



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 222 OF 2024

Mr. Ryan Walter Fernandes, Son of Mr. Herculano William Fernandes, Aged 36 years, married, service, Indian National, Resident of Flat G F-1, Babuso Enclave, Vidyanagar, Opposite Jal Vayu Villas, Jaikisan Club Road, Zuarinagar, Goa-403726. Through his Power of Attorney, Mr. Herculano William Fernandes, Aged 67 years, Son of George Caitano Philip Fernandes, Indian National, Resident of Flat G F-1, Babusso Enclave, Vidyanagar, Opposite Jal Vayu Villas, Jaikisan Club Road, Zuarinagar, Goa 403726.

... Petitioner.

Versus

1. Nova Cidade Residential Co-operative Housing Maintenance Society Limited. Nova Cidade Complex, Alto Porvorim, Bardez, Goa 403501. Through its Secretary, Mr. Ferdinando Noronha, Having its office at Nova Cidade Complex, Alto Porvorim, Bardez, Goa 403501.

...Respondent

Mr D. Vernekar, Advocate for the Petitioner.
Mr A. D. Bhobe, Advocate for the respondent.

CORAM: B. P. DESHPANDE, J
DATED: 3rd July 2024

ORAL JUDGMENT

1. Heard Mr D. Vernekar, learned counsel for the petitioner and
Mr A. D. Bhobe, learned counsel for the respondent.

2. Rule. Rule is made returnable forthwith. Matter is taken up for final disposal at the admission stage with consent.

3. Petitioner who is one of the member of the Co-operative Housing Society/Respondent, challenged resolution passed by the society before the Assistant Registrar of Co-operative Society under Section 83(2) of the Goa Co-operative Societies Act 2001("The Act" for short) thereby seeking prayer that the decision to handover rent agreement of the tenant for the purpose of giving new stickers and entry into the complex, is illegal. The Assistant Registrar by the impugned order dated 9.2.2024, rejected such application filed by the petitioner on the ground that there is no such dispute exists between the members and the society as contemplated under Section 83 of the Act. The above said decision is challenged in the present petition.

4. Mr Vernekar appearing for the petitioner would submit that petitioner is the owner of the unit which he purchased and thereafter Co-operative Maintenance Society is formed of the unit holders only for the purpose of maintenance activities. He submits that decision was taken in a special meeting which was conveyed by respondent/ society with unit holders who are intending to let out their units to the tenants, shall hand over land agreement for the the purpose of issuing stickers to the tenants. Resolution was also passed that proposal to start non-occupancy charges as per the bye laws at the

rate of 10% of the general maintenance, to charge Rs.200/- per month from the tenants with regards to car parking in the open space, to discontinue with the old car stickers and issue new ones to control unauthorised entry into the complex.

5. Mr Vernekar, submits that respondent being Cooperative Housing Society is not entitled to resolve and charge such fees since said society is not Co-operative Housing Society as defined under section 102 of the said Act. He would further submit that petitioner is owner of the unit as well as he has purchased parking place and therefore, even if he decided to let out unit, tenant is entitled to use his parking space and for that purpose society is not entitled to charge extra amount.

6. Mr Vernekar while relying upon the provisions of Co-operative Societies Act and Rules would submit that the unit was not allotted by the society to the petitioner but it was purchased by him from the developer as owner and only thereafter the society was formed. Mr Vernekar would then submit that no bye laws are framed or available with the society even though the respondent claimed that they adopted standard bye laws.

7. As far as impugned order is concerned, Mr Vernekar would submit that dispute exists between the Co-operative Society and the

members i.e petitioner and observations of the learned authority that it is only internal arrangement and not touching the constitution of the society is perverse.

8. Per contra, Mr Bhobe, appearing for the society would submit that dispute raised by the petitioner is only with the prayer as found in the prayer clause of his application which restricts to the decision taken by society to call for the rent agreement in order to issue new stickers to the tenants so as to prevent unauthorised entry into the complex.

