

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 493 OF 2014**

Mr. Gurudas Khedekar,
major of age,
r/o H. No.49,
Haveli, Curti,
Ponda Goa.

.... Petitioner

V e r s u s

1. State of Goa,
by the Secretary (Panchayat),
Government of Goa,
Secretariat, Porvorim,
Bardez Goa.

2. Mr. Naguesh Naik,
major of age,
r/o H. No.53, Sindhunagar,
Curti, Ponda Goa.

3. Village Panchayat of Curti,
Khandepar by its Secretary,
Curti, Ponda Goa.

..... Respondents

Mr. A. F. Diniz with Mr. R. Menezes, Advocates for the petitioner.

Mr. P. Faldessai, Addl. Government Advocate for the respondent no.1.

Mr. A. D. Bhobe, Advocate for the respondent no.2.

Ms. Kamaxi Parab, Advocate for the respondent no.3.

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

Date:- 25th October, 2016

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

Heard Mr. A. F. Diniz, learned counsel appearing for the petitioner, Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent no.1, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.2 and Ms. K. Parab, learned counsel appearing for the respondent no.3.

2. The above petition inter alia prays for a declaration that the seat of the respondent no.2 as a member (panch) of the Village Panchayat of Curti, Khandepar, has become vacant.

3. The facts of the case as stated by the petitioner are that the petitioner is a permanent resident of Curti, Ponda Goa, and that the respondent no.2 is a member of the local village panchayat who was elected from Ward no.10 in the year 2012. It is further contended that the respondent no.2 is the owner of two plots of land bearing survey Nos.75/1 (part) and 94/0 (part) of Curti, Ponda

Taluka having purchased by sale deed dated 04.02.2010 and 23.11.2010. It is further contended that after the purchase, the respondent no.2 has put up one small structure of about 30 square metres in the plot bearing survey no.94/0 though no construction was put up in the plot surveyed under No.75/1 other than the old house existing prior to the sale deed. It is further his case that the said structure constructed by the respondent no.2 is unauthorized and without obtaining permission from the local panchayat. It is further contended that the respondent no.2 resorted to an illegal expedient to get the said three structures registered for assessment of house tax even though only one structure was existing in the property in question. It is further contended that the respondent no.2 caused his brother Anil Kashinath Naik, his father in law Ramesh Mandrekar and his brother in law Dattaprasad Mandrekar, to seek house tax assessment for each structure located in the suit property which belongs to the respondent no.2. It is further his case that in the panchayat meeting held on 25.09.2013 the said application came up for discussion for allotting of house numbers for the said three structures. The respondent no.2 was present for such meeting and took part in the deliberation in connection therewith and accordingly,

the resolution nos.3(22), 3(23) and 3(24) were passed by the panchayat. Subsequently, the minutes of the meeting held on 25.09.2013 came to be confirmed at the meeting held on 15.10.2013. It is further contended that the respondent no.2 attended the subsequent meeting and at the meeting held on 04.12.2013 the respondent no.2 caused the panchayat to correct the proposer of the aforesaid three resolutions as being Sayyed Mulla instead of the respondent no.2. It is further his case that as the respondent no.2 had taken part in the deliberation allotting house numbers to the subject three structures, the respondent no.2 is deemed to have vacated the seat of the panchayat as a member in terms of Section 55(4) and 12(1)(d) of the Panchayat Raj Act.

4. The respondent no.3 has filed his affidavit in reply and inter alia contended that the minutes of the resolution bearing Nos.3(22), 3(23) and 3(24) passed in the fortnightly meeting dated 25.09.2013 were erroneously recorded by the Secretary of the respondent no.3. It is further contended that such mistake came to be rectified subsequently on 04.12.2013. It is further pointed out that the said resolution no.5 passed in the fortnightly General Body

