

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1195 OF 2016

Shri Sanjay Walavalkar	... Petitioner
Versus	
The State of Goa & Ors	... Respondents

Mr. D. J. Pangam and Mr. Pankaj P. Pai Vernekar, Advocates for the Petitioner.

Mr. D. Lawande, Advocate General with Mr. P. Dangui, Government Advocate for Respondent Nos.1 to 3.

Mr. S. S. Kantak, Senior Advocate with Mr. A. Kamat, Advocate for Respondent No.4.

***Coram : N.M. Jamdar &
Nutan D. Sardesai, JJ.***

Date : 8 November 2017.

P.C.:

By this petition, the Petitioner has sought the following reliefs:

(a) This Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondent No.4 to

convene a Special General Body Meeting to transact the agenda as requisitioned by the 18 requisitioning members vide their letter dated 07.11.2016 addressed to the Chairman/Secretary of the said society and to hold the same under the supervision and control of the Respondent Nos.2 and/or 3 as the observers to oversee such meeting.

(b) This Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondent Nos. 2 and/or Respondent No.3 to direct the Respondent No.4 to convene a Special General Body Meeting to transact the agenda as requisitioned by the 18 requisitioning members vide their letter dated 07.11.2016 addressed to the Chairman/Secretary of the said society and to hold the same under the supervision and control of the Respondent Nos.2 and/or 3 as the observers to oversee such meeting.

2. By way of an amendment dated 2 January 2017 the following three reliefs have been added:

(a) This Hon'ble Court be pleased to declare that the Notice dated 29/12/2016 addressed by the Secretary of the Respondent No.4, thereby proposing to convene the meeting of the Managing Committee inter-alia to induct new members to the General Body of the Respondent No.4 is illegal and bad in law and the same be quashed and set aside.

(b) This Hon'ble Court be pleased to declare that the holding of the Meetings of the Managing Committee of the Prabodhan Education Society on 17/09/2017 and 18/09/2017 and the decisions taken there-at (including in respect of induction of Respondent No.5 to 26) are illegal and non-est and the same be quashed and set aside and the Respondent No.5 to 26 be restrained from acting as members of the Respondent No.4 for all intents and purposes.

(c) This Honourable Court be pleased to restrain the Managing Committee of the Respondent No.4 from admitting or inducting any new members to the General Body of the Respondent No.4, pending holding of the Special General Body Meeting as requisitioned by 18 members of the

Respondent No.4 vide their letter dated 07.11.2016.

3. Mr. Kantak, the learned Senior counsel for Respondent No.4 raised a preliminary objection that the Writ Petition against the private institution such as Respondent No.4 is not maintainable. Mr. Pangam, the learned counsel for the Petitioner submitted that Respondent No.4 receives 100% grants from the public fund and therefore is amenable to writ jurisdiction. We are not finally concluding this issue in view of the order that we propose to pass, where we are not inclined to enter into the merits of the dispute.

4. The Petitioner filed the present petition on 22 December 2016 contending that Respondent No.4 had committed an illegality by not convening the Special General Body Meeting of the society inspite of the requisition duly made by one third total members, as per clause 3(v) of the Rules of the Society. It is the case of the Petitioner that the requisition letter was sent on 7 November 2016 and inspite of it is mandatory to do so, the Special General Body Meeting was not called for. The Petitioner also made a grievance as against the State Authorities

for not taking any action under Section 20(A) of the Societies Registration (Goa Second Amendment) Act, 1998 inspite of the complaint.

5. It appears that while this petition was pending, Respondent No.4 enrolled certain members who have been joined as added Respondents. The Petitioner has carried out an amendment and has sought to question the inclusion of the added Respondent Nos.5 to 26 and for a relief that they should be restrained from acting as members. Some of these added Respondents have been served.

