

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 6878 OF 2016

Sow. Rajashree Vilas Khatri and others.

... **PETITIONERS**

VERSUS

The State of Maharashtra and others.

... **RESPONDENTS**

...

Mr. R. R. Mantri, Advocate h/f Mr. S. V. Munde, Advocate for Petitioners.

Mr. U. H. Bhogale, AGP for Respondent No.1 / State.

Mr. Deelip Bankar Patil, Advocate h/f Mr. V. J. Francis and Mr. F. V. Patel,
Advocate for Respondent No.2.

Mr. S. K. Kadam, Advocate for Respondent Nos.3 & 4.

Mr. S. B. Talekar, Advocate for Intervenors.

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CORAM : P. R. BORA, J.

Reserved on : 08th July, 2016.

Pronounced on : **13th July, 2016.**

ORDER:

. The petition is finally heard at the admission stage.

2 The Petitioners have filed the present petition seeking issuance of writ for inclusion of their names in the final voters list published on 27th June, 2016, for the election of Kanchan Nagar Co-operative Housing Society Limited Nakshatrawadi, Aurangabad for the year 2016-17 so that they will be able to cast their votes in the election to be so held on 14th July, 2016. It is the contention of the Petitioners that for wrong reasons, their names have been deleted from the final list of voters published on 27th June, 2016. It is the further contention of the Petitioners that their names cannot be deleted on the basis of bye-law No.17(a)((i) of the Respondent Society. It is the further contention of the Petitioners that they are the valid members of Respondent No.2 Society and are, therefore, eligible to vote in the elections of the said Society and as such, their names must be included in the final voters list.

3 Relying upon the judgment of the Honourable Apex Court in the case of **Pundlik Vs. State of Maharashtra and others**, reported in, **2005(4) Mh.L.J. 254**, it was sought to be canvassed by Shri Mantri, learned counsel appearing for the Petitioners that even though the election process has commenced and the final voters list

has been published, still the illegality can be cured in time before the actual holding of the election and when the Petitioners have made out a strong case evidencing that for wrong reasons their names have been deleted from the provisional voters list, this Court can very well order inclusion of the names of the Petitioners in the voter list so that they can exercise their right of vote in the elections to be held for electing committee members of Respondent No.2 Society. The learned counsel submitted that the judgment in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others**, reported in, **AIR 2001 Supreme Court 3982** has been distinguished in the case of *Pundlik (supra)*. The learned counsel further submitted that the Petitioners cannot be denied the voting right by resorting to bye-law No.17(a)(i) of the bye-laws of the Respondent No.2 Society. The learned counsel invited my attention to the definition of 'nominal member' as provided under Section 2(19)(c) of the Act and submitted that to treat a member as a 'nominal member', he must have been admitted to the membership at the very initial stage by specifically showing him as a 'nominal member'. The learned counsel submitted that the Petitioners are not admitted as

nominal members in Respondent No.2 Society and they are holding the status of full fledged members of the said Society and thus cannot be deprived of voting right. The learned counsel further argued that even otherwise the provisions made in the bye-laws of the Society cannot be pressed into service for the reason that said bye-laws have been prepared by the committee, which was illegally in power at the relevant time though its term was over in the year 2010. In the circumstances, it was the contention of the learned counsel that the list of voters can be interfered with by this Court under Article 226 of the Constitution of India so as to remove the illegality.

4 Shri Deelip Bankar Patil, learned counsel appearing for Respondent No.2 opposed the submissions made on behalf of the Petitioners. The learned counsel reiterated the contentions raised in the affidavit in reply filed on behalf of Respondent No.2 to the present petition. The learned counsel submitted that Respondent No.2 being a Type 'D' society, the election of the Committee to the said Society is governed by Rule 76 of the Maharashtra Co-operative Societies (Elections to Committee) Rules, 2014 (hereinafter referred to as "Rules of 2014"). The learned counsel submitted that as provided in

the said Rule, the final voters list has been published, the Returning Officer has also been appointed to conduct the election and a meeting has also been convened of the General Body of Respondent No.2 Society for conducting the election of the Committee members. In the circumstances, according to the learned counsel, the petition as has been filed by the Petitioners, cannot be entertained and the only remedy available to the Petitioners is to file an election dispute as provided under Rule 78 of the Rules of 2014. The learned counsel relied upon the judgment of the Honourable Apex Court in the case of *Shri Sant Sadguru Janardan Swami (supra)*. The learned counsel submitted that Rule 78 of the Rules of 2014 specifically bars for raising any dispute as regards the election except by an election petition to be presented to the Co-operative Court as laid down in Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned counsel further submitted that the names of the present Petitioners have not been included in the list of voters since they do not fulfill the eligibility criteria as provided under bye-law No.17(a)(i) of Respondent No.2 Society, which prescribes that no individual shall be admitted as a member of a Society, who does not have any Plot / Flat / Row House / Duplex / Bungalow in his / her / their name by

virtue of allotment, deed, sale, transfer, lease etc. The learned counsel, therefore, prayed for rejecting the petition.

