

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1025 OF 2019

Sociedade Patriotica Dos Baldios
Das Novas Conquistas, of Uguem,
Sanguem, Goa, having registered
office at Hotel Arcadia, Panaji, Goa,
(through its lawful attorney
George Agnelo D'Souza, major,
married, service, r/o Ghanemorod,
Xeldem, Quepem, Goa).

.... Petitioner

Versus

1. The State of Goa,
through Chief Secretary,
Secretariat, Alto Porvorim,
Bardez, Goa.
2. The State Registrar,
Registration Department,
Government of Goa,
having office at 7th floor,
Shramshakti Bhavan,
Patto, Panaji, Tiswadi, Goa.
3. District Registrar (South)/
Inspector General of Societies,
Registration Department,
Government of Goa,
having office at 2nd floor,
Osia Commercial Complex,
“D” Wing, Margao, Goa.

4. Sociedade Patriotica Dos Baldios
Das Novas Conquistas,
purportedly and erroneously
registered as a society vide
No.93/Goa/2017 under the
Societies Registration Act,
with its registered office at
Costi, Kalay, Sanguem, Goa.
C/o Sushant Shivdas Naik,
son of Shivdas Naik, major,
House No.103, Costi, Kalay,
Sanguem, Goa.

.... Respondents

Mr. A. F. Diniz, Senior Advocate along with Mr. Ryan Menezes and
Mr. N. Fernandes, Advocates for the Petitioner.

Ms. Ankita Kamat, Addl. Government Advocate for the Respondents
No.1, 2 and 3.

Mr. Sanket kamat, Advocate for Respondent No.4.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKER, JJ.

Date:- 14th February, 2020

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. A. F. Diniz, Senior Advocate along with Mr. Ryan Menezes and Mr. N. Fernandes, for the Petitioner. Ms. Ankita Kamat, Additional Government Advocate appears for the Respondents No.1, 2 and 3 and Mr. Sanket Kamat appears for Respondent No.4.

2. Leave is granted to amend the prayer clause. Amendment to be carried out forthwith. This leave is granted because from the pleadings in the petition, it is very apparent that the challenge is to the communication dated 21.05.2018 made by the respondent no.3 rejecting the petitioner's objections to the registration of the respondent no.4 society in the name which is identical to that of the petitioner. However, in the prayer clause, by inadvertence, there is no specific prayer for quashing the communication dated 21.05.2018.

3. On 27.11.2019, whilst issuing notice, it was made clear that subject to constraints of time, endeavour shall be made to dispose of this petition finally at the stage of admission. Accordingly, we issue Rule. With the consent of and at the request of the learned counsel for the parties, the Rule is made returnable forthwith.

4. The petitioner has pleaded that it is a society duly constituted under the laws in force (erstwhile) Portuguese Regime, then regulated and approved by Governor General of Goa by virtue of powers vested vide No.3 of Article 26 of the current "Carta Organica" approved by Decree No.12499-A of 04.10.1926, after the approval of the Council of the Government and duly approved by Secretariat of the Government, Panjim on 19.11.1928.

5. The petitioner has pleaded that it owns substantial properties in the taluka of Sanguem, acquired by it during the subsistence of the (erstwhile) Portuguese Regime in Goa. It is pleaded that such acquisition is duly entered into and/or reflected/borne from land registration records and recorded in matriz records, as well as current survey records. The petitioner has pleaded that the object and purpose of the petitioner society is to promote cultivation and development of lands and to take such measures as may be necessary for this main purpose.

6. The petitioner has pleaded that the persons referred to in paragraph 2(F) of the petition, which includes one Mr. Sushant Shivdas Naik, have for some time now and on many occasions made several attempts to interfere with and/or disturb the petitioner's possession of some of its properties for which cases have been filed by the petitioner society against the said Mr. Sushant Naik. The petitioner has further pleaded that on or about 10.09.2017 said Mr. Sushant Naik filed a false complaint at the Sanguem Police Station alleging that the petitioner society was engaging in illegal sale of government lands. In the inquiry which followed, the said authorities were satisfied that the complaint was false.

7. The petitioner has further pleaded that in the course of the

inquiry at the police station, the office bearers of the petitioner learnt that Mr. Sushant Naik had claimed to be the President of the society in the name and style of “*Sociedade Patriotica Dos Baldos Das Novas Conquistas*”, which is today impleaded as respondent no.4 to this petition. The petitioner society bears the very same name since last over a century and therefore, applications were made under the Right to Information Act, 2005 in order to ascertain and/or determine the veracity of the claims made by Mr. Sushant Naik.

8. Necessary information regards incorporation and registration of respondent no.4 society was furnished to the petitioner on 25.10.2017.

