

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.68 OF 2024**

1. Mr. Mohammad M. Kunju,
Chairman, Son of Mohiddin Kunju
68 years of age,
r/o R-1, Sayyadri Niwas Co-operative
Housing Society Ltd.,
Dugabhat, Ponda, Goa.
Mobile No. 8390413989

2. Mr. Narendra N. Prabhu,
Secretary, 54 years of age,
r/o F-1, Sayyadri Niwas Co-operative
Housing Society Ltd.,
Durgabhat, Ponda - Goa.
Mobile No. 9850264914

3. Mr. Gajanan P. Goundadkar,
Treasurer, 67 years of age,
Son of Parhurat Laxman Goundadkar,
r/o F-1, Sayyadri Niwas Co-operative
Housing Society Ltd., Durgabhat,
Ponda - Goa.
Phone No. 9420820286.

4. Mr. Anil P. Dhond,
Member, 53 years of age,
r/o F-3, Sayyadri Niwas Co-operative
Housing Society Ltd.,
Durgabhat, Ponda – Goa.

.....PETITIONERS

VERSUS

1. Co-operative Officer,
O/o Asstt. Registrar of Co-operative
Societies, Ponda Zone,
Sahakar Bhavan, Curti,
Ponda - Goa.

2. Asst. Registrar of Co-operative Societies, Government of Goa,
Ponda Zone, Sahakar Bhavan,
Curti, Ponda - Goa.

3. STATE OF GOA
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

4. Shri. Shripad Y. Kamat,
G1, Sayyadri Niwas Co-op Housing
Society Durgahababhat, Ponda, Goa.

... RESPONDENTS

Mr. Ashwin Bhobe, Advocate for the Petitioner.

Ms. Sapna Mordekar, Additional Government Advocate for
Respondent-State

Mr. R.G. Ramani, Senior Counsel along with Mr. Pranav Shenvi
Kakodkar for the Respondent No. 4

CORAM: BHARAT P. DESHPANDE, J.

DATED : 15th February, 2024

ORAL JUDGEMENT

1. Heard Mr. Ashwin Bhobe, Advocate for the Petitioner, Ms. Sapna Mordekar, Additional Government Advocate for Respondent-State and Mr. R. G. Ramani, Senior Counsel for the Respondent No. 4.

2. Rule.

3. Rule is made returnable forthwith.

4. Heard the parties with consent for final disposal.
5. The challenge in the present proceeding is the order passed by the Registrar of Co-operative Housing Society dated 06.02.2023, thereby disqualifying the Petitioners for a period of five years for being chosen as Directors of Sayyadri Nivas Co-operative Housing Society, Durgabhat, Ponda, Goa on the ground that they violated the mandate of Section 72 read with Section 61 of the Goa Co-operative Housing Society Act.
6. Mr. Bhobe, learned Counsel appearing for the Petitioner would submit that Petitioners were the Directors of the Society and during Covid pandemic, they were unable to hold Annual General Body Meeting. However, the Petitioners convened a General Body Meeting of the society within the extended period as provided under the circular dated 28.06.2021 that is on or before 31.12.2021.
7. Mr. Bhobe would submit that thereafter Petitioner received a show cause notice from the Assistant Registrar of Co-operative Housing Society dated 19.05.2022 asking the Petitioners to explain as to why General Body Meeting was not convened on or before 28.02.2021, which was the last date as provided under Section 61.
8. He would submit that the reply was filed by the Petitioners

dated 20.06.2022 explaining the reason for not convening the meeting and the fact that such meeting was conducted on 30.12.2021, that is within the extended period.

9. Mr. Bhobe, would then submit that without considering the circular issued by the Registrar himself extending the period upto 31.12.2021, the impugned Judgement/Order is passed and that too on extraneous ground for which no opportunity was given to the Petitioners. He further submits that the show cause notice was only with regard to failure to conduct Annual General Body Meeting prior to 28.02.2021, which has been properly explained.

10. Mr. Ramani, learned Senior Counsel along with Mr. Kakodkar, learned Counsel appearing for the Respondent no. 4 would submit that the society failed to conduct Annual General Body Meeting for the year 2019-2020, on or before end of September 2020 and thereafter the Annual General Body Meeting for the year 2021. He submits that there is no explanation coming forward from the Petitioner for not convening the meeting for the year ending 2019-2020 and therefore the said default entitled the Registrar to issue order of disqualification of the Petitioners as Directors. He would further submit that the tenure of the committee was only for five year which expired in the year 2021

and thus the question will have to be considered as to whether said committee had any right to convene meeting for the year 2020-2021.

11. Mr. Ramani would then submit that the earlier circular issued by the Registrar dated 12.05.2020 was in operation only up to 31.12.2020 whereas the next circular issued on 15.12.2020 was for further extension of such period up to 28.02.2021. He submits that thereafter, there was no extension granted by the Registrar or any exemption from conducting such meetings. He would submit that the Annual General Body Meeting scheduled in February 2021 for the year 2019-2020 could have been conducted within the time frame. Since the Petitioner failed to convene such meeting within the stipulated period, disqualification is bound to follow.

12. Rival contentions fall for determination.

13. The show cause notice dated 19.05.2020 issued to the Petitioners is very specific. Paragraph 2 of the show cause notice reads thus:

AND WHEREAS, it has been observed from the records of this office that the Sayyadri Niwas Cooperative Housing Society Ltd., has not complied with the requirements of section 72 of the Goa Coop. Societies

Act 2001 as per office order No.15/344/ADT/RCS/2020/3118 DATED 15/12/2020 which mandates that every Society shall hold the Annual General Body Meeting of its members on or before 28/02/2021. However society has conducted its Annual General Body Meeting on 30/12/2021.

