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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.2347 OF 2025(F)**

Mr. Vivekanand Shridhar Pednekar,
S/o. Shridhar Pednekar,
Indian National, Aged 35 years,
R/o. B-402, Sairaj Residency Coop.
Hsg. Maint. Society Ltd.,
Siolim, Bardez-Goa.

....PETITIONER

Versus

1. The State of Goa,
Through its Chief Secretary,
Porvorim Goa.
2. The Registrar,
Registrar of Co-operative Housing
Societies, 4th & 5th Floor, Sahakar
Sankul, Patto Centre, Panaji, Goa.
3. The Asst. Registrar,
Registrar of Co-operative Housing
Societies, North Zone, 1st Floor,
Government Building Complex,
Mapusa, Bardez-Goa.
4. Sairaj Residency Co-operative
Maintenance Society Ltd.,
Portawaddo, Siolim, Goa.
5. Arden D'Souza
R/o. A-202, Sairaj Residency Coop.
Hsg. Maint. Society Ltd. Siolim,
Bardez-Goa.
6. Francisco William,

R/o. B-401, Sairaj Residency Coop.
Hsg. Maint. Society Ltd. Siolim,
Bardez-Goa.

7. Shiral S. Monteiro
R/o. A-103, Sairaj Residency Coop.
Hsg. Maint. Society Ltd. Siolim,
Bardez-Goa.

.... RESPONDENTS

Mr. Vibhav Amonkar, Advocate for the Petitioner.
Mr. Manish Salkar, Government Advocate for Respondent Nos.1
to 3.
Mr. Nigel Da Costa Frias, Advocate for Respondent Nos.4 to 7.

**CORAM : VALMIKI MENEZES &
HITEN S. VENEGAVKAR, JJ.**

DATE : 9th JUNE 2026

ORAL JUDGMENT : (Per Hiten S. Venegavkar, J.)

1. Heard Mr. Vibhav Amonkar, learned Counsel for the Petitioner, Mr Manish Salkar, learned Government Advocate for Respondent Nos.1 to 3 and Mr Nigel Da Costa Frias, learned Counsel for Respondent Nos.4 to 7.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. The Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, challenging the order dated 17.06.2025 passed by Respondent No.3, the Assistant Registrar of Co-operative Housing Societies, North Zone, Goa, under Section 123A of the Goa Co-operative Societies Act, 2001

(‘the Act’ for short). The Petitioner has also sought a direction to Respondent No.3 to grant a personal hearing in the subject matter and to set aside the consequential actions initiated against him.

4. The factual matrix giving rise to the present Petition reveals that the Petitioner, who was functioning as Chairman of Respondent No.4 - Co-operative Housing Society, came across a declaration on the notice board of the Society, wherein Respondent No.5 was declared as elected Chairman and Respondent Nos.6 and 7 were declared as elected Secretary and Treasurer, respectively. It is the contention of the Petitioner that the said declarations and the entire election process culminating therein were wholly illegal and contrary to the provisions of the Goa Co-operative Societies Act and Rules thereunder.

5. The Petitioner asserts that the Managing Committee appointed by the competent Authority was initially to continue for a specified tenure, and that, before the expiry of the tenure, attempts were made to hold fresh elections. However, owing to inadequate response from the members, by not submitting sufficient nomination forms, the said election process could not be completed. According to the Petitioner, only two nomination forms were received, which were insufficient for constituting the new Managing Committee. Consequently, the existing Committee continued to function and, therefore, subsequent resolutions were passed by holding General Body Meetings and Special General Body Meetings. It is further the case of the Petitioner that the

Petitioner's Committee continued till the fresh elections were to be held and, therefore, a proposal for the constitution of a Committee was forwarded to the Authorities and that Respondent No.5 had also participated in several meetings where decisions concerning future elections were taken by the consent of the members.

6. The Petitioner further contends that Respondent No.5 unilaterally appointed a Returning Officer without any valid resolution to the Society and that the entire election process thereafter was conducted without any authority of law. According to the Petitioner, the Returning Officer acted without jurisdiction and ultimately declared Respondent Nos.5 to 7 as Office Bearers of the Society without following any democratic process or procedure of law. Aggrieved thereby, the Petitioner preferred proceedings before the Co-operative Tribunal challenging the entire election process and election results. Since the proceedings were filed beyond the limitation, a separate application for condonation of delay was also preferred along with the main proceedings before the Tribunal. The Tribunal ultimately rejected the application for condonation of delay and, consequently, the said rejection amounted to rejection of the main appeal/proceedings in itself. Thus, the entire challenge of the Petitioner to the election process, as well as to the result of the election of the newly elected Managing Committee, failed.