meeting dated 04.12.2013 has taken effect and as such the question of the petitioner contending that the respondent no.2 has incurred disqualification in terms of the said Act would not arise at all. It is further pointed out that the contention of the petitioner that the documents produced on record do not at all justify the contention of the petitioner that the respondent no.2 has been disqualified from continuing to be the member of the panchayat in question is erroneous. It is further submitted that the petition has been filed at a very belated stage. It is also pointed out that the petitioner has contested the elections from Ward No.9 on earlier occasion against the respondent no.2 in which the petitioner had to suffer defeat and as such in retaliation the petitioner has filed the above petition. It is also denied that the respondent no.2 had caused his brother, his father in law, and brother in law to get the house numbers to the disputed structures as the allegations to that effect are totally frivolous and without any basis in law. It is further pointed out that when the resolutions with regard to the said house numbers were taken up for discussion at the meeting held on 25.09.2013, the respondent no.2 did not take part in any such discussion or deliberation nor he proposed such resolutions. The contention that the respondent no.2

has taken part in the discussion has been expressly denied by the respondent no.2. It is further pointed out that the petitioner is trying to take an advantage of wrong notings in the minutes to claim that the respondent no.2 has been disqualified from being a member of panchayat in question. The contention of the petitioner that the respondent no.2 is deemed to have vacated the seat in terms of Section 12(1) (d) read with 55(4) of the Panchayat Raj Act, have been expressly denied. It is further submitted that the petition be accordingly rejected.

5. The respondent no.2 has also filed reply and inter alia contended that there are disputed questions of facts which arise in the above petition. It is also pointed out that the minutes of the resolutions bearing Nos. 3(22), 3(23) and 3(24) passed in the fortnightly meeting dated 25.09.2013 of the respondent no.3 panchayat were erroneously recorded. It is further contended that neither the contents of the petition nor any of the documents enclosed to the petition disclosed that the petitioner has ever questioned or challenged the resolution no.5 passed in the fortnightly meeting dated 04.12.2013. The respondent no.2 has also disputed the photographs

produced by the petitioner in support of his contention that only one structure is located in the subject property. The respondent no.3 has also denied the fact that the respondent no.2 had caused his brother, brother in law and father in law to obtain the house numbers to the said three structures when only one structure was located in the subject property. It is also denied that the respondent no.2 has pecuniary interest in the subject resolutions allotting house numbers to the three structures. The said respondent has also disputed that he had attended the meeting nor taken part in the deliberation.

6. The petitioner has thereafter filed a rejoinder disputing all the contentions in the affidavit in reply of the said respondent no.2 and reiterated the facts as stated in the original petition. The respondent no.2 has filed sur-rejoinder and inter alia contended that the minutes of the said resolutions dated 25.09.2013 were erroneously recorded by the concerned Secretary. It is further pointed out that the petitioner is raising issues which are not at all relevant to decide the above petition. The contention of the petitioner that there is manipulation in the records has been expressly denied by the said respondent. In support of the said submission and rejoinder, the

respondent no.2 has filed affidavit of one Sajjad Mullah, Mr. Gurudas Khedekar and Sandeep Khandeparkar. As there were disputed questions of fact, at the request of the learned counsel appearing for both the parties, the evidence was recorded by appointing a Commissioner. The deponents of the affidavits relied upon by the petitioner and the respondents have been duly cross examined. The report of the Commissioner has also been produced on record.

7. We have perused the depositions of the concerned witnesses as well as the cross examination of the deponents. Based on the material on record, what culls out is that the respondent no.2 is the owner of the subject property wherein three structures were constructed which were the subject matter of the disputed resolutions dated 25.09.2013 wherein resolution nos. 3(22), 3(23) and 3(24) were passed. The fact that the respondent no.2 had participated in the discussions held in the said meeting cannot be disputed, though a wild attempt made by the respondent no.2 to contend that he was not present on the day of the said meeting. The witnesses examined by the petitioner including Khandeparkar who

was present at the meeting clearly show that the respondent no.2 in fact took part in the deliberation of the subject resolutions. The respondent no.2 is shown to have proposed the resolution in question in the minutes book. The minutes were thereafter confirmed when the respondent no.2 was present. The attempt by the respondent no.2 in rectifying the minutes of 25.09.2013 is only to wriggle out from the situation wherein the respondent no.2 was liable to incur disqualification for participating in the resolutions wherein he had pecuniary interest.

8. Section 12(1)(d) and Section 55(4) of the Goa Panchayat Raj Act read thus :

“12. Vacation of seat by members.--

(1) if a member of a Panchayat.--

(a).....

(b).....

(c).....

(d) votes or takes part in discussion in contravention of the provisions of sub-section (4) of Section 55, his seat shall be deemed to be or to have become, as the case may be, vacant.”

