

(2010) 03 BOM CK 0196
In the Bombay High Court
Case No : Writ Petition No. 497 of 2009

The Akhada St. Estevam Village Development and Protection Samittee APPELLANT

Vs

Smt. Seema Rohidas Narvekar and Others RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Goa Land (Prohibition of Constructions) Act, 1995 — Section 4, 5
Goa Village Panchayat Raj Act, 1994 — Section 10, 12(1), 121(1), 153, 154

Citation : (2010) 3 BomCR 37

Hon'ble Judges : Naresh H. Patil, J;N.A. Britto, J

Bench : Division Bench

Advocate : S.M. Walawaikar, for the Appellant; N.K. Sawaikar, for respondent No. 1, G. Shirodkar, Government Advocate for respondents No. 2, 4 and 6 and N.V. Shirodkar, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—By an order dated 29.1.2010, we had put the parties to notice that the petition may be disposed of at the admission stage itself. Rule. Rule returnable forthwith.

2. The petitioners seek a declaration for disqualifying respondent No. 1 Smt. Seema Rohidas Narvekar, as Member of Village Panchayat of St. Estevam of Tiswadi Taluka, u/s 12(1)(d), read with Section 55(4) of the Goa Panchayat Raj Act, 1994 (for short "1994 Act").

3. The petitioners, in brief, contend that respondent No. 1 Seema Narvekar was elected as a Member of Village Panchayat in the elections held in May, 2007. The tenure of a member is for 5 years. In the previous term, for the period from 2002 to 2007, husband of respondent No. 1 Rohidas Narvekar was elected as a member of the said Panchayat. The petitioners allege that respondent No. 1 and her husband have been abusing and misusing their position as Member of the

Panchayat and are persistently acting detrimental to the interest of the Village Panchayat. It is alleged that the husband of respondent No. 1 Rohidas Narvekar though not a Member, illegally attends the meetings of the Village Panchayat, deliberates in the meetings and as a formality, makes his wife respondent No. 1, to sign the resolutions taken in the meetings. The Panchayat consists of 7 Members. There is no opposition to the group of 7 Members in the Panchayat and the Members allegedly act in collusion with each other for their own benefits. The tenure of post of Sarpanch is also got divided, so that maximum number of members could become Sarpanch and Dy. Sarpanch.

4. The petitioners contend that in the month of January, 1998, respondent No. 1 and her husband Rohidas Narvekar illegally constructed a kutchra structure in the Comunidade land, having plinth of 5 x 10 metres, in her ward at Vali-Dongri, Akhada, which amounts to cognizable offence under Sections 4 and 5 of the Goa Land (Prohibition of Constructions) Act, 1995. In March, 1998, respondent No. 1 and her husband started running an illegal restaurant in the said structure. In April, 1998, the Captain of Ports and Block Development Officer directed respondent No. 3 Panchayat to take legal action against the said illegal structure/restaurant. Therefore, a show cause notice was issued. As husband of respondent No. 1 was a Member of the Village Panchayat during the period from 2002 to 2007, it is alleged that he managed to get House No. 1326 allotted to the said illegal structure and further managed to get NOC dated 27.8.2002 issued from the then Sarpanch for running a bar in the said illegal structure.

5. On 30th May, 2007, respondent No. 1 demolished the said katcha structure and extensively extended the plinth of the said structure on all sides of the Comunidade land unauthorized and illegally constructed a pucca structure having plinth of over 120 sq. metres.

6. On 23rd May, 2009, petitioner No. 2 lodged a written complaint with respondent No. 3 Village Panchayat and requested the Panchayat to demolish the said illegal structure.

7. The petitioners contend that on 23.5.2009, petitioner No. 2 filed a complaint addressed to the Sarpanch, Village Panchayat of St. Esteve, stating therein that Rohidas Narvekar and his wife Smt. Seema Narvekar had done illegal construction of a house at Vali Dongri, close to Akhada Foot Bridge and illegally obtained house No. 1326. By the said complaint it was requested to take action under the Panchayat Raj Act, immediately.

