

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 86 OF 2020

Shri Kiran Vasant Naik,
major of age, Indian National,
'Sanrit' Apartments,
Near Masjid, Malbat,
Margo, Salcete, Goa.

..... Petitioner

V e r s u s

1. Mr. Shirish Kamat,
S/o V. Kamat,
Major of age, Married,
businessman, having office
at C-6, Vishal Apartments,
Behind Vasant Theatre,
Aquem, Margao, Salcete, Goa
2. Registrar of Cooperative Societies,
Government of Goa, having office
at 'Sahakar Sankul', 4th and 5th floors,
EDC Complex, Patto, Goa, Goa.
3. Raju Mukdam,
Major of age, Indian National,
Chairman Committee Administrator,
Shekhar Bhavan Kruti,
Ponda-Goa 403 401
4. Suryakant Gawas,
Major of age, Indian National,
Assistant Registrar of Co-operative
Societies, Gomant Vidhya Niketan
Building, Margao-Goa. (deleted as per order dtd.
17.2.2020)
5. Pundalik Naik,
Major of age, Indian National,
Kalika Building, Gopal Housing
Board, above Bank of Maharashtra. (deleted as per order dtd.
17.2.2020)
6. Upaso Gaonkar,
Major of Age, Indian National,
Muta S. Paroda,
Quepem-Goa (deleted as per order dtd.
17.2.2020)

7. Vidya Vikas Co-operative Housing Society, Ltd.

Through its Chairman,

Committee of Administrators,

Telaulim,

Navelim, Margao-Goa.

(Amendment carried out as per order dtd. 12.2.2020)

..... Respondents

Adv. Parag S. Rao with Adv. Sandhya Kushawaha for the Petitioner.

Adv. Nigel Da Costa Frias for the Respondent no.1

Mr. M. Salkar, Government Advocate for the Respondent no.2.

Adv. S. Sardessai for the Intervenor.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 25th February, 2020.

Oral Order:

Facts:

Initially, the Cooperative Society was not a party to this writ petition.

Later, it was added as the 7th respondent. Then, the petitioner, with the Court's leave and at his own risk, deleted from the array of parties certain respondents. That is how the Cooperative Society now is the fourth respondent.

2. The Cooperative Society was established in 1984. Then, it had 16 members. Later, in 1991, 28 members were inducted, the petitioner being one amongst them. By then, as per the petitioner, only 2 of the 16 original members were active. Eventually, these 30 members (28 +2) contributed money and purchased a plot of land. In January 2007, the Cooperative Society entered into a development agreement with a builder: M/s. Appollo Engineers & Contractors Pvt. Ltd. The petitioner is said to be one of the Directors of that Company. But Appollo could not construct the buildings as undertaken in the agreement; so in 2008, it assigned its right in the

agreement to one Vrudhi Buildcon Pvt. Ltd. Even that second contractor could not fructify the scheme.

3. In turn, Appollo signed an MOU with Shirka Constructions, a proprietary concern, owned by the first respondent. To this MOU, the second contractor, Vrudhi, was a consenting party. Shirka began the construction but developed disputes with Appollo. Then, in February 2015, Appollo issued a notice, terminating the MOU. Thereafter, it has filed Special Civil Suit No.39/2015/III, before the Court of Civil Judge, Senior Division, at Margao. In that suit, Appollo sought a declaration, injunction, and damages. In January 2017, the trial Court granted injunction against Shirka. This injunction, sustained itself against Shirka's challenge by up to the Supreme Court.

4. On a different front, one Mr. Raikar, described by the petitioner's counsel as a one-man NGO, not being a member of the Society, complained to the Registrar about the alleged malpractices in the Society. He has, it seems, alleged that all the 28 members were wrongfully inducted into the Society. The complaint was in 2016; these 28 members were inducted in 1991. After appreciating the lack of standing on that complainant's part, the Registrar of Cooperative Societies, that is the second respondent, took up the complaint *suo motu* and appointed an inquiry officer. That inquiry officer, in June 2017, submitted her report, holding *prima facie* that these members were improperly inducted.

5. Acting on the Inquiry Report, the Registrar issued notices to all the 28 members, as well as the Society. In the inquiry that ensued, the first respondent participated. Not a member, he secured a letter of authority from one of the members of the Society and participated. Indeed, the first respondent does maintain that he has been a member since 2011. We need not visit that controversy.

6. In September 2017, the member who gave the letter of authority to the first respondent withdrew it. In that backdrop, the first respondent asserted himself to be a member and wanted to be impleaded in the inquiry. But through an order in May 2018, the Registrar rejected that impleadment. Later, in July 2018, the first respondent raised a dispute under Section 83 of the Goa Cooperative Societies Act, 2001. We are not concerned with that either.

