

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 402 OF 2018**

1. Mrs. Noella Fernandes,
Major, business, resident
of Apartment no. A 101,
2. Dr. Alan Andrade,
Major in age, married,
resident of Flat no.B-402,
represented by his son
Dr. Neil Andrade,
major in age bachelor,
dentist, POA holder
vide POA dated 02/03/2017
both resident of Apartment
No.B-402, both situated at
Infinity Enclave Co-operative
Housing Maintenance Society,
Near Krishna temple,
Nagali Hills Colony, Dona Paula,
Taleigao, Goa.

.... Petitioners

V e r s u s

1. Registrar of Co-operative Societies,
Central Zone, Panaji, Goa
having office at Sahakar Sankul,
EDC Plaza, Patto, Panaji Goa.
2. Assistant Registrar Co-operative Societies,
Central Zone, Panaji Goa
having office at Sahakar Bhavan,
Opp. Municipal market, Panaji, Goa.
3. Infinity Enclave Co-operative
Housing Maintenance Society,
Near Krishna temple,
Nagali Hills Colony,
Dona Paula, Taleigao, Goa
Through its Managing Committee

4. Mr. Aneet Coutinho,
Chairman of the respondent no.3,
Major in age, married,
 5. Mr. Antonio Costa,
Secretary of the respondent no.3.
Major in age, married.
 6. Mr. Suresh Narayan,
Treasurer of the respondent no.3,
All resident of Infinity Enclave Co-operative
Housing Maintenance Society,
Near Krishna temple, Nagali,
Hills Colony, Dona Paula,
Taleigao, Goa.
 7. State of Goa,
Through Chief Secretary,
having office at
Secretariat Complex,
Porvorim, Bardez-Goa.
- Respondents

Shri Melwin A. Viegas, Advocate for the Petitioners.

Shri Arun Talaulikar, Addl. Government Advocate for Respondent no.1, 2
and 7.

Shri V. Naik, Advocate for Respondent no.5 and 6.

CORAM: C. V. BHADANG, J.
DATE: 10th August, 2018.

ORAL JUDGMENT:

Rule, made returnable forthwith. Shri Talaulikar, the learned
Additional Government Advocate waives service for respondent no.1, 2 and 7

and Mr. Naik, the learned counsel waives service for respondent no.5 and 6. Heard finally by consent of parties.

2. This petition has to succeed on a short count. The election to the board of directors of the third respondent Co-operative Housing Maintainable Society are proposed to be held and hence the first respondent Registrar of Co-operative Societies had undertaken the exercise of the preparation of the voter's list. Rule 53 of the Goa Cooperative Societies Rules 2003 speaks of preparation of a provisional list of voters. The said rule envisages that the provisional list of voters shall be prepared by every such society in the year in which the election of such society is due to be held. The elections were due to be held on 21/4/2018. Admittedly, the petitioners were enrolled as members of the Society subsequent to 31/3/2017. The cooperative year is from 1.4.2016 to 31/3/2017.

3. The petitioners lodged an objection before the first respondent claiming that their names should be included in the list of voters on the ground that the elections being held in the cooperative year 2017-2018, 31/3/2017 cannot be the cut off date. The record discloses that the respondent no.2 on 9/3/2018 came to the conclusion that the claim of the petitioner has to be accepted and their names will have to be included in the voter's list. He

accordingly directed publication of the final list of voters including the names of the petitioners on 9/3/2018. However, subsequently on 12/3/2018, the second respondent found that the objection raised by the petitioners cannot be considered as the petitioners were enrolled as members after 31/3/2017.

4. The learned counsel for the petitioners apart from placing reliance on Rule 53 of the Rules has submitted that the second respondent could not have varied the order dated 9/3/2018 without hearing the petitioner. It is undisputed that after the Registrar had come to the conclusion on 9/3/2018 that the names of the petitioners are required to be included, there was no opportunity of hearing granted to the petitioners. However, the order was varied and it was held that they are not entitled to be included. Thus there appears to be a clear breach of principles of natural justice in this case.

5. Shri Talaluikar, the learned Additional Government Advocate for the respondent no.2 in all fairness submits that the second respondent shall hear the petitioner afresh and shall pass appropriate orders in accordance with law. In such circumstances, the following order is passed:

ORDER:

- (i) The petition is partly allowed.
- (ii) The impugned order dated 12/3/2018 is hereby set aside.

(iii) The second respondent shall hear the petitioner or their representative and shall decide their objection in accordance with law. The Registrar shall also consider to hear the representative of the society or any other interested party including the respondent no.5 in accordance with law if need be.

(iii) The petitioner to remain present before the Registrar on 24/8/2018 at 10 a.m.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/