

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 554 OF 2016

Mr. Bobby Pandurang Nayak,
73 years of age,
Son of Pandurang Nayak,
r/o H. No.13/677/7 & 8,
"Laxmi Villa"
Tonca, Caranzalem-Goa.
Represented by his constituted attorney
Mr. K. Ramesh Nayak,
62 years of age,
Son of Sanjeev Nayak,
r/o Madkai, Mardol,
Ponda-Goa.
Constituted vide POA dated 16/4/2014
Executed before Notary D. P. Agni
And registered in his office under
No.8331/14 dated 16/04/2014.

.... Petitioner

V e r s u s

1. The Laxmi Co-op Housing
Maintenance Society Ltd.,
Tonca, Caranzalem, Ilhas-Goa,
Through its Secretary,
Mr. Suhas Asnodkar,
Tonca, Caranzalem-Goa.
2. Mr. Keerti B. Nayak,
Major of age,
r/o H. No.270,
Bhagyalaxmi 8th Cross,
28th main, Sector -1,
HSR Layout, Bangalore 560102.

3. Ms. Gauri B. Nayak,
Major of age,
r/o H. No.270,
Bhagyalaxmi 8th Cross,
28th main, Section -1,
HSR Layout, Bangalore 560102. Respondents

Shri A. D. Bhobe with Ms. S. Bhobe, Advocates for the
Petitioners.

Shri J. P. Mulgaonkar with Shri J. J. Mulgaonkar,
Advocates for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 21ST July, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The learned
counsel for the respondents waives service. Heard finally by
consent of the parties.

2. The challenge in this petition is to the order dated
1.2.2016 passed by the Assistant Registrar of Cooperative
Societies, by which the preliminary objection raised on behalf
of the petitioner to the maintainability of the dispute as
against the petitioner has been rejected.

3. The first respondent which is a Maintenance Society has filed a dispute before the Assistant Registrar of Cooperative Societies against the petitioner and the respondent nos.2 and 3. Admittedly, the petitioner is not a member of the first respondent society. The respondent nos. 2 and 3, who are the members and flat owners are alleged to have carried out certain illegal construction/additions which according to the first respondent is without obtaining the no objection certificate. It is claimed on behalf of the first respondent that the action of the respondent nos.2 and 3, as also the petitioner is illegal and against the interest of the society.

4. The petitioner raised an objection that he, not being a member of the society, the dispute would not lie within the purview and scope of the provisions of section 83 of the Goa Co operative Societies Act, 2001 (the Act, for short). The first respondent opposed the preliminary objection contending that the petitioner is the father and the Karta of the HUF of which the respondent nos. 2 and 3 are members and, as such, the dispute would lie within the

purview of section 83 of the said Act.

5. A perusal of the impugned order would show that the learned Asst. Registrar has come to the conclusion that "the dispute is touching the management/business of the society and therefore, is within the purview and scope of provisions of section 83 of the said Act." It has further been held that as per section 86 of the Act, if the said Authority is satisfied that any matter referred to it is a dispute within the meaning of section 83, the Authority shall decide the dispute or refer it for disposal to a nominee appointed by the Registrar.

6. It is contended on behalf of the petitioner that, the petitioner not being a member, does not fall in any of the categories as mentioned in section 83 (2) (a) to (e) of the Act. It is submitted that the impugned order does not show any consideration on this aspect.

7. The learned counsel for the first respondent has supported the impugned order. It is submitted that under

section 83(2) (b) not only a member or a past member but a person claiming through a member is also covered. It is contended that under section 83 (2) (c), even a person with whom the society has or had transaction is also covered.

8. I have carefully considered the rival circumstances and the submissions made and I find that the impugned order does not show any consideration on the aspect as to whether the dispute is between the society and one of the persons as mentioned in section 83 (2) (a) to (e). It is apparent that under section 83 of the Act there are two requirements to be satisfied. Firstly, it has to be shown that the dispute is one which is touching the constitution, management or the business of the society and secondly it has to be shown that the dispute is between the society and one of the entities as enumerated in clause 83(2). In view of the fact that there is no consideration on the second aspect, I deem it appropriate to send the matter back to the Asst. Registrar of Co-operative Societies, who shall decide the preliminary objection afresh after hearing the parties in accordance with law. In such circumstances the following

order is passed:

Order:

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The preliminary objection is sent back to the Asst. Registrar who shall decide the same afresh after hearing the parties and in accordance with law.
- (iv) Rival contentions of the parties are left open.
- (v) The parties to appear before the Asst. Registrar on 8/8/2016 at 3p.m.
- (vi) Rule is made partly absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-