

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3574 OF 2015**

Satinder Mohan R. Batra & 32 Ors.

...Petitioners

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Viraag Tulzapurkar, Senior Advocate, a/w Mr. Simil Purohit, Mr. Suraj Iyer, Mr. Rohan Mathur, i/b M/s. Ganesh & Co., for the Petitioners.

Mr. I. K. Calcuttawala, AGP, for the Respondent Nos. 1 and 2.

Mr. M. M. Vashi, Senior Advocate, a/w Ms. Aparna Deokar i/b M/s. M. P. Vashi & Associates for the Respondents Nos. 3 to 16.

Mr. Vaibhav M. Parashurami, for the Respondent No. 17.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

DATED: 15th February 2016

PC:-

1. After this Petition was argued for some time and we have noted the request of the Petitioners and the opposition of the contesting Respondents, we find that the essential relief is that an election should be held to the Executive Committee of the Respondent No. 3.

2. We are mindful of the fact that there are certain applications which are pending before the Charity Commissioner, Greater Mumbai Region.

3. We are also mindful of the fact that the 3rd Respondent, Association has framed certain bye-laws /Regulations and which have also been registered with the Registrar under the Societies Registration Act, 1860. They are rather styled as Rules and Regulations /Memorandum of Association of Aram Nagar Welfare Association, Varsova, Mumbai 400 061.

4. Our attention is invited to the Regulations 4 and 5 and, equally, Regulation 11.

5. There are certain disputes and which the 3rd Respondent, Association claims to be on the footing that the Petitioners before this Court and those Applicants who have initiated proceedings before the Charity Commissioner are not eligible to enrol as members of the Association.

6. We have clarified to both senior counsel appearing for the Petitioners and the 3rd Respondent that since the parties are not averse to the election of the Executive Committee being held, whether without prejudice to the rights and contentions of both of them in the pending proceedings or equally their right to initiate any proceedings or raise contentions, can the elections to the Executive Committee be directed to be held by this Court and as our attention is invited by Mr. Tulzapurkar, learned senior counsel to an order passed on 1st July 2005 in three Chamber Summons and

one Notice of Motion in Writ Petition No. 3550 of 1991, a copy of which is at page 114 of the paper-book.

7. After seeking instructions from the respective clients, both senior counsel inform the Court that in the event the legal rights and contentions of both sides are protected, they are not averse to the elections being directed to be held by this Court. In the light of this broad agreement and by clarifying that this is without prejudice to the legal rights and contentions and, equally, the remedies resorted to or may be resorted to by the parties in future, the Respondent No. 17, Authority through its CEO and Vice President shall nominate a senior level officer preferably not below the rank of Deputy Chief Officer including from any unit of Maharashtra Housing Area and Development Authority (“MHADA”) to scrutinise the list that may be presented by the Association of its members. The authorized official shall, while undertaking the scrutiny and verification, also take assistance of the records of the Statutory Authority, including any list maintained by it of the occupants.

8. He shall also scrutinise and verify the claims of the Petitioners that they have forwarded amounts by way of cheques but they were not enrolled as member by the Respondent No. 3, Association.

9. That he would also verify from each of the occupants and presently in occupation of the premises as to whether they are possessing documents to prove that they are bona fide tenants of the premises or that they are members or occupants claiming

through such bona fide tenants either in the capacity of heirs and legal representatives of the deceased tenants or otherwise.

10. Upon such a scrutiny and verification which shall be done within a period of two weeks from today, the authorized official to announce and conduct an entire election programme and the process in pursuance thereof. He shall endeavour to conclude it within a period of two weeks from the date of scrutiny and verification of nomination papers.

11. Both sides agree that they shall subject themselves to such scrutiny and verification of this official without prejudice to their rights and contentions including on the point of his authority and power to do so. However, as they desire to have an election and concluded early that they would agree to this course of action.

12. We, therefore, direct the Respondent No. 17 whose Vice President and Chief Executive Officer shall be apprised of this order by Mr. Parashurami appearing for Respondent No. 17 on receipt of an authenticated copy of this order, to make an appointment in terms of para 7 above. Thereupon the process as directed above shall commence and be concluded.

13. We dispose of this Writ Petition by observing that we express no opinion on all the contentions and particularly on the grounds in the Petition and Reply thereto of the contesting parties.

14. Needless to clarify that since there is an Association-Respondent No. 3 and which claims to have a registration in its

favour under the Societies Registration Act, the costs of these elections and the electoral process shall be borne by the said Association.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)