5 Shri Talekar, learned counsel for the Intervenors, who have been impleaded as the Respondents, submitted that in view of the law laid down by the Honourable Apex Court in the case of *Shri Sant Sadguru Janardan Swami (supra)*, the petition cannot be entertained. The learned counsel taking me through the Rules of 2014 submitted that as provided in the said Rules the only remedy, which can be availed by the Petitioners is that of filing election petition under Section 91 of the Act and no relief can be granted as has been prayed by the Petitioners in the present petition. The learned counsel submitted that the observations made and the conclusions recorded in the case of *Pundlik (supra)* cannot be of any help to the case of the present Petitioners. The learned counsel, therefore, prayed for rejecting the petition.

6 The Co-operative Housing Society of which the Petitioners claim to be the members, is admittedly a Type 'D' Society as specified in Rule 4(IV) of the Rules of 2014. Rule 76 of the Rules of 2014 prescribes the procedure for election to the Committee to

Type 'D' Societies. Rule 76 of the Rules of 2014 reads thus:

“76. Election of the Committee to the type 'D' Societies

The provisions of this Part shall apply in respect of Type 'D' Societies, specified in rule 4(IV),—

(1) The society shall prepare its list of voters and submit a copy thereof to the Taluka or Ward Co-operative Election Officer within seven days from the date of preparation.

(2) Election of these societies shall be conducted in Special General Body meeting called for this purpose. Such meeting shall be presided over by the person appointed by the SCEA for this purpose. The notice of the meeting shall be issued by the Presiding Officer or by such officer, as the case may be at least fifteen days before the date fixed for such meeting.

Provided that, the General Body of the society by resolution may submit requisition to the Taluka or Ward Co-operative Election officer, to hold the election as prescribed in rule 75, the Taluka or Ward Co-operative Election Officer shall proceed for the election as per procedure laid down Rule 75:

Provided further that, in case of failure of the Special General Body meeting called for the purpose to choose member of the committee for any reason,

the person appointed shall report to the SCEA or, District Co-operative Election Officer or, the Taluka or Ward Co-operative Election Officer, as the case may be, to conduct the election as prescribed in rule 75:

Provided also that, the person appointed for the election purpose shall have no right to cast a vote in any circumstances.

(3) The person appointed for election purpose shall attend the meeting and report the SCEA within two days of the meeting held for the purpose.”

7 As provided in the aforesaid rule, the process of election of the committee to Type 'D' society commences from the preparation of the list of voters. In the instant case, it is not in dispute that the provisional list of voters was published on 4th June, 2016 and the objections were invited in that regard. It is further not in dispute that after having considered the objections received to the said provisional voters list, the final voters list has been published on 27th June, 2016. As has been revealed from the contents of the affidavit in reply submitted by Respondent No.2 and the documents annexed therewith, a General Body meeting as provided under Rule 76 has been convened on 14th July, 2014, for the election of the committee to

Respondent No.2 society and the appointment of the Returning Officer has also been made for conducting the election. Considering the aforesaid undisputed facts in the light of the law laid down by the Honourable Apex Court in the case of *Shri Sant Sadguru Janardan Swami (supra)*, it does not appear to me that it would be proper for this Court to cause any interference under Article 226 of the Constitution of India when the process of election has already commenced.

8 Though it was sought to be canvassed by Shri Mantri, learned counsel for the Petitioners that the law laid down in the case of *Shri Sant Sadguru Janardan Swami (supra)* has been distinguished in the subsequent judgment by the Honourable Apex Court in the case of *Pundlik (supra)* and hence it would be well within the powers of this Court to direct inclusion of the names of the Petitioners in the list of voters, I am not convinced with the submission so made. Perusal of the judgment in the case of *Pundlik (supra)* makes it clear that it does not take any contrary view than taken in the case of *Shri Sant Sadguru Janardan Swami (supra)*. On the contrary, it concurs with the ratio laid down in the case of *Shri Sant Sadguru Janardan*

Swami (supra). What is observed in the case of *Pundlik (supra)* is the fact that the ratio laid down in the case of *Shri Sant Sadguru Janardan Swami (supra)* is not applicable to the facts of the said case. I deem it appropriate to reproduce hereinbelow the relevant paragraphs from the judgment in the case of *Pundlik (supra)*, which would make the things clear:

