

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6090 OF 2016

Ajitsingh J. Mohite & Ors.

...Petitioners

V/s.

The State of Maharashtra & Ors.

...Respondents

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Mr. R.S. Apte, Senior Advocate i/by. Mr. Mayuresh S. Lagu,
Advocate for the petitioners.

Mr. S.D. Rayrikar, AGP for respondent no.1.

Mr. Chetan Patil, Advocate for respondent no.3.

CORAM :- Smt. R.P. SondurBaldota, J.

9th June, 2016.

P.C. :-

1). This petition filed on 6th June, 2016 under Articles 226 and 227 of the Constitution of India challenges the order dated 7th May, 2016 passed by respondent no.2, the Returning Officer of Sahakaar Maharshi Tatyasaheb Mohite Sahakaari Paani Puravtha Sanstha, Yalgud, Randevivaadi, Hatkanangle, Kolhapur. The impugned order is passed on the objections raised by the petitioners towards the final list of voters of respondent no.2, Society for conducting general elections of

the Society on the ground that respondent no.2 has wrongly refused inclusion of 35 petitioners in the final list of voters.

2). On 26th April, 2016 respondent no.2, pursuant to the directions of respondent no.1, State of Maharashtra had published the election programme of respondent no.3, Society as per the provisions of Section 75 of Maharashtra Co-operative Societies Act, 1960 ("M.C.S. Act" for short). As the Returning Officer, respondent no.2 published provisional voter's list on 2nd May, 2016 of 704 members of respondent no.3. The names of the petitioners were not found in the list. Therefore, the petitioners objected to the same contending that, their membership had not been terminated by following due process of law and in particular by adopting procedure under Section 35 of the M.C.S. Act. Also there was no approval or sanction taken from the Registrar for the purpose. Respondent no.3, Society filed its replies to the objections of the petitioner, bringing on record that identical observations raised by the petitioners had earlier been considered and rejected by this Court, as well as, by the Co-operative Court in a dispute raised by the petitioners. After considering the objections and the replies thereto, respondent no.2 passed the order impugned herein. In the order, respondent no.2 takes note of the fact that membership of the petitioners was cancelled prior to the year 2010. Consequently, they had not

participated in the elections that had taken place in the year 2011.

3). The petitioners had filed Writ Petition No.1011 of 2011 for setting aside the order dated 13th January, 2011 and 16th January, 2011 by which their names were deleted and for direction to the Registrar of Co-operative Societies for inclusion of their names. By the order dated 3rd February, 2011 this Court dismissed the petition on merits, as well as, on the ground of its maintainability. This Court also observed that, the petitioners have alternate remedy of challenging the election under Section 91 of the M.C.S. Act. Then, two of the petitioners herein i.e. petitioners no.23 and 25 on behalf of themselves and on behalf of the other petitioners had filed a dispute in the Co-operative Court at Kolhapur being Dispute No.76 of 2011 seeking an injunction to restrain respondent no.2 from obstructing the petitioners in exercising their rights as members of respondent no.3. That dispute was initially dismissed for default by the order dated 7th July, 2014. Thereafter, it was restored to file and again dismissed for default on 14th March, 2015.

4). In the present petition, the petitioners have not disclosed Writ Petition No. 1011 of 2011 and the dispute filed by them in the Co-operative court. Therefore, a serious grievance has been raised by Mr. Patil, the learned Advocate

appearing for respondent no.3, that the petitioners are guilty of suppression of material facts in the petition and as such they are not entitled for any relief. He also submits that, the petition as filed is not maintainable in view of decision of the Apex Court in **Shri. Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. V/s. State of Maharashtra and Ors. reported in 2001 (4) ALL MR page 863**. In the decision cited, the Apex Court had framed two questions for its consideration. They were, (1)whether the preparation of the electoral roll for electing members to the Managing Committee of a specified Society under the provisions of the Act and rules framed thereunder is an intermediate stage in the process of election; and (2)If the answer to the first question is in the affirmative, whether the High Court should interfere with the preparation of an electoral roll in a petition under Article 226 of the Constitution or decline to interfere in the matter leaving the parties to get the matter adjudicated by the tribunal by filing an election petition after declaration of result of the election. After considering the rival submissions and also the various decisions cited before it, the Apex Court held 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

established that the High Court should not stay the continuation of the election process, even though there may be some alleged irregularity or breach of rules while preparing the electoral roll.

5). Mr. Patil, also relies upon a decision of Division Bench of our Court in the case of **Osmanabad Taluka Bhaji Pala Va Phale Utpadak Prakriya Sanstha Ltd. And Another V/s. The Collector, Osmanabad and Others reported in 1989 C.T.J. page 45**, by which the Division Bench of our Court has held that, it will not entertain the complaint and dabble with the election programme in exercise of its writ jurisdiction under Article 227 since in case the petitioners felt aggrieved, the appropriate remedy to the petitioners is to file election petition after declaration of the result.

6). Mr. Apte, the learned Senior Counsel appearing for the petitioners, submits that, by the subsequent decision in **Ahmednagar Zilla S.D.V. & P. Sangh Ltd. And Another Versus. State of Maharashtra and Others, reported in (2004) 1 Supreme Court Cases page 133**, the Apex Court has held that the High Court can interfere with the election process. He also refers to the unreported decision of Division Bench of this Court dated 6th May, 2015 in **Basawraj s/o. Vishwanath Sarne V/s. The State of Maharashtra and Ors. passed in Writ Petition No. 3551 of 2015 and Writ Petition No. 3831 of 2015**,

to submit that the Division Bench has considered the decision of *Sant Sadguru's* case (supra) and subsequent decision of *Ahmednagar Zilla's* case (supra) to repeal the argument that preparation of electoral roll being intermediary stage of the election process, challenge to the electoral roll cannot be entertained in exercise of writ jurisdiction. Perusal of the observations of the Apex Court in *Ahmednagar Zilla's* case, in particular paras-4, 5 and 6 make it clear that, the decision in *Sant Sadguru's* case, has merely been distinguished by the Apex Court. The distinguishing factor was that, in *Sant Sadguru's* case, the preparation of voters list was in terms of the extant rules but certain irregularities were committed therein, but where the voter's list has been prepared on the basis of non-existent rules, the same would be illegal. The Apex Court found that, there were allegations of illegal amendment of the bye-laws, which amendment was challenged and on the basis of those bye-laws the electoral roll was prepared. Rule 81 of the M.C.S. Act, does not permit the Election Tribunal to go into the validity of the bye-laws. In such circumstances, the objecting members did not have a remedy other than filing an appeal before the appellate authority and once it was held that the amendment of bye-laws was not in conformity with the law, the electoral roll prepared on that basis would fall down. In the facts of the

case, it was not even the contention of the petitioners that the voters list prepared by respondent no.2 is not in terms of the extant rules. The petitioners are only alleging certain irregularities on the part of respondent no.2. These alleged irregularities have been part of various proceedings since the year 2011 and the contentions based thereon have already been rejected. Therefore, the present petition will be covered by the decision of the Apex Court in *Sant Sadguru's* case and as such it is not maintainable.

7). Even on merits of the case, it has already seen that the petitioners had raised their objections by raising a dispute before the Co-operative Court but did not carry the same further and allowed it to be dismissed for default. Consequently, this petition is nothing but an attempt on the part of the petitioners in interfering with the process of election. The petition cannot be said to be a bonafide petition filed by the petitioners for protection of their rights. The petition is dismissed.

8). The petitioners shall pay costs quantified at Rs.35,000/- (Rs. Thirty Five Thousand only) to respondent no.3, Society.

(SMT. R.P. SONDURBALDOTA, J)