

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 191 OF 2017

MRS. MARIA ARINA PEREIRA, THR. HER
ATT. HOLDER, MR. PEDRO CAETANO
ANDRE FERNANDES AND ANR.,

... Petitioners

Versus

ASHOKVAN CO-OP. HOUSING SOCIETY
LTD., THR. ITS CHAIRMAN, MR.
KALIDAS SATARDEKAR.,

... Respondent

Mr. Anthony Joe D'silva, Advocate for the petitioners.

Mr. S. P. Munj, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 27th June, 2017

P.C.

Heard the learned Counsel for the petitioners and the learned Counsel for the first respondent.

2. The petitioners, who are the members of the first respondent Society, had approached Assistant Registrar of Co-operative Societies, for a direction to the first respondent to issue No Objection Certificate (NOC) for transfer of the two garages held by the petitioner no.1 in favour of the petitioner no.2 and for refund of an amount of Rs.3,800/- and Rs.43,550/- along with interest. The learned Assistant Registrar, by an order dated 22/09/2010, had directed the first respondent society to pay the amount as claimed and to issue NOC for transfer of garages to

the second petitioner. The first respondent challenged the said order before the Co-operative Tribunal in Co-operative Appeal No.7/2012, which has been partly allowed on 29/04/2016, remanding the matter to the learned Assistant Registrar. Feeling aggrieved, the petitioners are before this Court.

3. I have heard the learned Counsel for the petitioners and the learned Counsel for the respondent and perused the record.

4. It is submitted by the learned Counsel for the petitioners that the main relief claimed by the petitioners is for the issuance of NOC for transfer of the two garages in favour of the petitioner no.2. It is submitted that the Society has unnecessarily raised a dispute about some maintenance charges to be due and payable from the petitioner no.1, but has not produced anything to show that such amount was due and payable. It is submitted that on the contrary, the Society owes an amount as claimed by the petitioner no.1. The learned Assistant Registrar had rightly found that it was the first respondent Society which owes the amount to the petitioner no.1.

5. On the contrary, it is submitted by the learned Counsel for the respondent no.1 that the impugned order was unreasoned and as such, the Co-operative Tribunal was justified in remitting the matter back. The learned Counsel points out that after the

remand, the Assistant Registrar has issued a notice and the matter is now fixed on 01/07/2017.

6. I have considered the rival circumstances and the submissions made.

7. It is true that the petitioner no.1 had approached the Assistant Registrar, primarily for a direction to the first respondent to issue NOC for transfer of the two garages in favour of the petitioner no.2. The petitioner no.1 also claimed that certain amounts were due and payable by the society. The application was allowed by the learned Assistant Registrar, as prayed. Perusal of the impugned judgment of the Co-operative Tribunal would show that the Tribunal, after noticing rule 119 (prior to its amendment) of the Goa Co-operative Societies Rules, 2003 which prescribes the procedure for hearing and decision of the dispute, has come to the conclusion and, to my mind, rightly so that the said procedure was not followed. A Quasi Judicial Authority is expected to consider the dispute in the context of the material on record and then record conclusion supported by reasons. All that the Co-operative Tribunal has done is to send the matter back to the Assistant Registrar. Thus, it will be for the learned Assistant Registrar to consider the question of grant of NOC by the first respondent and the question whether any amount is due, as claimed by the petitioner

no.1. It would be significant to note that there are rival claims in this regard made by the petitioner no.1 and the respondent no.1 against each other. Thus, on the one hand, the respondent no.1 is claiming that there are certain maintenance charges due and payable from the petitioner no.1, on the other, the petitioner no.1 is claiming that an amount, as claimed in the application, is due and payable from the first respondent Society. This issue, being a disputed question of fact, cannot be gone into in the present petition. The learned Counsel for the petitioners has submitted that the application was filed by the petitioner no.1 way back in the year 2010 and a simple matter about grant of NOC is pending for more than 7 years. I find that the proceedings before the Assistant Registrar can be expedited so as to take care of the apprehension of the petitioners about there being any further delay in the matter.

8. In the result, no case for interference is made out. Writ Petition is hereby dismissed. The learned Assistant Registrar shall decide the application as expeditiously as possible and within a period of three months from the receipt of this order. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA