

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.15721 OF 2015

Shri. Rajesh Khanna

.. Petitioner

Versus

State of Maharashtra and others

.. Respondents

Mr. V. B. Tapkir, for the Petitioner.

Mr. Nitesh V. Bhutekar, for the Respondent No.4.

Ms. M. S. Bane, "B" Panel Counsel for the Respondent Nos.1, 2 & 3.

CORAM : R.M. SAVANT, J.

DATE : 26th JUNE, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the letter dated 27.05.2015 which is communication to the Petitioner that his objection to his name not being included in the provisional voters list has been rejected. The said rejection is on the ground that the Petitioner is an associate member and his wife Mrs. Amita Khanna is the member. The Petitioner whilst challenging the said communication to him seeks to place reliance on the share certificate issued in respect of the shares held by the Petitioner and his wife of the society in question. The share certificate shows that initially the wife of the Petitioner was an ordinary member and the Petitioner was an associate member. However, on the reverse of the

said share certificate an entry is made in the year 2005 i.e. on 05.05.2005 in the column for date of transfer, the name of the Petitioner is shown as an ordinary member and the name of his wife as an associate member. The same is again reiterated against the entry made on 27.09.2005 in the column for date of transfer. It is based on the said entry that the Petitioner claims that he is an ordinary member and his wife is an associate member. In terms of Section 38(2) of the Co-operative Societies Act, the register of members bears the date of admittance to membership and of the date on which he ceased to be the member. The Learned Counsel Mr. Nitesh V. Bhutekar appearing for the Respondent No.4 society draws this Court's attention to the extract of "I" register and especially to Sr. No.65 of the said register, wherein the date of admittance of membership is shown as 22.9.97/6.8.98 and the name of the Petitioner's wife Mrs. Amita Khanna is shown as member and the Petitioner's name is shown as joint member. Upon this, the Learned Counsel for the Petitioner sought to place reliance on another register being the "J" register, wherein the name of the Petitioner is appearing as a member and the name of his wife is appearing as an associate member. The Learned Counsel for the Respondent No.4 society contends that the said "J" register is not material for the purposes of considering whether a person is a member or not and it is the "I" register which is material in so far as contesting the election is concerned.

In my view, the aforesaid contentions raise disputed questions of fact, as the Respondent No.4 society also questions the endorsement made on the reverse of the said share certificate. It is therefore not possible for this Court in its Writ Jurisdiction to enter into the said controversy. In my view, therefore, no interdiction is called for with the communication made by the Returning Officer to the Petitioner. The Writ Petition is accordingly dismissed. However, it would be open for the Petitioner to adopt such remedy as is available in law after the elections are over and if the occasion so arises.

[R.M. SAVANT, J]