7. The first respondent's counsel submits that the Registrar has tagged the first respondent's application under Section 83 of the Act with the dispute about the legality of the membership.

8. Eventually, through an order dated 22.8.2019, the Registrar of the Societies held that the membership of all the 28 is deemed to have been regularized. Soon thereafter, the first respondent filed WP No.851/2019 before the Division Bench of this Court. In fact, in that writ petition, to which those 28 members are not parties, the first respondent, wanted a direction to the Government and the Registrar. For he wanted those authorities to consider his complaint pending before the Registrar. That

apart, he wanted the Court to restrain the Committee of Administrators from holding the Annual General Body Meeting, too. The learned Division Bench, through its order dated 17.2.2020, disposed of that writ petition. I reckon the Division Bench's order does not affect this writ petition.

9. Now we may confine ourselves to the developments regarding the review application the first respondent has filed. On 3.10.2019, the first respondent wanted the Registrar to review its decision about the deemed regularization of the membership.

10. First the Dy. Registrar returned the review petition on the premise that the Registrar had no jurisdiction. The petitioner's counsel contends in this regard that the Dy. Registrar acted for the Registrar and the rejection is deemed to have been by the Registrar himself. On 6th and 10th February 2019, the first respondent again wrote to the Dy. Registrar of the Society. He maintained that the Dy. Registrar is not the competent authority to return the Review and that he should place it before the Registrar.

11. In the meanwhile, on 30th December 2019, the Cooperative Society had its elections held, the 28 members included. One from among the 16 founding members and three from the later inducted 28 were elected as Officer Bearers, unopposed. The very next day, the first respondent applied to the Registrar for having the order under Review stayed. Then, the Registrar of the Cooperative Society granted a stay till the disposal of the Review.

12. On 23rd January 2020, the petitioner applied to the Registrar, seeking leave as an intervenor. But later, he withdrew that application and filed this writ petition. To justify that course of action, the petitioner's counsel submits that the successor Registrar has stayed the order passed by the previous Registrar. According to him, first, the Registrar has no jurisdiction to review his own order. Second, even the attitude of the present Registrar reveals that the outcome of Review is a *fait accompli*. Plainly put, he asserts that the petitioner would not get justice. So he is said to have filed this writ petition.

13. The Intervenor sails with the first appellant, So I need not set out his arguments in detail.

14. Heard Shri Parag S. Rao with Adv. Sandhya Kushawaha for the Petitioner; Shri Nigel Da Costa Frias for the Respondent no.1; Shri M. Salkar, the learned Government Advocate for the Respondent no.2; and Shri S. Sardesai for the Intervenor.

Discussion:

15. To begin with, the intervenor, strange as it may sound, is one of these 28 members, whose legitimacy to be members hangs in balance. He is also said to be an officer bearer, being part of the Committee of Administrators

16. The first question is whether the Registrar has the powers under the Act to review his own order. The petitioner's counsel wants this Court to exercise its extraordinary jurisdiction under Article 226 or 227 of the

Constitution of India and rule on that aspect. Usually, the Constitutional Court allow authorities to exercise their jurisdiction. If that exercise is wrongful, it issues Mandamus, countermanding the order. In the alternative, if the authorities refuse to exercise the jurisdiction vested in them, again the Court issues Mandamus, commanding them to act. Still, if the authorities lack jurisdiction but proceed to act, the Court issues a writ of Prohibition.

17. True, here, once it is a matter concerning lack of jurisdiction, which renders all the proceedings void, the Court may as well decide on its own, instead of letting the authority decide first and then review that decision. That said, this case has a very chequered history. Intervening at this stage, I am afraid, only multiplies the litigation.

18. So, without prejudice to the contentions of the parties on either side and without advertng to the merits, I issue the following directions:

- (i) The second respondent/Registrar will decide whether the statute empowers him to review his own order.
- (ii) Whether the Registrar should proceed further in the matter shall depend on his findings on the first question, as it is a matter of inherent jurisdiction.
- (iii) The first respondent ought to have brought on record in the Review the members whose membership is in dispute. If they had not been parties, they could as well appear before the Registrar and defend themselves. If they are already members, as the first respondent maintains, their right to participate remains unaffected.
- (iv) Given the apprehension expressed by the petitioner's counsel, I hold that once the Registrar passes an order, notwithstanding its outcome, it shall not be given effect to, for two weeks from

the date the order is made available to the parties, so that any aggrieved person can have his or her options of assailing the order.

- (v) As there is a blanket stay in operation, the Registrar will decide as a preliminary issue the question of his powers to entertain the review and pass orders on that count.
- (vi) The Registrar will take up the issue of membership only after his rendering a finding on his jurisdiction and after a lapse of two weeks, as indicated above.

With these observations, I dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

ap/-