14. Perusal of this show cause notice would suggest that response of the Petitioners were called only with regard to the meeting which was due on or before 28.02.2021. Such meeting which was scheduled prior to 28.02.2021 is the Annual General Body Meeting for the year ending 2019-2020.

15. The said paragraph quoted above nowhere discloses about the Annual General Body Meeting with regard to any other year.

16. The Petitioners filed reply to the show cause notice which is dated 20.06.2022 and explained that during Covid pandemic they were unable to carry out/convene Annual General Body Meeting. However, the impugned order is passed totally on different count. The perusal of the impugned order shows that there was some complaint filed by Respondent no. 4, copy of which was never furnished to the Petitioners. No opportunity was given to the Petitioners to file reply to such complaint or to give their say.

Similarly, in the impugned Order/Judgement there is absolutely no reference to the circular issued by the Registrar on 12.05.2020, 15.12.2020 and 28.06.2021, which refers to exercise of power under Section 126A of the Goa Co-operative Societies Act thereby extending the period from time to time in connection with the provisions of Sections 72, 73 and 74 as well as Section 81.

17. The first circular in this respect is dated 12.05.2020 which discloses that due to the lockdown imposed on March 2020 and outbreak of the Covid pandemic as well as the difficulties faced by the Co-operative Societies, Government decided to exempt the societies from the restriction of time limit as specified under Section 72, 73, 74 and 81 respectively.

18. Section 72 of the Societies Act deals with meetings and minutes. It provides that every society shall hold Annual General Body Meeting of its members within six months from the close of the cooperative year. In such Annual General Body Meeting the society or the Board shall present the audited balance sheet and profit and loss account for the year, in the manner as specified by general or special order in this behalf.

19. Thus the first circular dated 12.05.2020 was issued by exercising power under Section 126A thereby extending the period

till 31.12.2020.

20. Thereafter by another Order dated 15.12.2020, the earlier period was extended up to 28.02.2021.

21. Mr. Ramani would submit that the Order dated 15.12.2020 there by extending the period up to 28.02.2021 was in force only up to 28.02.2021 and it was never extended further except the order passed by the order dated 28.06.2021.

22. Order dated 28 June 2021 read thus

ORDER

WHEREAS due to outbreak of Covid-19 which is still continuing and due to various restrictions imposed by the State Govt. the societies are findings it difficult to comply with the statutory requirements within the time frame assigned under the Goa Cooperative Societies Act, 2001(Goa Act 36 of 2001) (Hereinafter referred to as the "said Act".) Further, due to social distancing norm imposed by the Government, the societies are also unable to convene their General Body meetings.

AND WHEREAS, the Government decided to exempt the societies from the restriction of the time limit specified in certain sections of the said Act and allowed the societies further time to comply with the provision of these sections.

NOW, therefore, in exercise of the powers

conferred under section 126A of the Goa Cooperative Societies Act, 2001(Goa Act 36 of 2001), the Government of Goa hereby exempt the Cooperative Societies from the provisions to the extent specified below.

(i) Under section 72(2) of the said Act, meeting as stated therein shall be held on or before 31st Day of December, 2021.

(ii) Under section 73(4) of the said Act, the accounts as stated there in shall be prepared on or before 30th day of June, 2021.

(iii) Under section 74(4) of the said Act, the accounts as stated therein shall caused to be audited on or before 31st day of December, 2021.

(iv) Under Section 81 of the said Act, returns shall be filed on or before 31st day of December, 2021.

This order shall come into force with immediate effect and shall remain in force till 31st December, 2021.

*By Order and in the name of the
Governor of Goa.*

(sd/-)

*Registrar of Coop. Societies &
Ex-officio Joint Secretary*

23. Perusal of this order would go to show that due to outbreak of Covid-19 which was found to be continuing at the said time the Government decided to exercise the powers under Section 126A of

the Societies Act and accordingly the period mentioned under Section 72, 73, 74 and 81 was extended up to 31.12.2021.

24. The Order says that it shall come into force with immediate effect and shall remain in force till 31.12.2021. Thus, the said Order issued on 28.06.2021 came into immediate effect as on that day and remained in force till 31.12.2021.

25. The impugned Order passed by the Co-operative Officer is completely silent about all these circulars and the difficulties faced by the members of the society during the said period.

26. Similarly, the impugned order refers to aspect of holding of election. Admittedly, the show cause notice issued to the Petitioner nowhere refers to such default. No opportunity was given to the Petitioners to explain as to why they failed to carry out elections after the term expired within the stipulated period. Thus, it is clear that reference to such aspect in the impugned order is vitiated for breach of principles of natural justice and fair play for the simple reason that no show cause notice was given to the Petitioners on this aspect.

27. The power available to the concerned authority is to monitor the cooperative movement and to control the societies as well as the directors. Power given under the Section 61 are available to the

concerned authority, however, exercising of such power are necessarily to be used by passing reasoned order and by giving opportunities to the parties. In the present matter, first of all the show cause notice is vague and nowhere mentioned about the default committed by the Petitioners in connection with the Annual General Body Meeting, which the Respondent no. 4 is now trying to highlight. Similarly the said show cause notice nowhere discloses about not holding of elections within the stipulated time. It is therefore clear that the reasons given in the impugned order are clearly extraneous to the contents of the show cause notice and accordingly considered to be violating the principles of natural justice. Thus, the impugned order suffers from illegal exercise of the powers which also requires to be termed as violative of principles of natural justice.

28. The impugned order dated 06.02.2023 thus requires to be quashed and set aside. Accordingly the order stands quashed and set aside.

29. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.