

GJPM040030202023



**Order Below Exh-1**

1. The present application is preferred by the decree holder under the provisions of Order 21 with provision under Section 151 and 94 of the CPC. The present execution has been filed by the decree holder to provide the delivery of the possession of the immovable property to them as per decree dated 7.7.2014 passed in Lavad Case No.204/2011. The said decree was passed, wherein it was held that the plaintiff is the owner of the property and sale deed was cancelled thereby by the Board of nominees, Godhara. Also the defendant is not the member of the society so the society is not bound to adhere to the sale deed. Also the defendant does not have right with respect to constructing in the said property. Further the defendants were prohibited from carrying out any construction and permanent injunction restraining the same was also granted. It was also directed that the defendant does not transfer or change the nature of the property. Also the possession of the suit property to be handed over to the plaintiff within 30 days. Hence this execution petition was preferred.
2. The opponent no.2 and 3's learned advocate has filed an objection with respect to the execution produced vide Ex-6. They have objected that the applicant has misguided the court that the Appeal has been dismissed but we have filed a restoration application within the limitation period, which is pending before the Hon'ble Tribunal. The applicants are aware of the same and have filed a reply in the restoration application. The applicant has approached this court but if they

are aggrieved by the sale deed then he must approach the Civil Court or competent court within the limitation period. The applicant has neither filed any civil suit or declaratory suit or suit for possession before Civil Court nor filed an application before Halol Prant officer nor in any competent court for cancellation of mutation entry. Also the order passed in Lavad Case no.204/2011 was ex-parte order. Further the Board of nominees, Godhara is not a competent authority to pass the order to cancel the sale deed registered under Transfer of Property Act. The Board of Nominees, Godhra has only jurisdiction to decide the dispute pertaining to the membership of the Cooperative Society. But the applicant has not approached any civil court seeking such reliefs within the limitation period. Hence the instant proceedings are void ab initio coram non iudice as discussed above. Hence the above execution application may be dismissed accordingly.

3. The applicant has replied for the objection which is produced at Ex-11. The applicant has simply denied the objections raised by the opponent .
4. Now it is pertinent to note that the applicant has filed this suit for declaration that the plaintiff is the owner of the suit property, to provide the possession and to restrict the opponent from transfer or any further construction. Before considering the other factors it is important to peruse the Section 96 of the Gujarat Cooperative Societies Act,1961 which provides for procedure for deciding disputes touching the constitution, management or business of a society by the prescribed Authorities namely board of nominees with a further appeal provided to the Cooperative Tribunal. Further Section 98 of the Act provides for the settlement of disputes and Section 99 provides for the

procedure for the settlement of disputes and power of the Registrar, his nominee and board of nominees. From a bare reading of the said provisions, it is clear that only the disputes relating to the constitution, management or business of a Co operative Society can be decided by the Registrar or his Nominee or Board of Nominees. The said dispute may be between a Society, its Committee and its past members etc. as enumerated in Clauses (a) to (e) of Sub section (1) of Section 96. The Explanation I in Subsection (2) of Section 96 further enumerates that such dispute under Section 96 shall include a claim by a Society for any debt or demand due to it from a member or a claim by a surety or a claim by a Society of any loss caused to it by its member or refusal or failure of a member to deliver possession to the Society of land or any other assets resumed by it for breach of conditions of the assignment. Hence the periphery and scope of disputes to be dealt by the Registrar or his Nominees or Board of Nominees therefore cannot exceed the limits set in the said provision of Section 96 of the Act.

5. In the **Harikrushnadas Chhaganlal Nanalal & ... vs Vinodchandra G Vaghela. AIRONLINE 2021 GUJ 868** the Hon'ble High Court of Gujarat has held in the relevant para that:

“7. The periphery and scope of disputes to be dealt by the Registrar or his Nominees or Board of Nominees therefore cannot exceed the limits set in the said provision of Section 96 of the Act.

Obviously, a contract of sale or a conveyance under a registered sale deed cannot fall within the four corners of Section 96, as once such a sale deed is executed and registered, it can no longer remain a dispute

touching the constitution, management or business of a Society. The third party rights like in favour of the Appellant Trust in the present case are created and such civil rights or property rights cannot be said to be a dispute touching the constitution, management or business of the Society.

8. By an indirect challenge to the Resolution of the Society which could be a subject matter of Section 96 dispute cannot be examined or adjudicated by the Registrar or his Nominees once the sale deed has been executed and registered. If the Resolution is quashed and set aside before any such Sale Deed is executed and registered, it could be possibly said that such a dispute between a member and the Society would fall within the scope of Section 96 of the Act. But such a dispute raised after the Sale Deed is executed and registered does not remain within the realm of jurisdiction of the Registrar or his Nominees or Board of Nominees under Section 96 of the Act. Only the competent Civil Court can entertain such a challenge in a properly instituted suit on valid grounds and is based on admissible evidence.”

6. Hence in the above judgment the Hon'ble High court of Gujarat has clearly stated that the cancellation of the sale deed or other such related matters are to be adjudicated by the Civil Court and the society registrar has no such power exercised by them. Also the objections by the opponents no.2 and 3 are thereby taken into consideration and thus is in consonance with the above discussed provisions and the citations produced. The society constituted under the Gujarat Cooperative Societies Act,1961 has limited powers of the Civil Court which is

restricted to functions envisaged in the Chapter IX of the Act and not beyond that. So the Board of nominees has erred in entertaining the Lavad Suit which was not within their jurisdiction of the said board of nominees under Section 96 of the Act as the Registered sale deed was duly executed. The cancellation of sale deed is thereby void ab initio, in nullity and apparent on the face of it. Hence the present execution petition is without jurisdiction and cannot be executed accordingly.

### **ORDER**

The execution petition is thereby dismissed.

All other applications produced thereby are disposed accordingly.

The cost will be borne by the parties on their own.

Pronounced in open court on 9th, June, 2025.

Place:-Halol.  
Date :09/06/2025

(H.H.Vishnoi)  
Addl Civil Judge  
Halol