9. Mr Bhobe submits that there is no challenge raised by the petitioner to the first part of the resolution and therefore, authority was right in considering that there is no dispute touching the constitution of the society and it is only an internal arrangement or decision of the society to safeguard the interest of the members.

10. Rival contentions fall for determination.

11. It is a fact that the respondent is a Co-operative Housing Maintenance Society, however Section 102 defines Co-operative Housing Society which also includes in it Co-operative Housing Maintenance Society, thus contention of Mr Vernekar that the

respondent is not entitled to take such decision as it is not Co-operative Housing society has to be rejected.

Section 107 of the Co-operative Society Act deals with restriction of letting out. It starts with the non obstante clause wherein it is provided no member of a co-operative housing society who has been allotted a plot of land or dwelling unit in a building over a period of three months shall part with the possession of such plot or dwelling unit, as the case may be, without the written consent of the board of directors of the society. On an application made in this behalf by the member concerned, the board of directors of said society. Provision is completely different and operates in different contexts.

12. Respondent society nowhere decided in its special meeting that there should be restrictions of letting out units and that prior permissions are required to be taken of the Board of directors. Resolution which are relevant in the present issue reads thus:-

“It was proposed to start charging non occupancy charges from 1.11.2021 as per the bye laws of the society at the rate of 10% of the general maintenance charges per month. It was proposed to charge for a tenant car Rs.200/- per month for parking cars in the open space. These charges are for four wheeler of

the tenant. It has been proposed in the General Body, to discontinue with the old car stickers instead new ones will be printed and provided to all to control unauthroised entry into the complex.”

13. Thus, the submission of Mr Vernekar that it is against the provisions of Section 107 and Rules 133, is clearly unacceptable. Proposed resolution says that the society will start charging non occupancy charges as per bye laws of the society. Secondly, charges of Rs.200/- per car per month from the tenant is for the purpose of parking in the open space and not in the allotted or purchased car parking space. Thirdly, the decision taken by the General Body to discontinue old car stickers and issue new ones to all the members is only to control unauthorised entry into the complex.

14. Considering the above resolution and the fact that the prayer in the application filed under Section 83 of the Act before the Registrar, it would be apparent that only decision challenged by the petitioner is with regard to the condition to submit a copy of rent agreement so as to issue new stickers to the tenant. Prayer clause at paragraph no. 27 of the application by the respondent reads thus: (page 57)

- “a. Pass judgment and order declaring the decision of the Society in its Special General Body Meeting (dated unknown), to have the rent agreements of the tenants to be submitted before them as a condition precedent for giving them stickers and entry in the Nova Cidade Complex, Alto Porvorim, Goa as illegal.*
- b. For an interlocutory order staying the operation of the decision of the Society which is communicated by the Secretary and the Managing Committee of denying entry to the vehicles without new stickers from 1st of January, 2022.*
- c. For ad interim order in terms of prayer clause (b).*
- d. Any other order in the interest of justice.”*

15. Learned Assistant Registrar in its observations found that the decision to issue new stickers by discarding old ones to the members including the tenant is an internal decision and not touching to the constitution of the society cannot be faulted with. Such decision is only for the purpose of safety and also for controlling unauthorised use of the parking spaces and thus such decision of the society cannot be considered as a dispute under Section 83 of the Act.

16. Mr Vernekar submits that the petitioner has already furnished police verification form of his tenant to the society disclosing the names and other details of the tenant. Thus handing over a tenant agreement or rent agreement only for the purpose of issuing a new

entry pass in the name of the tenant cannot be considered as detrimental to any member or even considered as a dispute between the unit holders and the society.

17. Observations of the Assistant Registrar while deciding such disputes therefore cannot be considered as perverse or illegal.

18. For all the above reasons the petition deserves to be dismissed and accordingly, dismissed. Parties shall bear their own cost.

19. Rule is discharged in above terms.

20. Writ Petition stands disposed of accordingly.

B. P. DESHPANDE, J