



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CONTEMPT PETITION NO.25 OF 2024.
IN
WRIT PETITION NO. 216 OF 2021**

MOHAMMED HUSSEIN SHAIK AND 2 ORS. ... PETITIONERS.

V e r s u s

STATE OF GOA THR CHIEF SECRETARY
AND 2 ORS.

... RESPONDENTS.

Mr Ethelwald O. Mendes, Advocate for the petitioners.

Mr Deep Shirodkar, Additional Government Advocate for
respondents.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE: 18th February 2025.

P.C

1. Heard learned counsel for the applicants/petitioners.
2. Petitioners want this Court to initiate Contempt Proceedings against the alleged contemnors respondent nos. 1 and 2 for defying the orders of this Court dated 6.2.2023 passed in Misc. Civil Application No.195 of 2023(Filing).
3. To appreciate the submission of the learned counsel for the petitioners, it will be significant to reproduce the order dated 27.06.2017 passed by this Court. The relevant portion of the order dated 27.06.2017 passed by this Court wherein the statement of learned

Advocate General was recorded on the basis of which petition was disposed of viz. Paragraphs 3 to 6 read thus:-

“3. The grievance of the Petitioners in the above Petition is that a renewal of the subject Society has been issued despite of earlier directions issued by the Registrar and the State Government that the affairs of the subject Society would have to be inquired into by a registered Chartered Accountant before issuance of such renewal. Learned Counsel pointed out that as the renewal has now been granted, the Petitioners apprehend that such inquiry may not be conducted as directed by the State Registrar.

4. Mr. Lawande, learned Advocate General, appearing for the Respondent nos. 1 and 2, however submits that notwithstanding the renewal of the subject Society, the inquiry with regard to the affairs to the extent as directed in the Order dated 03.10.2013 and the Government decision dated 31.10.2014 shall be initiated and taken to a logical conclusion in accordance with law.

5. Mr. E. O. Mendes, learned Counsel appearing for the Petitioners, however submits that the Petitioners be allowed to assist such inquiry. Liberty to the Petitioners, if so advised, to file an appropriate application to that effect before the appropriate forum constituted by State Government which shall be examined on its own merits in accordance with law.

6. The Petition stands disposed of accepting the said statement of the learned Advocate General to complete the inquiry as mentioned in the said Order dated 03.10.2013 and Government decision dated 31.10.2014 in accordance with law.”

4. The order dated 3.10.2013 which forms the basis for filing of the petition on the basis of which aforesaid order dated 27.6.2017 was passed, the relevant portions read thus:-

“1. The application of the Complainant is allowed under Section 20(A) (1) of the Societies Registration (Goa Second Amendment) Act, 1998.

In view of the express powers under the said Act, the preliminary objections as to jurisdiction of the undersigned raised by the Advocate for Respondent is rejected.

2 Since the time of its registration in 1993, the said Society has not renewed its Certificate of Registration and it has presently become an “unregistered Society” under Section 3(B)(5) of the Societies Registration (Goa Second Amendment) Act, 1998. The Respondent have failed to produce the relevant Statutory financial registers during the course of hearings. Pending any application here after for renewal it is hereby ordered that an Auditor appointed by Government shall inspect all cases of irregular, illegal or improper expenditure, or failure or omission to receive moneys or other property thereof, and state whether such

expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misappropriation or any other misconduct on the part of the governing body or any other person including the inspection of the financial registers and other documents and financial issues of the Society “Jamattul Muslimin Shaffi Masjid” and submit his/her report to the undersigned Inspector General of Societies(South) about irregularities if any, observed in the course of its’ inspection, for further necessary action, if any. The cost and expenses of the Auditors shall be borne by the Respondent Society.

3. As regards criminal activities/Breach of Trust enquiry is beyond the scope of this authority hence complainant as such to take appropriate steps before appropriate forum for appropriate relief.

4. About other connected issues like ordering the elections for the Managing Committee, Orders will be issued based upon the report of the Auditors.”