9. The petitioner addressed representation dated 21.11.2017 to the Chief Secretary, State of Goa pointing out that the registration of the respondent no.4 society in the name identical to that of the petitioner society was malafide and effected with ulterior and/or oblique motive to claim rights in the properties of the petitioner society. This representation was forwarded through respondent no.2 to respondent no.3 who was called upon to initiate due processes including hearing both parties and take appropriate action in his capacity as Inspector General of Societies/District Registrar (South). The petitioner has pleaded that this was consistent with the provisions of Section 12A(5)

of the Societies Registration Act, 1860 as applicable in the State of Goa.

10. The record indicates that the respondent no.3 issued notices to the petitioner and respondent no.4. After hearing them, the respondent no.3 vide impugned communication dated 21.05.2018 rejected the petitioner's objections. Hence the present petition.

11. Mr. A. F. Diniz, learned Senior Advocate for the petitioner refers to the provisions in Section 3A and Section 12A(5) of the Societies Registration Act, 1860 as applicable in the State of Goa (said Act) to submit that the Inspector General of Societies ought not to have in the first place registered the respondent no.4 society with the name identical to the name of the petitioner society. In the alternate learned Senior Advocate submits that the Inspector General of Societies was duty bound to exercise the powers vested in him by Section 12A(5) of the said Act and direct the respondent no.4 society to change its name within a period of three months from the date of such directions or such longer period as the Inspector General may think fit to allow.

12. Mr. Diniz submits that the petitioner society is a registered society in terms of the law prevalent at the time of its incorporation and registration. He submits that Section 3A of the said Act makes reference to existing society previously registered. He submits that

Section 3A nowhere speaks about the registration under the said Act. He refers to several other provisions of the said Act to point out that wherever the Legislature intended the registration to be under the said Act, it has said so. He relies upon *Aeon's Construction Products Ltd. v. Commissioner of Central Excise, Chennai – (2005) 10 SCC 637* and *Padma Sundara Rao (Dead) and others v. State of T.N. and others – (2002) 3 SCC 533*, in order to explain the concept of *causus omissus*. He also relies upon *Corn Products Refining Co. v. Shangrila Food Products Ltd. - AIR 1960 SC 142* to explain the meaning of the phrase “*likely to deceive*” as it appears in Section 3A of the said Act. For all these reasons Mr. Diniz submits that the reliefs in this petition may be made absolute.

13. Ms. Ankita Kamat, learned Additional Government Advocate defends the impugned communication on the basis of reasoning reflected therein. She submits that since the petitioner society was admittedly not registered under the said Act, no fault can be assigned to the Inspector General of Societies in registering respondent no.4 society with the same name. She submits that since the petitioner society was never registered under the said Act, the provisions of Sections 3A and 12A of the said Act will really not come to the aid of the petitioner society. For these reasons she submits that this petition may be dismissed.

14. Mr. Sanket Kamat, learned counsel for respondent no.4 relies upon what has been set out in the affidavit of Mr. Sushant Naik, the President and authorised representative of respondent no.4 society. He adopts the submissions of Ms. Kamat and points out that since petitioner society has not bothered to register itself under the provisions of the said Act, the petitioner society cannot seek any assistance of the provisions in Sections 3A and 12A of the said Act.

15. The rival contentions now fall for our determination.

16. As the cause title in this petition suggests, the name of the petitioner society is the following:

“SOCIEDADE PATRIOTICA DOS BALDIOS DAS NOVAS CONQUISTAS”

17. Similarly, the name of respondent no.4 society is also the following:

“SOCIEDADE PATRIOTICA DOS BALDIOS DAS NOVAS CONQUISTAS”

18. From the aforesaid, it is evident that names of the petitioner society and respondent no.4 society are identical.

19. The petitioner as noted earlier, has pleaded that the petitioner is

a society registered under the laws in force during the erstwhile Portuguese Regime. The petitioner has referred to the details of such laws and in fact, enclosed the English translations of such laws as Exhibit A to the petition. Petitioner society, in terms of the documents produced on record, was constituted almost a century ago i.e. between the years 1926 to 1928. The petitioner society has been operating as such for last over 100 years.

20. Though, a detailed affidavit has been filed by respondent no.4, there are no proper denials or in any case, there are only evasive denials with regard to the pleadings relating to attempts made by some persons, which includes Mr. Sushant Naik who has filed the affidavit on behalf of respondent no.4 in relation to the properties of the petitioner society. Mr. Diniz, learned Senior Advocate for the petitioner has contended that the registration of respondent no.4 society, with the identical name is basically for the purpose of usurping the properties of the petitioner society or in any case, attempting to deceive and create confusion with regard to the status of such properties.

21. Section 3A of the said Act reads as follows:

“3A. Prohibition against registration of societies with undesirable names.— No society shall be registered by a name

which, in the opinion of the Inspector-General, is undesirable, being a name which is identical with, or which in the opinion of the Inspector-General so nearly resembles the name by which any other existing society has been previously registered as to be likely to deceive the public or members of either society, or which is being used without the previous permission of the Government concerned, and which suggests or is calculated to suggest the patronage of any Government or connection with any body constituted by any Government or local authority, or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Inspector-General.”