“55. Quorum and Procedure.--

(1).....

(2).....

(3).....

(4) No member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.”

9. In this connection, in the judgment passed by the Division Bench of this Court dated 16.08.2010 in ***Writ Petition No. 295 of 2010*** in the case of ***Shri Jagdish Bhobe V/s State of Goa & Ors.***, (wherein one of us F. M. Reis, J was a party), it has been observed at paras 11 and 12 thus :

“11. In the case of *The Akhada St. Estevam Village Development and Protection Samittee and others (supra)*, this Court had considered the meaning of “pecuniary

interest”. This Court in paragraph 24 held that to ensure purity of administration of local bodies, the provisions relating to disqualification should not receive an unduly narrow or restricted construction. The phrase used in sub section (4) of Section 55 of the said Act of 1994 is “pecuniary interest”. The word “pecuniary” connotes “pertaining to money”. The expression “pecuniary interest”, therefore, necessarily means the interest which can be exacted in money or which is pertaining to money. The interest can be of different types. The interest can be in respect of a right in a property, benefit in a property or use of a property. If a person constructs a structure and the construction is sought to be demolished, it can be certainly stated that “pecuniary interest” of the person is affected, inasmuch as the demolition or destruction or damage to the structure will involve monetary loss. To attract sub-section 4 of Section 55, actual monetary gain or accrual of benefit is not necessary. Participation in a discussion involving “pecuniary interest” is sufficient.

12. On 14th August, 2009, in the meeting of

the second respondent Village Panchayat, an application made by Mrs. Felicidade, mother of the fourth respondent, for transfer of house tax in respect of House No.454/2 in her name by deleting the name of the fourth respondent was considered and the said application was granted. It is not in dispute that the fourth respondent is an elected Member of the second respondent Village Panchayat and is at present the Sarpanch. It is not disputed that he was present at the meeting and participated in the meeting. On 28th October, 2009 one Mr. Amar De Silva made a complaint to the Block Development Officer that the fourth respondent is constructing a new house in the land surveyed under Survey No.145/7 known as "Maurecho Bhat" situated at Mascarenhas Wado, in Goa Velha, with mutation No.529, registered in the name of his father. It was alleged that the construction was being carried on by the fourth respondent, without obtaining sanad of conversion and without obtaining necessary permissions. In Form No.I & XIV, in respect of the said land, the name of the father of the fourth respondent appears. On

the basis of the complaint filed by the said Mr. Amar De Silva, on 28th October, 2009, notice cum order under Section 66(6) of the said Act of 1994 was issued by the Block Development Officer, material part of which reads thus :”

10. The observations in the said judgment clearly reveal that participating or discussing on a resolution to grant house tax number would entail pecuniary interest on the member of the panchayat being the owner of the subject property. The fact that the respondent no.2 is the owner of the property and that the structures are located therein is not in dispute. The assessment for house tax and grant of house numbers would naturally add to the benefit of the respondent no.2 as it is alleged that two structures are unauthorised.

11. Taking note of the said observations of this Court in the said judgment referred to herein above, we find that the respondent no.2 has taken part in the deliberation/resolutions wherein house numbers have been issued to the structures located in the property belonging to the respondent no.2 which were unauthorised and as such would lead to pecuniary interest to the respondent no.2 in terms

of Section 55(4) of the Panchayat Raj Act. Reading the said provisions of Section 12(1)(d) with Section 55(4) of the Panchayat Raj Act, we come to the conclusion that the respondent no.2 has incurred disqualification from continuing to be a member of the concerned panchayat as he took part in the resolutions wherein the respondent no.2 had pecuniary interest.

12. In view of the above, we pass the following :

ORDER

- (i) The petition is partly allowed.
- (ii) Rule is made absolute in terms of the prayer clause (a).
- (iii) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J

F. M. REIS, J.

at*

JUDGMENT CONTINUED

13. At this stage, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.2 seeks stay of the operation of the judgment passed today for a period of eight weeks. Hence, in the peculiar facts and circumstances of the case, the operation of the judgment is stayed for a period of eight weeks subject to the respondent no.2 shall not vote in the meetings of the panchayat.

NUTAN D. SARDESSAI, J

F. M. REIS, J.

at*

Dt: 25/10/2016