6. As stated earlier, the Petitioner has made a complaint to Respondent No.3 in respect of the management of Respondent No.4-society. Mr. Pangam, sought to raise various issues as regards the inclusion of the added Respondents and the conduct of Respondent no.4.

7. We have noticed the provisions of the Societies Registration (Goa Second Amendment) Act, 1998, more particularly Section 20(A) thereof, which reads thus :

"20A. Investigation of affairs of society-(1) where, on information received under section 4A or otherwise, or in circumstances referred to in section 12D, the Inspector-General is of the opinion that there is apprehension that the affairs of the society registered under this Act, are being so conducted as to defeat the objects of the society or that the society or its governing body, by whatever name called, or any officer thereof in actual effective control of the society is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations, the Inspector-General may, either himself or by any person appointed by him in that behalf, inspect or investigate into the affairs of the society or inspect any institution managed by the society.

(2) It shall be the duty of every officer of the society when so required by the Inspector-General or other person appointed under sub-section(1) to produce any books of accounts or other records of or relating to the society which are in his custody or to give him all assistance in connection with such inspection or investigation.

(3) The Inspector-General or other person appointed under sub-

section (1) may, call upon and examine on oath any officer, member or employee of the society in relation to the affairs of the society and it shall be the duty of every officer, member or employee, when called upon, to appear before him for such examination.

(4) The Inspector General or other person appointed under sub-section (1) may, if in his opinion it is necessary for the purpose of inspection or investigation, seize any or all the records including the accounts books of the society.

Provided that any person from whose custody such records are seized, shall be entitled to make such copies thereof, in the presence of the person having the custody of such records.

(5) On the conclusion of the inspection or investigation, as the case may be, the person, if any, appointed by the Inspector-General to investigate or inspect, shall make a report to the Inspector-General on the result of his inspection or investigation.

(6) The Inspector-General may, after such investigation or inspection, give such directions to the society or its governing body or any officer thereof, as he may think fit, for the removal of any defects or irregularities within such

time as may be specified and in the event of default in taking action in accordance with such directions, the Inspector-General may proceed to take action under Section 12D.”

8. *Prima facie*, as per Section 20A(1) on information received "*otherwise*", the Inspector General, if is of the opinion that there is an apprehension that the affairs of the society are conducted to defeat the object of the society, can conduct an inquiry and the course of action as specified in Section can be taken. We however do not finally conclude the issue as we do not wish to preclude the parties for taking this contention in law. However, considering the nature of lis brought before us, which is an internal dispute between a society, we find it appropriate that instead of considering the issue of internal management of a society, at the first instance under Article 226 of the Constitution of India, an authority under the enactment can consider the same first. Since the Petitioner has already approached the Inspector General under Section 20(A) and the Inspector General is considering the complaint and that it is the grievance of the Petitioner that certain developments have taken place pending the decision of the complaint, even the subsequent grievance of

the Petitioner can be considered by the Inspector General on its own merits. Since the Inspector General is an authority under the Act, it will be appropriate that the matter is first looked into by the Authority under the Act, before this Court is called upon to decide the issue of internal management of the society at first instance.

9. Mr. Pangam states that the compilation of documents along with consolidated statement will be furnished to Respondent No.4 and the authorities within a period of one week. Mr. Lawande, the learned Advocate General states that after the documentation is so received within one week, the decision there upon, after hearing the parties and giving them opportunity to file reply, will be taken within a period of six weeks.

10. Accordingly, we dispose of the Writ Petition by directing Respondent No.3 i.e. the Inspector General, before whom the complaint is made by the Petitioner is pending, to consider the additional grievance made by the Petitioner as well. The Inspector General will decide the matter on its own merits as per law. All contentions of all parties are kept open, including the

one mentioned above.

11. The ad-interim order passed in this petition, in the form of statement recorded will continue till disposal of the complaint and two weeks thereafter.

12. Writ Petition is accordingly disposed of.

Nutan D. Sardesai, J.

N.M. Jamdar, J.