

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 381 of 2017

BETWEEN : **SATISH NARAYAN** of Nasilivata Road, Nadera, Nasinu, Assistant
Lecturer.

PLAINTIFF

AND : **NASINU LAND PURCHASE AND HOUSING CO-OPERTATIVE**
SOCIETY LIMITED a limited liability company having its registered
office at Suva, Fiji.

DEFENDANT

Counsel : **Mr. S. Singh for the Plaintiff**
Ms. S. Devan for the Defendant
Date of Hearing : **16th April, 2018**
Date of Judgment : **27th April, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiff was an ex-Chairman, and also a member of the Defendant. He was suspended from the membership of the Defendant on 27th July, 2017. He is seeking reinstatement of his membership with the Defendant with all his membership benefits. The Defendant admitted that the Plaintiff's membership. The reason for suspension was that he had signed a share certificate while he was the Chairman of the Defendant. The transferor had died, prior to the purported transfer. The Defendant was unable to establish procedure regarding the share transfer and the responsibility of the Chairman in regard to the authenticity or correctness of the said transfers. As the Chairman of the Defendant all the share certificates needs to be signed by the Chairman and the Secretary. The transfer of the shares was approved by the Board of Defendant. In the absence of procedure, the verification of the identity of the transferring parties are collectively with the Board. Upon the Board decision shares were transferred and two signatories in the share certificate cannot be entirely held

responsible unless there was some procedure where verification as to the contents of the applicants are vested with one or more persons.

FACTS AND ANALYSIS

2. The Plaintiff was an ex-Chairman of the Defendant Co-operative, governed by Co-operative Act, 1996 and also by-laws made by it.

3. The Plaintiff was suspended from the membership of Defendant by a letter dated 5.8.2016 and it stated as follows:

‘The reason (sic) for your suspension is as follows,

1. Wrongfully transferring of Lot 20 DP 10581 which belonged to Mr. Har Deo (Unknown member) and was then transferred to Ms. Karishma Kartika Devi.
2. This membership issue wasn't brought up or discussed at the board meeting neither it is minutes.(sic)
3. You as the then Chairman and Mr. Muni Deo Former Secretary to the board signed and approved Ms. Karishma Kartika Devi membership card without prior approval of the board.
4. This is a breach of fraudulent (sic) in making or approving membership.
5. In the Annual General Meeting on 27/07/2016 this issue was raised by you and the Chairman Mr. Yogesh Krishna explained to its member (sic) and showed the membership card that was signed and approved by then the (Sic) Chairman Mr. Satish Narayan and former CEO/Secretary Mr. Mini Deo. As a matter of fact Mr. Asraf Ali Maqbool and Mohammed Ali Maqbool said that it was a case of fraud and what action did the board took. Chairman explained. Mr. Asraf Ali Maqbool moved a motion that Mr. Muni Deo, Mr. Satish Narayan and Mr. Prem Chand be suspended immediately and was seconded by Mr. Mohamed Ali Maqbool.
6. Based on the decision made in the AGM the board has now decided to accord you natural justice by asking you to present your side of the story before the board finally (sic) decides on what action to be taken.’

4. On Board of Directors Meeting held on 22.1.2014 attended by Plaintiff (as then Chairman), Yogesh Krishna Nair, Ravinesh Chand, Muni Deo, Arvind Kumar, Satya Narayan, Prem Chand, Arendra Kumar (all Directors at that time) and they had fully endorsed and approved the transfer of the members, including the alleged transfer from Har Deo to Krishna Devi. These minutes were also approved later by the same Board of Directors in the subsequent meeting held on 26.2.2014.

5. Section 43 of the Co-operative Act, 1996 deals with the expulsion of a member and states as follows

'Expulsion of member

43.-(1) The expulsion of a member may be ordered by the Board or by the General Meeting if a member carried out or attempted to carry out an act seriously detrimental to the co-operative or if he or she failed to respect any or all the duties stipulated in Section 39 of this Act.

(2) The procedure for expulsion of a member shall be set out in the by-laws and shall include:

(a) a period of notice of at least two months;

(b) a written notification thereof stating the reasons for the expulsion; and

(c) the member's right to defend himself or herself before the Board or the General Meeting prior to the decision.

(3) If the expulsion was decided by the Board, the expelled member may appeal to the next General Meeting whose decision shall be final: Provided that such appeal shall not suspend the effects of the decision'.

6. According to the above Section 43 of Co-operative Act, 1996 it is mandatory for the Defendant to make by laws regarding the expulsion of its members.

7. By law 8 of the Defendant deals with the termination of the membership and state as follows

'Membership shall be terminated by

- a. Death;
- b. Removal of residence from the area of operations of the co-operative;
- c. Permanent insanity ;
- d. Expulsion as provided for in by law 9;
- e. Withdrawal after application in writing to the Secretary giving one year's notice;
- f. Buying of other members shares to become members.
- g. Number of shares and membership;
- h. Failure to hold shares in the Co operative as required under By law 6(e)'

8. As to the procedure of expulsion of a member is dealt in by law of the Defendant in clause 9 and states as follow

'A member may be expelled for any action which is held by the Board and confirmed by the Annual General Meeting to be dishonest or contrary to the stated objects of the or interest of cooperation'.

9. It should be noted there is no provision contained in the Co-operatives Act, 1996 or By laws of the Defendant that deals with the **suspension** of a member. The Plaintiff is currently suspended from the membership since 27.07.2016. According to the said letter the decision to suspend was taken in AGM of the Defendant on 27.07.2016. The decision to expel is a decision of the Board, that needs confirmation in AGM. in terms of By Law 9.
10. The AGM was held on 23.07.2016 but there is no evidence that there was a motion to suspend or remove Plaintiff from membership. (See SN7 annexed to the affidavit in opposition).
11. Though it was included in the Affidavit in opposition, this Motion to investigate certain dealing including the specific transfer, was made by the Plaintiff. This cannot be relied to suspend the Plaintiff.
12. In a letter dated 4.8.2016, the CEO /Secretary of the Defendant had informed that suspension of the Plaintiff from 27.7.2016 would be dealt in the following Board Meeting on 8.9.2016 and he was summoned to appear before the Board on that day.
13. On 17.10.2016 the Plaintiff has written a letter to the Secretary of the Defendant and indicated that more than 30 days lapsed from his appearance before the Board for explanation regarding the suspension from the membership with the Defendant and of failure to inform the Decision of the Board.

14. On an email from the CEO/Secretary to the Defendant the Plaintiff was informed that suspension of the Plaintiff from the Defendant would operate till the next AGM. There is no evidence of an AGM in year, 2017.
15. There is no provision contained in either Co-operatives Act 1996 or by laws of the Defendant in terms of the Section 43(2) of the Act, to suspend the membership of a member.
16. In any event suspension of a membership for over one year is unreasonable and unjustified. The decision to expel must be a determination of the Board. This should be subsequently confirmed by AGM. (See By Law 9).
17. In this instance the Plaintiff was the Chairman of the Defendant at the time of the alleged transfer of the shares from Har Deo to Karishma Devi. This share transfer is annexed to the affidavit in opposition marked 'SN 4' and the Board of the Defendant had approved it on 23.01.2014. The minutes of the said Board Meeting is annexed to the affidavit in support marked 'C' and this minutes were adopted in the subsequent Board Meeting of the Defendant.
18. The reasons for suspension of the Plaintiff is contained in the letter annexed as 'D' to the affidavit in support. The reasons are, approving the share transfer without the approval or concurrence of the Board, which is proved incorrect on the evidence submitted, which is undisputed.
19. It should also be noted that before suspension of the Plaintiff from the membership no opportunity was given to him for show cause. There was not even an item in the agenda of AGM.
20. It should be noted that any removal of member needs to comply Section 43(2)(a),(b), and (c) of the Co-operative Act, 1996. This cannot be circumvented by suspending a

member for more than one year. The suspension for a long period deprives membership his rights.


CONCLUSION


There is no provision in the Co-operatives Act, 1996 or in the By Laws made in terms of that to suspend a member. The suspension is illegal. The reasons for suspension is also not justified. The Plaintiff is reinstated with the Defendant forthwith, together with all his membership benefits. The cost of this action is summarily assessed at \$2,000.

FINAL ORDERS

- a. The suspension of the Plaintiff from the Defendant's membership on 27th July, 2017, is illegal.
- b. The Plaintiff is reinstated as member of Defendant together with all his membership rights, benefits.
- c. Cost is summarily assessed at \$2,000.

Dated at Suva this 27th day of April, 2018




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Justice Deepthi Amaratunga
High Court, Suva