22. The aforesaid provision prohibits the Inspector General of Societies to register any society by a name which, in his opinion, is undesirable, being a name which is identical with, or which in the opinion of the Inspector General so nearly resembles the name by which any other existing society has been previously registered as to be likely to deceive the public or members of either society, or which is being used without the previous permission of the Government concerned, and which suggests or is calculated to suggest the patronage of any Government or connection with any body constituted by any Government or local authority, or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Inspector General. The Proviso however makes it clear that no orders shall be passed under Section 3A unless the party against whom such order is proposed to be passed is heard on the matter.

23. The contention of Ms. Kamat that at the stage of registration, the Inspector General of Societies is basically required to go by the information available with him and that such information, will normally stem from the details of the societies registered under the said Act is quite reasonable and deserves to be accepted. At the stage of registration, it cannot be expected that the Inspector General of Societies undertakes search of identical names or names which so nearly resemble the name of the applicant, particularly when the societies which bear such names have not been registered under the said Act. Therefore, it cannot be said that the very registration of the respondent no.4 society was illegal or unjustified.

24. However, further reference is necessary to the provisions in Section 12A, including in particular, sub-section 5 of Section 12A of the said Act, which are quite relevant to decide the issue which arises in the present petition.

25. Section 12A of the said Act reads as follows:

“12A. Registration of change of name.— (1) Where a proposition for change of name of a society has been agreed to and confirmed in the manner specified in section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Inspector-General for registering the change of name.

(2) If the proposed change of name is in his opinion undesirable

for any of the reasons mentioned in section 3A, the Inspector-General shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Inspector-General shall, if he is satisfied that the provisions of the Act in respect of the change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case and on the issue of such a certificate, the change of name shall be complete.

(4) The Inspector-General shall charge for any copy of a certificate issued under sub-section (3) a fee of one rupee and all fees so paid shall be accounted for to the Government.

(5) If, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions of section 3A), the Inspector-General, may, after hearing the party concerned, direct the society to change the name, and the society shall change its name within a period of three months from the date of such direction or such longer period as the Inspector-General may think fit to allow, in accordance with the provisions of this Act.”

(Emphasis supplied)

26. The record indicates that the petitioner society did apply for exercise of powers under Section 12A(5) of the said Act by the Inspector General of Societies. Section 12A(5) provides that if, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions

of section 3A), the Inspector General, may, after hearing the party concerned, direct the society to change the name, and the society shall change its name within a period of three months from the date of such direction or such longer period as the Inspector General may think fit to allow, in accordance with the provisions of this Act. Therefore, it is quite clear that the Inspector General was duty bound to consider and dispose of the petitioner's application seeking directions to the respondent no.4 society to change its name so that the same is not identical to the name of the petitioner society.

27. The Inspector General has taken the view that since the petitioner society was not registered under the said Act, it cannot be said that the registration of the respondent no.4 society with the name identical to that of the petitioner society is some undesirable name as contemplated by Section 3A of the said Act.

28. As noticed earlier, Section 3A of the said Act merely makes reference to *“any other existing society has been previously registered”*. Section 3A does not speak of registration under the said Act i.e. the Societies Registration Act, 1860 as applicable to the State of Goa. Mr. Diniz has pointed out to the provisions under Section 3B(2), 4A, 11A, 12C, 20A in which, the expression used is *“society registered under this Act”*. This means that wherever the Legislature intended to refer

to societies registered under the said Act, the Legislature has said so in specific terms by using the expression “*society registered under this Act*”. However, such expression, is conspicuous by its absence in Section 3A of the said Act. This point, has been clearly missed by the Inspector General of Societies.

29. In *Aeon's Construction Products Ltd. (supra)*, the Hon'ble Apex Court, in the context of certain provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985 has observed that significantly in respect of issuance of show cause notices, no such power has been given to the Board. *This itself indicates that where the legislature so intended it specifically so provided. Thus where the legislature has purposely omitted to so provide, it clearly indicates that the Board was not authorised to limit powers under the Act.* Section 37 merely gives rule-making power to the Central Government. No rule could be shown under which the Board could whittle down the jurisdiction of a Central Excise Officer as given to that officer under the Act.

