

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 379 OF 2016

MR. AKBAR MULLA AND 5 ORS.,	... Petitioners
Versus	
STATE OF GOA, THR. CHIEF SECRETARY AND 3 ORS.,	... Respondents

Shri G. Sardessai and Shri A. Carvalho, Advocates for the petitioners.
Shri D. Lawande, Addl. Advocate General with Shri A. Jamadar, Addl. Govt. Advocate for the respondent nos.1 to 3.
Respondent no. 4 deleted.
Shri D. J. Pangam, Advocate for the respondent no.5.

Coram:- F. M. REIS, J.

Date:- 8th December, 2016

P.C.

Heard Shri G. Sardessai, learned Counsel for the petitioners, Shri D. Lawande, learned Addl. Advocate General for the respondent nos.1 to 3 and Shri D. J. Pangam, learned Counsel for the respondent no.5.

2. The challenge in the above petition is to the refusal of leave to implead the respondent no.5 herein as the party respondent to the proceedings before the Registrar/respondent no.3 under Section 82 of the Co-operative Societies Act.

3. Shri Sardessai, learned Counsel appearing for the petitioners submits that in terms of the said Act all the Directors who were in office during the period of misfeasance and other irregularities alleged in the show cause notice would be jointly and severally

liable for such acts. The learned Counsel further points out that according to the petitioners, the respondent no.5 was also a Director at the relevant time and as such, the exclusion of the respondent no.5 by the respondent no.3 in such proceedings is unjustified. The learned Counsel further submits that grave prejudice would occasion to the petitioners in case the respondent no.5 is excluded from such inquiry, as according to him, looking into the relevant provisions of the said Act and as the respondent no.5 was also a Director at the relevant time, the impugned order passed by the learned Registrar cannot be sustained and deserves to be quashed and set aside. The learned Counsel further pointed out that the respondent no.3 has erroneously misconstrued the relevant provisions of law and dismissed the application filed by the petitioners. The learned Counsel also brought to my notice the direction of the Inquiry Officer in his report at internal page 11 to the effect that all the Directors from the year 2000-2001 to 2010-2011 should be made parties to the proceedings.

4. On the other hand, Shri D. Lawande, learned Addl. Advocate General appearing for the respondent nos.1 to 3 has submitted that the application filed by the petitioners was essentially rejected by the Registrar on the ground that there was no cogent material on record to show that the respondent no.5 was also a Director at the relevant time. The learned Addl. Advocate General has thereafter taken me through the impugned

order to point out that the learned Registrar has observed that unless the alleged minutes relied upon are made part of the record of the proceedings, the question of examining whether the respondent no.5 would be made a party or not would not be justified. The learned Addl. Advocate General further points out that this itself suggests that the learned Registrar came to the conclusion that the application to implead the respondent no.5 was premature.

5. Shri D. Pangam, learned Counsel appearing for the respondent no.5 has pointed out that the respondent no.5 disputes the correctness of the allegations made by the petitioners, as according to him, the respondent no.5 was a Director only in the year 2000-2001. The learned Counsel further points out that the alleged misfeasance against the petitioners is according to him during the period of 2006-2007 and as such, the contention of the petitioners to alleged that the respondent no.5, also be made party to such proceedings is misconceived. The learned counsel further points out that unless the Registrar is prima facie convinced that there are any allegations which would include the respondent no.5, the question of directing the impleadment of the respondent no. 5 at the behest of the petitioners would not at all be justified. The learned Counsel, as such, submits that the petition be rejected.

6. I have duly considered the submissions of the learned Counsel and I have also gone through the record.

7. The proceedings before the Registrar under Section 82 of the said Act are admitted at an initial stage. The learned Registrar while passing the impugned order inter alia has taken a view as pointed out by the learned Additional Advocate General that the application itself is premature as the aspect as to whether the respondent no.5 has also be made party to the proceeding can be examined only after the alleged minutes are made part of the records. Shri Sardesai, learned Counsel however submits that he has cogent documentary evidence to show that the respondent no.5 was a Director and as such, is also liable to the alleged misfeasance alleged in the show cause notice issued by the respondent no.3. Admittedly, such material was not produced before the learned Registrar at the time of the passing of the impugned order. Shri Sardesai, however, points out that this Court has made respondent no.5 a party to the above proceedings and, as such, it is appropriate for this Court to examine the records and pass an appropriate order with that regard.

8. The suggestion of Mr. Sardesai learned Counsel for the petitioners to examine the documentary evidence and take a view on the aspect of impleading the respondent no.1 would not all be justified in a petition under Article 227 of the Constitution of India as there are disputed factual contentions raised by the respondent no.5 as well as the learned Additional Advocate General appearing for the respondent nos. 1 to 3. As such this

material sought to be produced by the petitioner would have to be examined by the respondent no.3 on its own merits after hearing the concerned parties in accordance with law. The impugned order challenged in the above petitioner will not come in the way of the petitioner moving such application if they are so advised by producing cogent evidence in support of their alleged stand that the respondent no.5 be also made party to the proceedings. Subject to the above and with liberty as stated above, petition stands disposed off. All the contentions of the parties on merits are left open.

F. M. REIS, J.

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