7. It is further submitted by the Petitioner that during the pendency of the proceedings before the Tribunal, Respondent No.3 issued a notice under Section 123A of the Act calling upon the Petitioner to explain as to why action should not be initiated against the Petitioner for failure to hand over the charge and records to the newly elected Managing Committee. The Petitioner further submits that on receiving the said show cause notice, he immediately submitted his reply contending that the election itself was under challenge and that the proceedings under Section 123A required to be dropped as being premature. Respondent No.3, however, by his communication, informed the Petitioner that there is no stay granted to the election process or to the election results by the Tribunal and, hence, the Petitioner was directed by Respondent No.3 to hand over the records to the newly elected Managing Committee. Subsequent communications were also issued by Respondent No.3, requiring compliance of Section 123A, thereby handing over the records by the Petitioner to the newly elected Managing Committee. Ultimately, as the records were not handed over by the Petitioner, Respondent No.3 passed an order dated 17.06.2025 imposing a penalty upon the Petitioner at the rate prescribed under Section 123A of the Act for failure to hand over the charge and the society records to the newly elected Managing Committee.

8. The learned Counsel appearing for the Petitioner vehemently contended that the election process itself was illegal and, therefore, Respondent No.3 ought not to have acted upon the alleged election

results. He submitted that once the election dispute was pending before the Co-operative Tribunal, prudence demanded that Respondent No.3 awaits the outcome of the challenge before directing transfer of charge and handing over of records. He further submitted that if at all the Petitioner would have handed over the charge and the records to the newly elected Managing Committee, his entire challenge before the Tribunal would have become infructuous, for the reason that handing over the charge and the records would by itself amount to acceptance of the election results. He further submitted that the Petitioner had throughout acted bonafide and had repeatedly informed Respondent No.3 of the pendency of proceedings before the Tribunal. Thus, according to the learned Counsel, the action initiated by Respondent No.3 under Section 123A of the Act was illegal and premature.

9. The learned Counsel further argued that the Petitioner had made sincere attempts to comply with the directions issued by Respondent No.3. According to him, the records were tendered before Respondent No.3, and it was Respondent No.3 who returned the same to the Petitioner, addressing a communication to the said effect. He further argued that there was no deliberate non-compliance on the part of the Petitioner, but it was for a bonafide cause that a litigation was pending before an appropriate forum and, hence, the records were not handed over. It was also contended that the impugned order was passed without granting an effective hearing and in breach of principles of natural justice. In support of the arguments about violation of the

principles of natural justice, the learned Counsel relied upon the decisions of the Hon'ble Supreme Court in the case of *Mangilal V/s. State of M.P.*¹ and *Krishnadatt Awasthy V/s. State of Madhya Pradesh and Ors.*².

10. Per contra, learned Government Advocate appearing for Respondent Nos.1 to 3 supported the impugned order. He submitted that Section 123A creates a mandatory statutory obligation to hand over the charge and records to the newly elected Committee, and such obligation cannot be suspended merely because the outgoing Office Bearer chooses to challenge the election. It was argued that, admittedly, no stay order was operating in favour of the Petitioner and, therefore, the newly elected Committee was entitled to assume the charge. Learned Government Advocate further submitted that the replies furnished by the Petitioner did not disclose any sufficient cause as contemplated under Section 123A and merely reflected an attempt to retain control over the records of the Society. It was, therefore, submitted that action under Section 123A was perfectly justified.

11. Having considered the rival submissions and having perused the material placed on record, we find no merit in the principal challenge raised by the Petitioner. Before we proceed to decide the matter on

¹ (2004) 2 SCC 447

² (2025) 7 SCC 545

merits, we would like to consider the scope and mandate of Section 123A of the Act, which reads as under:

“123A. Handing over records and property to new Chairman on election.- (1) *On the election of a new Board of Directors and its Chairman, the retiring Chairman in whose place the new Chairman is elected, shall hand over charge of the office and all papers and property, if any, of the society in his possession or any officer thereof, to the new Chairman of the Board of Directors [immediately after assuming office by him].*

(2) If the retiring Chairman fails or refuses to hand over charge, or to hand over the papers and property of the society as aforesaid, the Registrar, or any person authorised by him in this behalf, may, by order in writing, direct him to forthwith handover such charge and property.

(3) If the retiring Chairman to whom a direction has been issued under sub-section (2) without sufficient cause fails to comply with such direction, he shall be liable to pay fine of rupees two thousand per day of delay in handing over of charge to the newly elected Chairman from the date of issuance of directions by the Registrar till the actual date of handover of charge. Such fine shall not be paid from the funds of the society but shall be recovered from the defaulting retired Chairman];

(4) The retiring Chairman shall pay such fine so payable under sub-section (3) to the Registrar by way of challan in the Government treasury and a self-attested copy of the receipt of the paid challan shall be submitted to the Registrar within thirty days of handing over the charge.

(5) On failure of the retiring chairman to pay fine within the time limit specified under sub-section (4), the same shall without prejudice to any other mode of recovery, be recoverable as an arrears of land revenue.

(6) The provisions of sub-sections (3), (4) and (5) shall mutatis mutandis apply in case, the newly elected/nominated Chairman, Administrator or any other Office bearer, as the case may be, without sufficient cause, fails to take over custody of books, records, cash, security and other property belonging to a co-operative society.”

12. A perusal of Section 123A of the Act, in its entirety, shows that the provision has been enacted with the avowed object of ensuring seamless transition of the management of co-operative Societies. The provision mandates that, upon cessation of office, the outgoing office bearer shall hand over charge, records, books, documents and properties of the Society to the person or Committee legally entitled to receive the same. The language employed in Section 123A by the legislature leaves no room for discretion. The obligation is mandatory, and most importantly, the obligation is immediate with the sole object that the functioning of the Society should not be hampered or stalled and should effectively continue.