5. One of the respondent had filed Misc. Civil Application No.717 of 2018 in this Court in Writ Petition No.438 of 2017. This Court disposed of the application by making following observations:-

“5. According to us, since the applicants were impleaded as parties to the petition, normally, notice was required to be served on the applicants and the applicants were required to be heard in the matter. However, we find that our order dated 27/06/2017 is not really adverse to the interest of

the present applicants. Besides, we have only recorded the statement of the learned Advocate General that the matter will be taken to its logical conclusion in accordance with law. According to us, the statement made as well as its recording was quite innocuous because even otherwise, it is not only within the province of the Government/appropriate authority to take the matter to its logical conclusion and further in doing so they are required to act in accordance with law. This requirement of acting in accordance with law will obviously include affording of opportunity to not only the original petitioner but also the present applicant. We have no doubt that such opportunity will be extended to both the original petitioner as well as to present applicants.

6. In the course of such opportunity, it will be undoubtedly open to the applicants to point out that the directions in the order dated 03/10/2013 or for that matter any other order stands complied with and there is nothing further remaining for compliance. Similarly, it will be open to the original petitioner to point out otherwise. This means that all contentions of all the parties are left specifically open.

7. Besides, if the applicants have any grievance against any action or any stage of action which is initiated, then the applicants, are always at liberty to take out the independent proceedings to question the same. Nothing in our order dated 2706/2017

restricts such right of the applicants or for that matter, of the original petitioner.”

6. Thus the order clearly records that if the applicants therein have any grievance against any action at any stage which is initiated, they are always free to question the same. Further, this Court observed that nothing in the order dated 27.6.2017 restricts such right of the applicants or for that matter the petitioners.

7. Thereafter one of the respondent in the Writ Petition filed Civil Application no. 1662/2022/F for appropriate directions to dispose of inquiry which was the subject matter of the order dated 27.6.2017. The same was disposed of by this Court on 30.11.2022 by following order:-

“4. Mr. Shetye, learned Additional Government Advocate, on instructions from the District Registrar (South), Mr. Arjun Shetye who is present in person, states that the District Registrar (South) will dispose of the enquiry which was the subject matter of order dated 27.06.2017 in Writ Petition No.438/2017 and order dated 27.08.2019 in Miscellaneous Civil Application No.717/2018 in Writ Petition No.438/2017 as expeditiously as possible and in any case within 2 months from today. This statement is accepted and the District Registrar (South) is directed to act accordingly.

5. The petitioner and respondents no.4, 5 and 6 to appear before the District Registrar (South) on

05.12.2022 at 03:30PM. No separate notice will be issued for this appearance.

6. The enquiry shall be held in accord with law and all concerned to cooperate in the early conclusion of this inquiry. All objections of all parties are expressly left open to be considered by the District Registrar and disposed of in accord with law. Further, the District Registrar (South) is directed to dispose of the enquiry finally and not entertain any request for stalling or staying of the enquiry on any grounds.

7, Depending on the outcome of the enquiry, the District Registrar (South) should dispose of the issue of renewal of registration, again, in accord with law. We note that despite 2 orders from this Court, the issue of enquiry and renewal of registration is still pending. The District Registrar (South) is expected to dispose of such matters at the earliest and in accord with law.

8. With the above directions, this petition is disposed of.”

8. Vide order dated 6.2.2023, an application for extension of time was made by the District Registrar (South Goa).

9. Learned counsel for the petitioners submits that the respondents have committed breach of the order dated 6.2.2023. We find that the order dated 6.2.2023 is only an order for extension of time to complete the inquiry. However, it is the submission of the learned counsel for the

petitioners that respondents have committed breach of the order dated 27.6.2017, consequence of which is the order dated 6.2.2023 passed in Misc. Civil Application No.195 of 2023(Filing). Learned counsel for the petitioners submitted that in view of the directions of this Court what the respondents ought to have done is to have conducted a full inquiry and not a preliminary inquiry and that too in a great hurry as has been done by the respondents.

