

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 2642 of 2014 (E)

PETITIONER:

**MARTIN M.O.
MEMBER NO.1846
THE SALES TAX DEPARTMENT HOUSING CO-OPERATIVE SOCIETY
THIRUVANANTHAPURAM NO.4385 (RESIDING AT
MANAGALAKKADAN HOUSE
KOTHAKULANGARA, ANGAMALY, ERNAKULAM)**

**BY ADVS.SRI.P.C.SASIDHARAN
SRI.E.S.ASHRAF**

RESPONDENTS:

- 1. KERALA STATE CO-OPERATIVE ELECTION COMMISSION
OFFICE OF THE KERALA STATE ELECTION COMMISSION
THIRUVANANTHAPURAM - 695 001**
- 2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM - 695 001**
- 3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
THIRUVANANTHAPURAM - 695 001**
- 4. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
ESTATE OFFICER, THIRUVANANTHAPURAM - 695 001**
- 5. THE SALES TAX DEPARTMENT HOUSING CO-OPERATIVE SOCIETY
THIRUVANANTHAPURAM NO.4385
REPRESENTED BY ITS SECRETARY - 695 001**

**R1 TO R3 BY SPL. GOVERNMENT PLEADER
R4 BY GOVERNMENT PLEADER SRI. T.R. RAJESH
R5 BY ADV.SRI.GEORGE POONTHOTTAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

WP(C).No. 2642 of 2014 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE ELECTION NOTIFICATION DT.12-12-2013.

**EXHIBIT P2 : TRUE COPY OF THE ORDER APPOINTING THE ELECTORAL
OFFICER AND RETURNING OFFICER DT.12-12-2013.**

**EXHIBIT P3 : TRUE COPY OF THE ELECTION NOTIFICATION APPEARED IN
MADHYAMAM DAILY.**

**EXHIBIT P4 : TRUE COPY OF THE REPRESENTATION PREFERRED BY ONE OF
THE MEMBER BEFORE R1.**

**EXHIBIT P5 : TRUE COPY OF THE REPRESENTATION PREFERRED BY SOME OF
THE MEMBERS OF THE SOCIETY BEFORE THE R1.**

**EXHIBIT P6 : COPY OF THE COMMUNICATION ISSUED BY THE DEPUTY
COMMISSIONER DATED 24.01.2014**

RESPONDENT(S)' EXHIBITS:-

EXHIBIT R5(a) : TRUE COPY OF THE BILL ISSUED BY VEEKSHANAM DAILY

**EXHIBIT R5(b) : TRUE COPY OF THE BILL ISSUED BY MADHYAMAM DAILY
ON 23.12.2013**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). No. 2642 of 2014

Dated this the 03rd day of February, 2015

JUDGMENT

Ext. P2 election notification for the Managing Committee of the fifth respondent society is impugned. The grounds on which the challenge is made are the following:-

i) The resolution of the Managing Committee fixing the date, time and place of election was routed through the Assistant Registrar and not through the Registrar as mandated in the Rules.

ii) The details of the election to the committee of the society have not been published in two vernacular dailies having wide circulation in the area but in dailies having political affiliation with limited circulation.

iii) The space allocated for polling is hardly sufficient for the voters to exercise their right of franchise when the number of members exceed 1400.

2. The final voters list was published on 08.01.2014 and the list of candidates was also published on 17.01.2014. The writ petition was filed on 27.01.2014 just a couple of days before the actual date of poll on 29.01.2014. The polling is also over and the results have not been published by virtue of

the interim order dated 28.01.2014 in the writ petition. Whether the facts alleged by the petitioner has vitiated the election is the moot question which can as well be adjudicated in an election petition.

3. I decline jurisdiction following **Shri. Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra and Others [(2001) 8 SCC 509]**. The petitioner is free to urge the points now canvassed in an election petition if so filed. The process of election shall continue from the stage at which it was halted.

The writ petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

DCS