent has issued show cause notice to the chairman of the society and one of the petitioners has replied and signed the reply on behalf of the chairman. The reply is given on the letter head of the M/s Sapana Garden Co-operative Housing Society Ltd. This goes to show that the petitioners were aware about the allegations in the show cause notice. Most of the contents of the reply are in

regard to the access charges/interest due upon from Mr. Sarikar. There is no reply/explanation as to why the society or its chairman/ Members of the Board of directors have not conveyed the Annual General Body Meeting and why they have not submitted Annual returns of the accounts of the society within stipulated time.

16. Considering the above facts and circumstances of the case, it cannot be said that opportunity was not given to the petitioners before passing the impugned order. Holding of such meeting, submission of Annual Report in cumulative responsibility of all the directors, therefore, no individual director can claim that no individual notice is required to be issued to them before taking any action under Section 61 of the Act. Therefore, all the points are answered in the negative. Considering, all the above aspects discussed, I am of the opinion that there is no substance in the petition, therefore, same is liable to be dismissed and accordingly it is dismissed with no order as to costs. Rule stands discharged.

17. Petition stands disposed of accordingly.

K. L. WADANE, J.

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