

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.113 OF 2017.

1. Shri Dharma V.
Chodankar, son of
Vasudev Chodankar, of
major age, Indian
National, resident of
1001, Sodemtim, Chodan,
Tiswadi-Goa.
2. Shri Gurudas Sawal, son
of Sitaram Sawal, of
major age, Indian
National, resident of
Journalist Colony,
Porvorim, Bardez-Goa.
3. Shri Mahadev S. Natekar,
son of Sharangadhar
Natekar, of major age,
Indian National, resident
of Dempo Mansion, IIIRD
Floor, Mapusa, Bardez-
Goa.
4. Shri Eknath V.
Nagvenkar, son of Vithal
Nagvenkar, of major age,
Indian National, resident
of 2/122-A, Naikawado,
Calangute, Bardez-Goa.
5. Smt. Nirmala R. Khalap,
wife of Shri Ramakant
Khalap, of major age,
Indian National, resident
of Altinho, Mapusa,
Bardez-Goa.
6. Shri Ravindra Fogueri,
son of Vishnu Fogueri, of
major age, Indian
National, resident of
E/46, Housing Board,

Mapusa, Bardez-Goa.

7. Shri Chandrakant Y. Shetgaonkar, son of Yeshwant Shetgaonkar, of major age, Indian National, resident of Batiwada, Morjim, Pernem-Goa.
8. Shri Vishwas K. Nayak, son of Kashinath Nayak, of major age, Indian National, resident of 'Ravindra', Plot No. 105, Housing Board, Gogol, Margao, Salcete-Goa.
9. Shri Narayan B. Ratwad, son of Baburao Ratwad, of major age, Indian National, resident of 96/10, Khorlim, Mapusa, Bardez-Goa.
10. Shri Gokuldas S. Shirodkar, son of Shanu Shirodkar, of major age, Indian National, resident of "Sai", H2, Duplex, near Bhatikar High School, Housing Board, Gogol, Margao, Salcete-Goa.

..... Petitioners.

Versus

1. State of Goa, through its Chief Secretary, having Office at Secretariat, Porvorim, Bardez-Goa.
2. The Registrar of Cooperative Societies, Government of Goa, Department of

Cooperation, Panaji-Goa.

3. Shri Jaiwant P. Naik, son of Shri Pandurang Naik, major of age, Indian National, resident of Pandurang Smriti, Khorlim, Mapusa, Bardez-Goa. Respondents.

Shri P. Rao, Advocate for the petitioners.

Shri S. D. Lotlikar, Advocate General with Shri D. Shirodkar, Additional Government Advocate for the respondent nos.1 and 2.

Shri A. Naik, Advocate for the respondent no.3

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

Date:- 9th February, 2017.

JUDGMENT (Per F. M. Reis, J)

Heard Shri P. Rao, learned Advocate for the petitioners, Shri S. D. Lotlikar, learned Advocate General for the respondent nos.1 and 2 and Shri A. Naik, learned Advocate for the respondent no.3.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the parties.

4. The learned Addl. Government Advocate and learned

Advocate waive notice on behalf of the respective respondents.

5. The challenge in the above petition inter alia is to a communication/decision taken by the respondent no.2 to a requisition made by the petitioner in terms of Section 59-A of the Goa Co-operative Societies Act, 2001("the Act" for short) It is pointed out by Shri P. Rao, learned Counsel appearing for the petitioners that the petitioners have received a show cause notice in terms of Section 59(11) of the said Act in connection with a complaint lodged by the respondent no. 3. The learned Counsel further submits that it is the contention of the petitioners that the show cause notice itself is misconceived and also that the respondent no.2 has no jurisdiction to issue such show cause notice. It is further pointed out by the learned Counsel that by the impugned communication/ decision, the respondent no.2 refused to accede to the request of the petitioners to call for a special meeting of the Board of Directors on the ground that as the show cause notice has been issued to the petitioners. The learned Counsel further submits that such stand taken by the respondent no.2 is untenable in law and as such, the

impugned communication/decision be quashed and set aside.

6. On the other hand Shri S D. Lotlikar, learned Advocate General on behalf of the respondent nos. 1 and 2 fairly accepts that the reasons rendered in the impugned communication/decision cannot be a ground to refuse to decide on the requisition by the petitioners for a special meeting. The learned Counsel appearing for the respondent no.3 however points out that as the petitioners are facing a show cause notice which can lead to the disqualification in terms of Section 59(11) of the Act, the question of acceding to the request of the petitioner for a special meeting in terms of Section 59-A of the Act would not arise. It is further pointed out that actions committed by the petitioners are detrimental to the interest of the society and as such the respondent no.2 was justified to issue a show cause notice under Section 59(11) of the Act. The learned Counsel further submits that unless the show cause notice issued by the respondent no. 2 is decided, the question of proceeding to hold a special meeting in terms of Section 59-A of the Act would not arise at all. The learned Counsel as such points out that the petition be rejected.

7. Upon hearing the learned Counsel appearing for the respective parties the validity, propriety or legality of the show cause notice under Section 59(11) of the Act issued to the petitioners by the respondent no.2 will not be gone into as there is no challenge to such notice in the present petition. All the contentions of both the parties with that regard are left open.

8. The only aspect which is being examined is whether the reasons recorded in the impugned decision/communicate dated 16.1.2017 while refusing to accede to the request of the petitioners for a special meeting in terms of section 59-A of the Act are tenable in law.

9. It is not in dispute that merely because the members of the Board of Directors are facing a show cause notice under Section 59(11) of the said Act would itself not be a ground to refuse the requisition sought by the petitioners under Section 59-A of the Act. In such circumstances, considering also the stand taken by the learned Advocate General we find that the reasons recorded by the respondent no.2 in refusing the

requisition sought by the petitioners in terms of Section 59-A of the Act are unsustainable and not justified in law. Consequently the impugned decision/ communication dated 16.1.2017 deserves to be quashed and set aside and the respondent no.2 be directed to take a decision on the application for requisition filed by the petitioners in terms of Section 59-A of the said Act a fresh in accordance with law.

10. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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