“15. In our considered opinion, the ratio laid down in *Sant Sadguru Janardhan Swami* does not apply to the facts of the case. In that case, objections against publication of provisional electoral roll of the society were filed which were considered by the Collector and disposed of. Final electoral roll was published on July 2, 1999. Election programme was drawn by him on October 21, 1999. Thereafter, the petitioner filed a petition under Article 226 of the Constitution in the High Court. A prayer was made in the petition that the order passed by the Collector on October 21, 1999 was required to be set aside. Obviously, therefore, the election process was already in motion and prayer of the petitioner was for quashing of Schedule for holding election. In the light of the factual position before the court, the petition was dismissed and it was held that the only remedy available to the aggrieved petitioner was to file election petition after the election is over in accordance with Rule 81 of the Rules.

16. The Court stated :

"In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved by means of an election petition before the Election Tribunal."

17. In the instant case, respondent Sangh had taken immediate action on receiving the fax message from respondent No.2 - Collector. As per the said communication by the Collector, an action could be taken for change of representative of respondent Sangh latest by June 10, 2005. A meeting was, therefore, convened by issuing an agenda to that effect by respondent Sangh on June 2, 2005. The meeting was accordingly convened on June 9, 2005 and a resolution was passed being Resolution No. 7 wherein it was decided that instead of

respondent No. 7, the appellant would represent respondent Sangh in the election of Maha Sangh. Since the action was taken strictly in conformity with the provisions of Rule 5 of the Rules as also the communication of respondent No.2-Collector dated May 30, 2005, respondent No.2 ought to have effected the change. The ground put forward for rejecting the resolution was not correct inasmuch as in the agenda notice issued by respondent - Sangh dated June 2, 2005, subject No.7 had clearly been mentioned and in pursuance of the said agenda notice, a meeting of the Managing Committee of respondent - Sangh was convened and a decision was taken. The grievance of the appellant, therefore, was justified that by not effecting the change and by ignoring the resolution passed by the Managing Committee of respondent - Sangh the Collector has acted contrary to law.

18. In our opinion, the learned counsel for the appellant is also right in submitting that if the order passed by respondent No.2 is upheld, the provisions of sub-rule (2) of Rule 5 will become nugatory and otiose. When the rule making authority conferred power on the Sangh to change the name of its representative/delegate by expressly permitting the change of representative/delegate and intimating the said fact to the Collector, such right cannot be taken away or interfered with. Since the last date as per the communication of the respondent No.2-Collector was June 10, 2005, the action of respondent - Sangh was

within the four corners of Rule 5(2). The High Court was, therefore, in error in not allowing the petition and granting the relief to the appellant.”

In view of the observations made as above, there shall not remain any doubt that the ratio laid down in the case of *Shri Sant Sadguru Janardan Swami (supra)* still holds the field and the same would apply in the facts of the present case.

9 In the case of *Shri Sant Sadguru Janardan Swami (supra)* the Honourable Apex Court has clearly laid down that the preparation of the voters list is a part of election process for constituting managing committee of the society and the writ petition challenging the order declaring the election schedule on the ground of illegality in preparation of voters list would, therefore, be not maintainable and further that if there was breach of rule or certain mandatory provisions of the rules were not complied with while preparing the electoral roll, the same could be challenged by means of election petition.

10 As noted earlier, the final voters list for the election of Respondent No.2 society has already been published and the election programme has also been declared. The authority concerned has

assigned certain reasons as to why the names of the present Petitioners could not be enrolled and enlisted as voters. The Petitioners may have certain grievances as against the decision of Respondent No.2 in not enlisting their names as voters, however, this Court cannot scrutinize the list and find out whether the names of the Petitioners have been wrongly deleted or otherwise in the limited jurisdiction of this Court. The issues, (i) whether the Petitioners can be treated as the members eligible to be included in the voters list or shall be treated as nominal members not having right of vote in the election of the Committee, (ii) whether the bye-laws, as are approved in the year 2013, can be acted upon or not, and (iii) whether the Petitioners were admitted as nominal members or otherwise etc. are disputed questions of facts, which cannot be gone into by this Court in writ jurisdiction. Admittedly, there are rival contentions for resolution of which an alternate equally efficacious remedy has been provided under Rule 78 of the Rules of 2014 of filing an election petition to the Co-operative Court under Section 91 of the Act.

11 Having regard to the fact that the election process pertaining to the election of the Committee of Respondent No.2

society has not only commenced, but it is at final stage, in view of the law laid down in the case of *Shri Sant Sadguru Janardan Swami (supra)*, the present petition cannot be entertained. The writ petition is accordingly dismissed without any order as to costs.

[P. R. BORA, J.]

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