8. In the meeting of Panchayat held on 24.5.2009, the Sarpanch placed before the Members the said complaint filed by petitioner No. 2. By Resolution No. 10, the Members present unanimously resolved to reject the proposal which was proposed by respondent No. 1 Seema Narvekar, after discussing and considering the fact that house No. 1326 mentioned in the complaint was not registered in the name of Seema and Rohidas Narvekar. In the meeting of Panchayat held on 14.6.09, the proceedings of previous meeting held on 24.5.09 were read, in

detail, and found to be correct and the Sarpanch proposed to confirm the same in the said meeting and unanimously resolved by the members accordingly. Gramsabha again met on 28.6.2009 and passed another resolution. Both the resolutions bearing No. 10 and 20 are reproduced as below:

Res. No. :10 dated : 24.5.2009.

Sarpanch placed before the meeting complain made by Mr. Devanand D. Bhosle r/o. Akhada against Rohidas & Seema Narvekar for illegal construction and obtaining illegal H. No. After discussing over the complain in the meeting and considering the fact that H. No. 1326 mentioned in the complain is not registered in the name of Seema & Rohidas Narvekar. Smt. Seema Narvekar proposed to reject the complain which is seconded by Sarpanch and unanimously resolved by the members present for the meeting.

Res. No. :20 dated : 28.6.2009.

Shri Orlando Menezes ward member Foro informed the ward member's present for the meeting that Resolution No. 10 dated 24.5-2009 was proposed by him and not the Seema Narvekar, but Secretary has wrongly written it as proposed by Seema Narvekar and same Resolution got confirmed in the meeting dated 14.6.2009. After detailed discussion over the matter in the meeting he proposed to consider the Resolution No. 10 dated 24.5.2009 as proposed by him and not by Smt. Seema Narvekar which is seconded by Orlando Menezes and unanimously resolved by the members present for the meeting.

9. The petitioners contends that respondent No. 1 Seema Narvekar, a sitting member, has pecuniary interest in the subject-matter of the complaint filed by petitioner No. 2. The said complaint was discussed and respondent No. 1 had participated in the discussion and even proposed to reject the same, which amounts to disqualification of the Member under the provisions of Section 12(1) (d), read with Section 55(4) of the 1994 Act.

10. Respondent No. 1 filed an affidavit-in-reply. The respondent denied the allegations made by the petitioners. A preliminary objection as to locus standi of the petitioners to file the present petition, is also raised. It was contended that the present petition is abuse of process of law. It was contended that the petition raises disputed questions of facts which cannot be gone into by this Court in the petition in exercise of powers under Article 226 of the Constitution of India. The petition has been filed with malafide intention to harass respondent No. 1 and her family as petitioners No. 2 and 3 are on endemically terms with respondent No. 1 and her family. It is contended by respondent No. 1 that Mahabaleshwar Bhosle, brother of petitioner No. 2 and also petitioner No. 3 Pandurang Fadte had contested elections against respondent No. 1 in the year 2002 from Ward No. 1, but they were defeated by her husband. In the year 2007, respondent No. 1 got elected by defeating Miss Amrita Bhosle, daughter of the president of petitioner No. 1 -Society. Respondent No. 1 contends that there is no house bearing No. 1326, registered in her name nor in the name of her husband and, therefore, the

complaint was rejected in the meeting. It is contended that her participation in the meeting was without any intention to protect the pecuniary interest, as alleged by the petitioners. Respondent No. 1 states that House No. 1326 is registered in the name of one Vasant Volvoikar.

11. Respondent No. 1 contends that Resolution No. 10, passed on 24.5.09, was wrongly recorded and therefore, it was corrected in the meeting held on 28.6.09 to the effect that Orlando Menezes had informed the ward members that Resolution No. 10 dated 24.5.09 was proposed by him and not by Seema Narvekar, and the Secretary wrongly endorsed it as proposed by Seema Narvekar.

12. An affidavit-rejoinder was filed by the petitioners and an affidavit-in-sur-rejoinder was filed by respondent No. 1 Seema Narvekar. Respondent No. 2 also filed an affidavit-in-reply.

13. Respondent No. 3 Secretary of the Village Panchayat contends that he had correctly recorded the minutes of the meeting called on 24.5.09, which were read over in the meeting and thereafter confirmed in the next meeting held on 14.6.09. According to the deponent, not a single member raised any objection against the minutes of the meeting written by him on 24.5.09. As regards the meeting called on 28.6.09, wherein Resolution No. 20 was adopted, the Secretary contends that he informed the members present in the meeting that he had rightly recorded Resolution No. 10 dated 24.5.09, but not a single member was ready to listen to him and, therefore, he made an endorsement in the remarks column to the effect that he had rightly recorded the minutes of Resolution No. 10 passed on 24.5.09 and also observed that no member was ready to listen to him when resolution No. 20 was adopted on 28.6.09.

14. Shri Walawaikar, learned Counsel for the petitioners submits that the petitioners do have locus standi to file the petition. The complaint filed by petitioner No. 2 addressed to the Sarpanch is clear and there is no vagueness in the same in respect of the location of the house of respondent No. 1 and her husband. The dispute raised by respondent No. 1 in respect of house No. 1326 should not damage the case of the petitioners as location of the house is also very clearly mentioned and described in the complaint. Petitioner No. 2 had requested the Sarpanch to take action against respondent No. 1 in accordance with the 1994 Act, immediately. Reading of Resolution No. 10 clearly demonstrates that respondent No. 1 had discussed the question in the meeting which involved her pecuniary interest and, therefore, respondent No. 1 incurs disqualification to hold the post of a Member of Panchayat. Learned Counsel refers to Annexure P-2, a communication made by Sarpanch Shri D. G. Shet, addressed to the Executive Inspector, Tiswadi Taluka, Panaji, Goa stating therein that the Panchayat has no objection for issue of licence to Smt. Seema Rohidas Narvekar, resident of Akhada St. Estevem, Tiswadi Taluka for sale of I.M.F.L. and country liquor for consumption in the restaurant premises bearing H. No. 1326 at Akhada, St. Estevem. In the very next para of the said communication, it was intimated that the said premises is legal and authorised, as per building buy laws

and area development plan and the same is registered in this Panchayat for House Tax under No. 1362. The learned Counsel for the petitioners submits that respondent No. 1 had attended all the three meetings viz. the meeting which discussed Resolution No. 10 dated 24.5.09, the meeting dated 14.6.09 which confirmed Resolution No. 10 and the meeting which adopted Resolution No. 20 dated 28.6.09. The Counsel submitted that the confusion which is tried to be created by respondent No. 1 and the Sarpanch of the Village Panchayat in respect of house No. 1326 and 1362 would not have any bearing on the question which is raised by the petitioners in this petition.

15. The learned Counsel placed reliance on the definition of expression "interest" as occurring in the Shorter Oxford English Dictionary, fifth edition; as also Black's Law Dictionary, seventh edition. Reference was also made to definition of the expression "pecuniary" as defined in the Shorter Oxford English Dictionary, fifth edition; as also Black's Law Dictionary, seventh edition.

16. In support of his submissions, learned Counsel for the petitioners relied upon the Judgment of the Supreme Court in the case of Gurudev datta VKSSS Maryadit and Others Vs. State of Maharashtra and Others, . In para 26, Supreme Court has observed thus:

26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of statute....

He has further relied upon a Judgment of the Apex Court in Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, , more particularly paras, 40, and 41 thereof which read as under:

40. It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation i.e. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of

interpretation other than the literal rule, vide *Swedish Match AB v. Securities and Exchange Board of India*. As held in *Prakash Nath Khanna v. CIT*, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide *Delhi Financial Corpn. v. Rajiv Anand*. Where the legislative intent is clear from the languages, the court should give effect to it, vide *Govt. of A.P. v. Road Roller Owners Welfare Assn.* and the Court should not seek to amend the law in the garb of interpretation.

41. As stated by Justice Frankfurter of the US Supreme Court (see "Of Law & Men: Papers and Addresses of Felix Frankfurter"):

Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction.

The Counsel for the petitioners also placed reliance on a Division Bench Judgment of this Court in *Agnello Caridade Lobo v. Sanjay Pednekar and Ors.* W.P. No. 104/2009.

17. The learned Counsel appearing for respondent No. 1 submits that the complaint filed by petitioner No. 2 dated 23.5.09 addressed to the Sarpanch was referring to a demolition of a house. For the said purpose, provisions of Section 66 of the 1994 Act are attracted and there is alternate remedy available to the petitioners. Even in respect of the issue of tax, alternate remedy u/s 153 and Section 155 of the 1994 Act is available to the petitioners. The learned Counsel submitted that the complaint filed by petitioner No. 2 was placed before the Panchayat meeting. The complaint was not circulated by giving 7 days notice, in accordance with the Rules. It was urged that respondent No. 1 did not participate with intention to protect her pecuniary interest. The complaint of petitioner No. 2 was placed before the meeting by the Sarpanch for discussion. While referring to the provisions of Section 55(4) of the 1994 Act, the Counsel submitted that the provisions do not refer to pecuniary interest of a member, but institutional interest. The Counsel submitted that in view of the provisions of Section 10(f) of

the 1994 Act, no disqualification can be attached in the light of the provisions of Section 55(4). It was further submitted that the issue discussed in the meeting was in respect of house No. 1326, which does not belong to respondent No. 1 and her husband. According to the Counsel for respondent No. 1, admittedly house No. 1362 is registered in the name of respondent No. 1 Seema Narvekar. As petitioners No. 2 and 3 had contested elections earlier against respondent No. 1 and were defeated, with malafide intention, the petitioners have resorted to the present proceedings. According to the Counsel, the petitioners have no locus standi to file the petition and by passing the impugned resolution, respondent No. 1 has not caused any loss to the institution.

In support of his submissions, the Counsel for respondent No. 1 has relied upon the cases of M.M. Nandgaonkar v. The Collector (1995) 57 BOMLR 212 and K.F. Nariman Vs. Municipal Corporation of Bombay, .

18. Mr. N.V. Shirodkar, learned Counsel appearing for allotted to the property which is registered in the name of respondent No. 1. The Counsel denied the allegations made against respondent No. 3 Panchayat. The learned Counsel was unable to make any definite statement as to whether any construction permission was granted by the Panchayat to erect subject structure owned by respondent No. 1.

19. We deem it appropriate to refer to certain provisions of the 1994 Act which are relevant for this case. Sections 121(1)(d) reads as under:

12. Vacation of a seat by members - (1) If a member of a Panchayat -

(a) ...

(b) ...

(c) ...

(d) votes or takes part in discussion in contravention of the provisions of Sub-section (4) of Section 55, his seat shall be deemed to be or to have become, as the case may be, vacant.

Section 55(4) reads thus:

55. Quorum and Procedure - (1)

(4) No member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

20. We have perused the copies of the original resolutions passed and the minutes of the meeting recorded by the Secretary of the Panchayat. We find that the complaint filed by petitioner No. 2, addressed to the Sarpanch dated 23.5.09 clearly mentions that Rohidas Narvekar and his wife Smt. Seema Narvekar had

illegally constructed a house at Vali Dongri, close to Akhada Foot Bridge and had illegally obtained house No. 1326. It is true that from the record it is demonstrated that house No. 1326 is not registered in the name of respondent No. 1 Smt. Seema Narvekar and her house number is 1362. From the documents placed on record, we do not find that respondent No. 1 was factually misled while the complaint was put up in the meeting of 24.5.09 and was discussed. The Resolution clearly states that respondent No. 1 Seema Narvekar proposed to reject the said complaint as the said house is not registered in the names of Seema and Rohidas Narvekar. Respondent No. 1 was present when the Minutes of the said meeting were confirmed in the meeting dated 14.6.09. We do not find justifiable ground and reasons for the Panchayat Members to take a somersault and pass resolution in the meeting dated 28.6.09 to the effect that the proposal to reject the complaint was made by Orlando Menezes, Ward Member Foro and not by respondent No. 1 Seema Narvekar. From the material placed on record we are convinced to draw a conclusion that sensing the probable disqualification u/s 55(4), resolution No. 20 was got passed by the Members. There is enough support to this conclusion from the affidavit-in-reply filed by the Secretary and the endorsement made by him at the time when resolution No. 20 was passed. The Secretary has, in clear terms, mentioned that no member was ready to listen to him. The Secretary reiterated his stand that what was recorded by him in respect of the meeting conducted earlier was factually correct. We do not find any ground to disbelieve the affidavit-in-reply filed by respondent No. 2 Panchayat Secretary and the endorsement made by him in the remarks column of the minutes sheets which are part of record.