30. Similarly, in *Padma Sundara Rao (Dead) and others (supra)*, the Hon'ble Supreme Court has considered the rival pleas regarding rewriting of statute and *casus omissus* and held that it is well-settled principle in law that the Court cannot read anything into a statutory

provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. “*Statutes should be construed, not as theorems of Euclid*”, Judge Learned Hand said, “*but words must be construed with some imagination of the purposes which lie behind them*”. By reference to its earlier decision in *D. R. Venkatchalam v. Dy. Transport Commr.* - (1977) 2 SCC 273, Hon'ble Supreme Court observed that the courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

31. Finally, the Hon'ble Supreme Court has held that two principles of construction – one relating to *casus omissus* and the other in regard to reading the statute as a whole – appear to be well settled. *Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or*

section must be construed together and every cause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “*An intention to produce an unreasonable result*”, said Danckwerts, L.J., in *Artemiou v. Procopiou* (at All ER p. 544-I), “*is not to be imputed to a statute if there is some other construction available*”. Where to apply words literally would “*defeat the obvious intention of the legislation and produce a wholly unreasonable result*”, we must “*do some violence to the words*” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where at AC p. 577 he also observed (All ER p. 664-I) “*This is not a new problem, though our standard of drafting is such that it rarely emerges.*”

32. Applying the aforesaid principles to the statute in question, some meaning, will have to be assigned to the absence of the expression “*society registered under this Act*” and the use of the expression “*any other existing society has been previously registered*”. Taking into consideration the object of Section 3A of the said Act, namely to prohibit registration of societies with undesirable names, it is

reasonable to proceed on the basis that the omission was quite deliberate. If the omission was deliberate, it is not for the courts to supply the omission particularly when such supply will neither suppress the mischief nor advance the purpose for which Section 3A of the said Act came to be enacted in the first place. As noted earlier, the records do indicate that the petitioner is also a society registered under the erstwhile laws and has been operating since last over a century or thereabouts.

33. Since, the name of the petitioner society and the name of the respondent no.4 society is identical, obviously, in terms of Section 3A of the said Act, the registration of respondent no.4 society with such a identical name is undesirable. Even otherwise, Section 3A makes reference also to the name, which in the opinion of the Inspector General so nearly resembles the name by which any other existing society has been previously registered as to be '*likely to deceive*' the public or members of either society. Further, Section 3A, deems registration of societies with such identical names or names which so nearly resemble the names of any other existing societies as to be likely to deceive the public is undesirable.

34. Section 12A(5), again, makes specific reference to Section 3A and requires the Inspector General to have due regard to the provisions

of Section 3A. Section 12A clearly vests jurisdiction in the Inspector General, after hearing the parties to direct the society to change its name, where, such society has been registered through inadvertence or otherwise by a name which should not have been registered having due regard to the provisions of Section 3A of the said Act.

35. In the facts of the present case, the petitioner, had clearly made out a case for exercise of jurisdiction by the Inspector General under Section 12A(5) of the said Act. However, the Inspector General, by narrowly construing the provisions of Section 3A of the said Act has declined to exercise such jurisdiction or in any case, in the exercise of such jurisdiction, has acted with material irregularity.

36. Since, the name of the respondent no.4 society is identical to that of the petitioner society, no useful purpose will be served by simply setting aside the impugned communication and remanding the matter to the Inspector General in order to determine whether the registration in the identical name is undesirable or not. In the facts and circumstances of the present case, clearly, such registration in the name identical to that of the petitioner society is undesirable.

37. The affidavit filed by respondent no.4 makes extensive reference to the provisions of the said Act in order to urge that the petitioner

ought to have registered itself under the said Act in order to take assistance of the provisions in Sections 3A and 12A of the said Act.

38. No doubt, the provision of Section 17 of the said Act contemplates registration of societies formed before the said Act entered into force. However, in this case, we do not feel it is necessary or even appropriate to go into the issue as to whether the petitioner society, as a matter of mandate, was required to register itself under the provisions of the said Act. This is because Section 3A of the said Act, as interpreted by us, really makes no reference to any registration under this Act as a precondition for invoking the provisions under Section 3A or 12A(5) of the said Act.

39. The affidavit filed on behalf of respondent no.4 also makes reference to petitioner selling properties belonging to the Government or not appropriately distributed the profits to its members. According to us, all these issues are clearly irrelevant and if respondent no.4 has any grievance on that score, it is for the respondent no.4 to take such steps as may be available under the law. However, all such contentions are quite irrelevant to the issue which is raised in this petition.

40. Accordingly, we quash and set aside the impugned communication dated 21.05.2018 made by the Inspector General of

Societies which is to be found at Exhibit G (page 83 of the paper book). Further, we direct the Inspector General of Societies to direct the respondent no.4 society to change its name within a period of three months from the date of issuance of such direction. The Inspector General of Societies to issue such direction within a period of four weeks from today.

41. We however clarify that we have not interfered with or quashed the registration *per se* of the respondent no.4 society. The registration can continue however, the respondent no.4, will have to change its name so that the same is not identical to the name of the petitioner society or so nearly resembles the name of the petitioner society as is likely to deceive the public or members of either society.

42. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

43. All concerned to act on an authenticated copy of this order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.