

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.301 OF 2015.

1. Mr. Shaikh Iqbal, Major, Married, President, Jamatul Muslimeen, having office Masjid Colony, Carriamoddi, Curchorem, Goa 403 706.
r/o Hasan Manzil, Bansai, Curchorem, Goa 403 706.
2. Mr. Abdul Vadud Bhukhari, Major, Married, General Secretary, Jamatul Muslimeen, having office Masjid Colony, Carriamoddi, Curchorem-Goa-403706, r/o. H. no.A/9, Vithal Bhavan, Curchorem, Goa - 403 706.
3. Mr. Mohammad Rizwan Sarmadi, Major, Married, Treasurer, Jamatul Muslimeen, having office at Masjid Colony, Carriamoddi Curchorem-Goa-403706, r/o. H. no.1137, Opp. Masjid, Carriamoddi, Curchorem, Goa - 403 706.
4. Jamatul Muslimeen, A society registered under Societies Registration Act 1860 having registered office at Masjid Colony, Carriamoddi, Curchorem-Goa- 403706. Represented herein by its President Mr. Shaikh Iqbal. Petitioners.

Versus

1. District Registrar (South)/

Inspector General of Societies,
Registration Department,
Office of District Registrar,
South Osia, Commercial
Compex, 2nd Floor, "D" Wing,
Salcete, Margao-Goa.

2. Shaikh Moinuddin, H. No. 2308, Carriamoddi, Curchorem-Goa.
3. Ali Mackbul Shaikh, Tanki, Quepem-Goa.
4. Shaikh Jahid Hussain, H. No. 469/1, Carriamoddi, Curchorem - Goa.
5. Khwaja Abdul Karim, H. No. 461/2, Carriamoddi, Curchorem-Goa.
6. Aslam Shaikh, H. No. 2257, Carriamoddi, Curchorem- Goa.
7. Rizwan Shaikh, Zahida Manzil, Carriamoddi, Curchorem- Goa.
8. Shaikh Sharfuddin Ismail, Shnoor Plaza, Masjid Colony, Carriamoddi, Curchorem-Goa.
9. Shaikh Mohammed Jina, Masjid Colony, Carriamoddi, Curchorem- Goa.
10. Shaikh Suban, Kamral, Curchorem-Goa.
11. Sayeed Ahmad, H. No. 93/A,

Morailem, Curchorem – Goa.

12. Shaikh Shakil Ahmad, Shaikh
Manzil, Near Guardian Angel
High School, Bebquegal,
Curchorem-Goa. Respondents.

Shri V. A. Lawande, Advocate for the petitioners.

Shri S. D. Lotlikar, Senior Advocate with Shri A. Jamadar,
Government Advocate for the respondent no.1.

Shri G. Agni and Shri E. Usapkar, Advocates for the
respondent nos. 2 to 12.

Shri Rui Gomes, Advocate for the applicants in MCA
580/2015/Intervenors.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

Date:27th September, 2016.

ORAL JUDGMENT (Per F. M. REIS, J)

Heard Shri V. A. Lawande, learned Advocate for the
petitioners, Shri S. D. Lotlikar, learned Senior Advocate
Advocate for the respondent no.1, Shri G. Agni, learned
Advocate for the respondent nos. 2 to 12 and Shri Rui Gomes,
learned Advocate for the Intervenors.

2. Rule.

3. Heard forthwith with the consent of the learned

Counsel appearing for the respective parties. The learned Counsel appearing for the respective respondents waive notice.

4. The essential grievance of the petitioners in the above petition is to the legality of an order passed by the respondent no.1 dated 8.4.2015 whereby the petitioners have been directed to hand over charge to the respondent nos.2 to 12 in respect of Jamat in question. Mr. Lawande, learned Advocate appearing for the petitioners has assailed the impugned order on the ground that the respondent no.1 has no powers to direct the petitioners to hand over such charge nor to examine the validity or otherwise of the claim put forward by the respondent nos.2 to 12 to be duly elected committee of the Jamat in question. The learned Counsel for the petitioners further submitted that the petitioners who were duly elected had filed an applications dated 27.10.2014 and thereafter on 1.1.2015 for renewal of the Society of the Jamat in question in terms of Section 3(B) of the Societies Registration Act, 1860. It is further pointed out that without taking a decision on such renewal application, the question of respondent no.1 recognizing any specific committee and