21. Whether participation of respondent No. 1 in the discussion on the complaint filed by petitioner No. 2 would amount to discussing the issue, wherein respondent No. 1 had pecuniary interest, is a question which falls for our consideration in this petition. The law injects a member of a Panchayat to participate in such discussion wherein he/she has any "pecuniary interest".

22. At this stage, it is useful to refer to the definitions of expressions "interest" and "pecuniary", as occurring in the Shorter Oxford English Dictionary, fifth edition; as also in Black's Law Dictionary, seventh edition. Expression "interest" as occurring in Shorter Oxford English Dictionary defines:

The fact or relation of having a share or concern in, or a right to, something, esp. by law; a right or title, esp. to (a share in) property or a use or benefit relating to property; (a) share in something (b) participation in doing or causing something; (c) A financial share or stake in something; the relation of being one of the owners or beneficiaries of an asset, company, etc.

The expression "interest" as occurring in Black's Law Dictionary defines:

1. Advantage or profit, esp. of a financial nature, conflict of interest. 2. A legal share in something; all or part of a legal or equitable claim to or right in property, right, title, and interest.

The expression "pecuniary" as occurring in the Shorter Oxford English Dictionary, defines:

1. consisting of money; exacted in money, 2. Of or pertaining to money.

The expression "pecuniary" as occurring in Black's Law Dictionary, defines

Of or relating to money; monetary, a pecuniary interest in the lawsuit.

23. Considering the provisions of Section 55(4) of the 1994 Act, and the complaint made by petitioner No. 2, the discussion undertaken in the meeting, coupled with the definitions of the terms "pecuniary" and "interest", as defined, we are of the view that the issue raised in the complaint was discussed in the meeting related to pecuniary interest of respondent No. 1 Smt. Seema Narvekar. We do find that a brave attempt was made by members of the Panchayat to protect respondent No. 1 from the clutches of the provisions of Section 55(4) by adopting Resolution No. 20 dated 28.6.09.

24. In the facts of the case and in view of the provisions of the law, we are of the opinion that to ensure purity of administration of local bodies, the provisions relating to disqualification should not receive an unduly narrow or restricted construction.

25. We do not find any substance in the submission advanced by the learned Counsel appearing for respondents No. 1 and 3 that the petitioner had no locus standi to file the petition. The said submission is, therefore, rejected.

26. It was also submitted on behalf of respondent No. 1 that she had no intension to participate in the meeting to protect her pecuniary interest. In the facts of the case and in view of the import of Section 12(1)(d) read with Section 55(4) of the 1994 Act, we are of the view that element of mens rea would not have any bearing in the matter. The contention raised in this regard on behalf of respondent No. 1 is also rejected.

27. The complaint made was in respect of alleged illegal construction of a structure raised by respondent No. 1 and her husband. Though house number was wrongly mentioned, it is clear from the record and from the submissions advanced before us that the subject- structure is located at the place mentioned by the complainant petitioner No. 2 in his complaint. The Counsel appearing for the petitioners submitted that respondent No. 1 was served with the notice issued by this Court on the address having her house number mentioned as 1326, though in fact house number is 1362. This makes the issues more clear and transparent.

28. We have perused the Judgments cited by the petitioners and the respondents. In the facts of the case, ratio of the judgments cited by the respondents is not applicable to the facts of the case at hand.

29. In the light of the reasons stated above, we accept the contentions raised by the petitioners that respondent No. 1 participated in the discussion on a question

which came up for consideration in the meeting of Panchayat in which she had pecuniary interest. Respondent No. 1 thus contravened the mandate of Section 55(4) of the 1994 Act incurring disqualification, on account of which, her seat as a Member of Panchayat, would be deemed to have fallen vacant.

30. The writ petition is allowed, with costs. Respondent No. 1 the 1994 Act to continue as a Member of respondent No. 3 Village Panchayat. In view of the provisions of Section 12(1)(d) of the 1994 Act, the seat of respondent No. 1 is deemed to have become vacant. Rule made absolute. Costs of the petition are quantified at Rs. 10,000/- which shall be deposited by respondent No. 1 Seema Rohidas Narvekar.

After pronouncement of the judgment, the learned Counsel for respondent No. 1 prayed for stay of operation of the Judgment and Order for 10 days. We do not find any justifiable ground and reason to allow the request made by the Counsel. Prayer stands rejected.