10. Learned Additional Government Advocate placed on record note of the District Registrar dated 19.5.2023, a communication dated 25.8.2023, Letter dated 5.10.2023 addressed by Under Secretary(Estt), Law Department to State Registrar-cum- Head of Notary Services and the order dated 1.11.2023 regarding renewal of the society. It is the contention of the learned counsel for the petitioners that the respondents have defied the orders passed by this Court as a full inquiry was not conducted. Perusal of the note indicates that the inquiry was conducted (which according to the petitioners is a preliminary inquiry and not full inquiry) The note records are as under:-

“In the course of initial enquiry as the Inquiry Authority, undersigned as the District registrar (South)/Inspector General of Societies with due procedure tried to get names of Chartered Accountants initially from both the parties itself so as to have consensus and cooperation so as to the said investigation. But except the original

complainant who manage to submit names of three Chartered Accountant of which only one Chartered Accountant D.S. Pawooskar from Vasco Da Gama agreed to conduct the said investigation in the affairs of the society from 1993 to 2013 as per the directives in the Order dated 03/10/2013 of Inspector General of Societies as approved by government. (Copy of the Order dated 03/10/2013 is placed in file at 1c to 2/c)

As such name of said Chartered Accountant was finalise and propose and, submitted to Government for post facto approval to conduct the investigation into the financial affairs of the society as per direction in Order dated 03/10/2013 of inspector General of Societies (Copy of said Note is placed in file at 3c to 7c).

And finally considering the time limit allotted by the Hon'ble High Court of Bombay, the District Registrar South/Inspector General of Societies informed and directed said Chartered Accountant D.S. Pawooskar to start the process of conducting the investigation into the financial affairs of the said society and to submit the report in time bound manner. A letter issued to said Chartered Accountant D.S. Pawooskar is placed in file at 8c to 9/c.

After conducting the preliminary audit investigation, said Chartered Accountant D.S. Pawooskar submitted his preliminary report before the District Registrar (South)/inspector General of Societies which is placed in file at 10/c to 21/c.

However prima facia in the said report issues which were as noted in Order dated 03/10/2013 of District Registrar, South, no such expressive irregularities or inflow of foreign funds are highlighted or earmarked as to the misappropriation of funds in observation report dated 05/04/2023 based on the available documents or records of the society place before him.

Further in the said report it has also been highlighted that certain issues are not within his preview or scope of inspection or investigation as to financial irregularities of the Society, which need to be address separately by different Authority.

As overall content of said preliminary report have not highlighted such major financial irregularities in the affairs of the society, as to the enquiry highlighted in this Authority Order dated 03/10/2013 thus the enquiry by this authority is entirely based on the investigation report submitted by the Chartered Accountant which report does not highlight such visible issues as to the irregularities however has raised certain preliminary observation which is not the part of present investigation by Inspector General of Registration and if so required the same may be investigated by the present managing committee of the said Society.

Thus the present enquiry before this authority is now completed as contemplated taking into

consideration the preliminary report submitted by the Chartered Accountant.”

11. We are satisfied that this is not a case for initiating any action for contempt of the order passed by this Court. We are of the opinion that there is no willful default/disobedience of the order passed by this Court. If the petitioners have any grievance about report dated 19.5.2023 of the District Registrar (South) which is placed on record today, it is always open for the petitioners to raise appropriate challenge to the said report in appropriate proceedings. We do not express any opinion on merits or otherwise on the report dated 19.5.2023 keeping the liberty of the petitioners open to challenge the report dated 19.5.2023 and the consequent decisions.

12. We record the submission of learned counsel for the petitioners that the copy of the report was never intimated to the petitioners and the consequent order which is placed on record today was never intimated to the petitioners and the same has been handed over to the petitioners only during the hearing of the contempt petition.

13. Mr Shirodkar, learned Addl. Govt. Advocate submitted that factually he is not aware whether such report and consequent order which are placed on record are served on the petitioners. However, it is clarified that what we have recorded is the submission of the learned counsel for the petitioners that the orders are not served.

14. Contempt petition is not entertained. Disposed of.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.