passing the impugned order is totally without jurisdiction and unjustified. The learned Counsel further pointed out that though the petitioners had initiated the process of holding election nevertheless on account of objections and other obstructions raised by the respondent nos.2 to 12 such election could not take place. It is further pointed out by the petitioners that the respondent nos.2 to 12 have illegally claimed that they are duly elected managing committee of the Jamat in question without following the due process of law as provided in the By-laws and the Rules for conducting such election. It is further pointed out that the respondent nos.2 to 12 are relying upon some fabricated Minute Books to advance their contention that substantial number of members of the subject Jamat are not eligible to be members. It is further submitted that unless the respondent no.1 takes a decision on the renewal application pending before the respondent no.1, the question of proceeding to pass the impugned order is without any jurisdiction and unjustified. The learned Counsel has thereafter taken us through the records to point out that the impugned order passed by the respondent no.1 is unsustainable in law and deserves to be quashed and set aside.

5. On the other hand Shri S. D. Lotlikar, learned Advocate General points out that in terms of the provisions of Section 3(C) of the Societies Registration Act, 1860, the Registrar would have to take a decision with regard to the renewal application filed before him in connection with the subject Jamat. The learned Advocate General further pointed out that the respondent nos.2 to 12 have also filed an application for such renewal which is also pending for decision before the respondent no.1. The learned Advocate General further submitted that the Registrar has to decide the rival claims with regard to such renewal applications.

6 Shri G. Agni, learned Counsel appearing for the respondent nos. 2 to 12 has pointed out that the respondent nos.2 to 12 have been duly elected to run the affairs of the subject Jamat. It is further submitted that the petition itself is not maintainable, as according to him, the term of the managing committee consisting of the petitioner nos.1 to 3 has already expired and as such the question of filing such petition on behalf of the Jamat is totally unsustainable. It is further submitted that as the respondent no.1 are entitled to

take charge of the affairs of the Jamat in question and as such there is no reason to interfere with the impugned order. The learned Counsel further pointed out that the contention of the petitioners that the Minutes Books produced by the respondent nos.2 to 12 are fabricated, is totally misconceived and untenable in law. As such, the learned Counsel points out that the question of interfering with the impugned order would not arise.

7. Shri R. Gomes, learned Counsel appearing for the intervenors submits that the respondent nos.2 to 12 have no locus to represent the Jamat nor claim to be duly elected managing committee of the Jamat in question, as according to him, there was no election conducted to elect such alleged managing committee. The learned Counsel further pointed out that the whole game plan of the respondent nos.2 to 12 is to eliminate substantial number of members by indulging in an illegal experience by relying upon a fabricated Minute Books which allegedly was not existing for more than 10 years. It is further pointed out that based on the illegal election conducted by the respondent nos.2 to 12, the question of recognizing the respondent nos.2 to 12 as the managing

committee of the Jamat in question would not arise.

8. We have duly considered the submissions of the rival parties and with their assistance we have also gone through the records.

9. We are not inclined to examine the correctness or otherwise of the rival contentions with regard to the claim put forward by the respondent nos.2 to 12 as being a duly elected committee of the Jamat in question. It is disputed question of fact which will have to be examined in appropriate forum in accordance with law.

10. In the present petition, we are only examining the legality or otherwise of the impugned order passed by the respondent no.1 directing the petitioners to hand over the charge of the Jamat in question to the respondent nos.2 to 12. It is undisputed that the renewal application is filed by the petitioners and no decision has been taken on such application. Apart from that, the respondent no.1 can exercise jurisdiction to pass any direction in terms of the said Act only after there is a duly recognized society in terms of the said

Act. Unless and until the renewal application is decided by the respondent no.1, the question of the respondent no.1 proceeding to pass the impugned order would not arise at all. We find that the provisions of Societies Registration Act 1998 do not prima facie entitle the respondent no.1 to pass the direction in the manner as reflected in the impugned order. In such circumstances, we find that the impugned order passed by the respondent no.1 dated 8.4.2015 deserves to be quashed and set aside. The respondent no.1 would accordingly proceed to decide the renewal application filed by the petitioner dated 27.10.2014 after hearing all the concerned parties and examining any objection with that regard in accordance with law.

11. At this stage Shri Agni, learned Advocate for the respondent nos.2 to 12 has pointed out that the application filed by such respondents is also pending decision before the respondent no.1. The respondent no.1 would accordingly proceed and examine such application in accordance with law. All the contentions of the petitioners that such application is not maintainable are left open to be examined on its own merits in accordance with law. The respondent no.1 shall

proceed to examine the renewal application on its own merits in the light of the observations made hereinabove in accordance with law. The petition stands disposed off. All the contentions of the parties on merits are left open.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

vn*