

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.366/2022

1. RATNAKAR H. NAIK, aged about 56 years, Indian National, R/o. H. No. 42, Dhondebhat, Neura, Tiswadi, Goa,

2. TIMNO ROOPA GAUDE, aged about 71 years, Indian National, R/o. H. no 1613, Adanwada, Madkai, Ponda, Goa.

... PETITIONERS

Versus

1. THE STATE OF GOA, Through the Chief Secretary, Government of Goa, Secretariat, Porvorim, Goa.

2. THE COLLECTOR NORTH GOA DISTRICT, Government of Goa, Collectorate Building, Panaji, Goa.

3. THE MAMLATDAR, Tiswadi Taluka, Government of Goa, Having Office at Collectorate building, Ground floor, Panaji, Goa.

4. SHRI GANESH RAMA NAIK, Resident of Dongrim, Mandur, Tiswadi, Goa.

5. SHRI RAVIKANT NAIK, Resident of House No.42, Neurawada, Near Mahalaxhmi Temple, Neura, Tiswadi, Goa.

6. SHRI BHIKARO L. MADKAIKAR,
Resident of Gudiwada, Neura, Tiswadi,
Goa.

7. SHRI EKNATH K. NAIK, Resident of
Dongrim, Mandur, Tiswadi, Goa.

8. SHRI KANTA NAIK, Resident of
Gudiwada, Neura, Tiswadi, Goa.

9. THE NEURA-O-GRAND TENANTS
ASSOCIATION, having office at Neura,
Tiswadi, Goa.

...RESPONDENTS

Mr Deepak Gaonkar, Advocate *for the Petitioners*.

Mr Deep Shirodkar, Additional Government Advocate *for the
Respondent-State*.

Mr Arjun Naik with Ms Mehendi Naik, Advocates *for the
Respondents No.4, 5, 6 & 9*.

CORAM: S.V. GANGAPURWALA, ACJ &
M. S. SONAK, J.

DATED: 21st February 2023

ORAL JUDGMENT: (Per S. V. Gangapurwala, ACJ)

1. Heard Mr Deepak Gaonkar for the petitioners, Mr Deep Shirodkar, learned Additional Government Advocate for the State and Mr Arjun Naik for respondents no.4, 5, 6 and 9.

2. This petition challenges the election of the Managing Committee of the Neura-O-Grande Tenants Association.

3. Learned counsel for the petitioners submits that on 10.02.2021 polling was held for the election of the members and office bearers of the Managing Committee of the Association. The election programme was declared on or about 01.02.2021. Large scale illegalities have been committed by the Mamlatdar and his representative at the time of conducting the election.

4. Learned counsel for the petitioners submits that the voters list was finalized on 28.01.2021. After the voters list was finalized, the Mamlatdar and/or his representative did not have the power to change the voters list. However, on 08.02.2021, new voters were added to the voters list. The same was not permissible. The learned counsel refers to Rule 3(3) of the Goa Daman & Diu Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975, (1975 Rules for short).

5. Learned Counsel for the petitioners further submits that about fourteen proxy voters were not allowed to vote in the election. In case if a member is not in a position to vote in the General Body Meeting held for the election of the members and office bearers of the Managing Committee then, provision exist

for voting by proxy voters. A member may appoint any other member or even a third person to vote on his behalf. Reference is made by the learned counsel to Rule 4(c) of the 1975 Rules.

6. Learned counsel for the petitioners further submits that the list of tenants up-to-date has to be maintained in Form III under Rule 3. That would be sufficient to imply that the voters list cannot be changed and voting rights would be available to only those whose names appear in Form III under Rule 3.

7. Learned Counsel for the petitioners further submits that time and again the petitioners have represented to the respondent authorities. Even the Collector had directed the Mamlatdar to make an inquiry but the Mamlatdar turned a blind eye to the same. The Mamlatdar did not take cognizance of the representations made by the petitioners. In view of this, the petitioners have approached this Court by filing this petition.

8. Mr Deep Shirodkar, the Learned Additional Government Advocate submits that though there is no provision for having the authorisation affirmed before the Executive Magistrate, the same was undertaken for the purpose of authenticity. Further, he submits that the Mamlatdar was not present during the meeting scheduled for electing the members of the Managing Committee

but he deputed his representative. He submits that no illegality has been committed.

9. We have considered the submissions canvassed by the learned counsel for the parties.

10. This Court, in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India, would be slow in interfering with the election process.

11. After hearing the arguments of the learned counsel for the parties it appears that the matter would involve disputed questions of facts.

12. As far as the addition of members on 08.02.2021 is concerned, out of the two orders passed on 04.01.2021 and 03.02.2021, the order dated 04.01.2021 was much prior to the declaration of the election programme. The order dated 03.02.2021 adding four members to the voters list was after the declaration of the election programme. That would not make much difference. Only four members were added by order dated 03.02.2021 whereas the petitioners lost by a margin of twelve votes.

13. As far as the contention with regard to not allowing the proxy voters to vote, none of the proxy voters have filed affidavit.

14. We also do not know as to how this would have affected the result of the election. There is no evidence. Evidence would be required to be adduced in that regard. The same cannot be considered in the writ jurisdiction of this Court under Article 226 of the Constitution of India.

15. In the light of the above, the grievance of the petitioners in this petition cannot be considered. The Mamlatdar can look into the illegalities under Rule 10 of the 1975 Rules. It is for the Mamlatdar to consider the grievance raised by the petitioners, if the petitioners file any application, on its own merits, of course, after considering the say of the petitioners and respondents, expeditiously.

16. With the aforesaid observations, the Writ Petition stands disposed of. Rule is discharged in the above terms.

M. S. SONAK, J.

ACTING CHIEF JUSTICE

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NANDAN
SINGBAL

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