13. The entire edifice of the Petitioner’s case proceeds on the premise that since the election was under challenge, he was justified in retaining custody of the records. Such a contention cannot be accepted. Mere institution of election proceedings does not obliterate the election nor suspend its operation. Unless a competent forum grants interim protection or sets aside the election, the elected committee remains entitled to function. Admittedly, in the present case, no such interim order was ever granted in favour of the Petitioner. On the contrary,

records show that Respondent No.3 specifically informed the Petitioner that no stay has been granted by the Tribunal and, therefore, compliance of the directions issued by the Petitioner is the statutory requirement and not optional.

14. We have perused the replies submitted by the Petitioner and we find that the Petitioner has failed to disclose any sufficient cause within the meaning of Section 123A. The Petitioner consistently relied only upon the pendency of the election proceedings. Such a plea cannot constitute sufficient cause under the statute. Acceptance of such a contention would frustrate the very purpose and object of Section 123A of the Act and permit outgoing office bearers to indefinitely withhold records by merely challenging an election.

15. The contention of the Petitioner that he had handed over the records to Respondent No.3 also deserves to be rejected. Section 123A(1) clearly mandates that the retiring Chairman, in whose place the new Chairman is elected, shall hand over charge of the office and all papers and property, if any, of the Society in his possession or any Officer thereof to the new Chairman of the Board of Directors immediately after assuming the office by him. Thus, Section 123A does not contemplate delivery of records to the office of the Assistant Registrar. The statutory obligation is to hand over charge and records to the person or Committee legally entitled to receive them. In the present case, the persons legally entitled to receive such records were the members of the newly elected

Managing Committee. Therefore, forwarding documents to Respondent No.3 would never amount to compliance with the statutory mandate of Section 123A of the Act. Consequently, the communication relied upon by the Petitioner, including the communication dated 14.05.2025, cannot absolve him of the liability under Section 123A.

16. The submission vehemently advanced by the learned Counsel for the Petitioner based on the principle of natural justice also does not persuade us to interfere with the impugned order in its entirety. The Petitioner was repeatedly called upon to explain his conduct and, in fact, had submitted detailed replies from time to time to the office of Respondent No.3. The substance of his defence was therefore before the Respondent No.3 at all times when the direction as contemplated under Section 123A of the Act was issued by Respondent No.3. However, while examining the quantum and period of penalty, we find it necessary that the liability be confined to the period during which the Petitioner continued to be in non-compliance of the statutory directions. Only to this extent, we deem it appropriate to interfere with the impugned order of the Respondent No.3. The reliance of the Petitioner on the Apex Court judgments is, therefore, absolutely misplaced.

17. The records suggest that the communication of Respondent No.3 dated 22.04.2025 granted the Petitioner seven days' time to hand over the charge and the records to the newly elected Committee in accordance with Section 123A of the Act. The Petitioner admittedly

failed to do so. Equally, there is no material on record to show that the Petitioner ever handed charge and records to the newly elected Committee thereafter, till this Court, in the present Writ Petition, intervened and directed the Petitioner to hand over the records to the newly elected office bearers of the Respondent No.4 – Society. Furthermore, we find that the present Petition itself came to be instituted before this Court on 03.09.2025 while continuing to dispute the authority of the newly elected Committee. In such circumstances, the period of default cannot be curtailed merely because Petitioner chose to forward records to Respondent No.3. The contention of the Petitioner that the period be restricted till 14.05.2025, the date on which the Petitioner forwarded the records to the office of Respondent No.3, has to be therefore rejected as such an act of the Petitioner does not satisfy the statutory requirement under Section 123A of the Act.

18. Therefore, while the finding recorded by Respondent No.3 regarding the Petitioner's failure to comply with Section 123A deserves to be affirmed, the computation of the penalty requires modification. In our considered view, the penalty ought to be computed from the expiry of the period granted under the communication dated 22.04.2025 and shall continue till 03.09.2025, namely, the date on which the present Petition came to be instituted before this Court by the Petitioner.

19. For all the aforesaid reasons, the challenge to the action initiated under Section 123A, therefore, fails. The impugned order dated

17.06.2025 is upheld insofar as it records the Petitioner's failure to comply with the mandatory statutory obligations of handing over charge and records to the newly elected Managing Committee. Insofar as it imposes a penalty upon the Petitioner, the order dated 17.06.2025, is modified to the limited extent that the penalty shall be calculated beyond the expiry of the period granted in the communication dated 22.04.2025 till 03.09.2025. The Petitioner is directed to pay the penalty amount within a period of eight weeks from today, failing which the Authorities can recover the same in accordance with law from the Petitioner.

20. The Writ Petition is accordingly partly allowed in the aforesaid terms. The Rule is made partly absolute. There shall be no order as to costs. The Registry is directed to waive office objections and number the Petition.

HITEN S. VENEGAVKAR, J.

VALMIKI MENEZES, J.