

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2874 OF 2016

Jagjeevanram Co-operative Housing Society Ltd.,
Padampura, Aurangabad.

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. M.D. Narwadkar, Advocate for petitioner.

Mr. A.P. Basarkar, A.G.P. for State.

Mr. K.J. Suryawanshi, Advocate for Respondent Nos.6 to 9.

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CORAM : T.V. NALAWADE, J.

DATED : 04th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Returning Officer by which a direction is given to include names of Respondent Nos.6 to 9 in voters list for election to petitioner – housing society. Both sides are heard.

2. The record and submission made shows that the society was registered in the year 1962. Government acquired land for present housing society in the year 1968 and at that time there was record created to show that the land was acquired for Chambhar (backward

class community) Housing Society. During the years 1976 to 1992, one Shastri was the Chairman of the society. During his tenure, the membership fees and other amounts were accepted from Respondent Nos.6 to 9 and the certificates of memberships were also issued to them. In the year 1993, F.I.R. was given against Shastri that the amounts which were recovered from the members for making members were not shown in the account and it was misappropriated. Shastri is now no more.

3. The audit of the accounts of the petitioner – society was conducted for the period 1988 to 1991 and report was submitted in 1992. The auditor noticed that 106 members were there including the present Respondent Nos.6 to 9. He made some observations with regard to irregularities about making of the members. Subsequently, Respondent Nos.6 to 9 were shown to be deleted from the register of members. It was submitted for the society that by passing resolution the membership was terminated as Respondent Nos.6 to 9 do not belong to aforesaid community and they are of upper class community.

4. The authority has given decision that Respondent Nos.6 to 9 were made members after accepting the membership fees and other amounts from them and even the certificate of membership was issued to

them and so they cannot be deprived of their rights to vote in the election and so direction is given to include their names in the voters list. The aforesaid record is considered by the Assistant Registrar of Co-operative Societies – the authority

5. During arguments, it was submitted for society that as Respondent Nos.6 to 9 belong to upper class community, they could not have been members and so they cannot be allowed to vote in the election. The learned Counsel submitted that if their names were deleted by passing resolution by general body, it was necessary for them to challenge the said resolution, deletion of their names from membership register.

6. The submissions made show that virtually no record is available with the society to show that some resolution was passed by the general body and the membership of the Respondent Nos.6 to 9 was terminated. The learned Counsel submitted that when F.I.R. was given against Shastri, entire original record was collected by police for the criminal case and that record remained with police. In that regard communication is produced by the learned Counsel for Respondent Nos. 6 to 9 which is to the effect that the said record was not taken over by police. This circumstance cannot be ignored in view of the defence of

aforesaid nature taken by the society. Further, the decision of the general body was not informed to the authority as required by law and so there is no check to the contention that such resolution was really passed by the general body. Before termination of such membership, notice is required to be given to the members individually and the member needs to be allowed to have his say before the general body and only thereafter that the resolution can be passed. After passing of the resolution, report is required to be given to the authority about passing of resolution and the authority also again expected to make enquiry into the matter during which opportunity needs to be given to the members and then only the authority approves the resolution. Such procedure provided by Rules was not followed and so it cannot be presumed that the membership which was shown on the record till the year 1992 when first audit was done, was terminated after following due process of law.

7. Learned Counsel for petitioner submitted that the record on which Respondent Nos.6 to 9 are placing reliance is highly suspicious in nature as similar record is not available with other members and even the lay out of the plot given by the government to the society is not sanctioned. This contention cannot be considered as there is report of audit submitted in the year 1992 which is to the effect that the

Respondent Nos. 6 to 9 were made members. In view of this factual position, this Court holds that it is not possible to interfere in the order made by the authority.

8. Learned Counsel for petitioner placed reliance on two reported cases **2011 (2) Mh.L.J. 8 (Nagpur Bench)** and **2009 (4) All M.R. 553 (Nagpur Bench)**. The points involved in those proceedings were different. The scope of present matter is limited. Though there is circumstance that these respondents have filed dispute before Co-operative Court for declaration of their rights, this circumstance also cannot go against Respondent Nos. 6 to 9 considering the scope of the present enquiry. Thus, it is not possible to interfere in the order made by the authority. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD