

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

964 WRIT PETITION NO. 4935 OF 2018

VAIBHAV FLAT OWNERS CO-OP SOCIETY MARYADIT
ULKANAGARITHRU REPRESENTATIVE D B GUP ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. B. N. Patil, Advocate for the Petitioner.

Mr. A. P. Basarkar, AGP for Respondents-State.

Mr. S. K. Kadam, Advocate for Respondent Nos.2 to 4.

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**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATED : 22nd JUNE, 2018.

PER COURT:-

1. Mr. Patil, learned counsel for the petitioner strenuously contends that the names of the present petitioners have been illegally excluded from the voters list for the election to the Managing Committee of respondent no.5. The learned counsel submits that Rules 9 and 10 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 have been flagrantly violated. According to the learned counsel, the said Rules have been followed more in breach. The petitioners-societies were never made known about the preparation of the provisional voters list and objections being called. The learned counsel submits that petitioners are only seeking right to

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vote in the election of which voting is to take place on 01.07.2018. The petitioners have got the said right. The petitioners had also raised objections before the Returning Officer to the provisional voters list before it become final, but the objections were not considered on the ground that resolutions were not submitted before stipulated time. The learned counsel submits that had the petitioners been made known of the program of publication of voters list, the petitioners would have raised the objections within time. Rules 9 and 10 do not contemplate public notice in newspapers. The petitioners have their offices at district place, still they were never intimated about the date. According to the learned counsel, when there is an illegality in conduct of the election and the procedure involved therein, this Court would interfere under the Article 226 of Constitution of India.

2. Mr. Kadam, learned counsel for the respondent nos.2, 3 and 4 submits that the elections are required to be conducted within three months as per judgment and order of the Division Bench of this Court at Principal Seat at Bombay in Writ Petition No.987 of 2016 with connected writ petitions under order dated 31.01.2018. The learned counsel submits that Rules 9 and 10 would apply, if the elections are held before completion of the term of the members. The term of the present Managing Committee of respondent no.5 came

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to an end in the year 2011. In view of that, Rule 6 of Rules 2014 would apply. One month time was given to the petitioners to raise objections as per the program declared in daily Lokmat dated 19.03.2018. The provisional list was published on 26.04.2018 and objections were called upto 07.05.2018. The petitioners had approached the Returning Officer on 07.05.2018. The objections ought to have been raised prior to the said date. The Resolutions were never annexed, as the Resolutions were not annexed, the objections could not be considered. The final voters list is published on 22.05.2018. The learned counsel submits that even there would be a bar for entertaining the writ petition and the petitioners have alternate remedy under Rule 78 of the Rules 2014.

3. We have considered the submissions. It is a fact that preparation of program was published in daily Lokmat and even press note is issued in two other newspapers. The objections were supposed to be raised to the provisional voters list. The names of the delegate accompanied with the resolution should have been submitted on or before 19.04.2018. The same were not submitted and were submitted only on 07.05.2018.

4. The election program has been declared on 01.06.2018 and the voting is scheduled on 01.07.2018. However, considering the facts and

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circumstances of the case and the fact that the petitioners have a remedy under Rule 78 and can raise objections with regard to the non-adherence of Rules 9 and 10 of Rules 2014, we are not inclined to entertain the petition at this stage. The petitioners may raise all these contentions, if it chooses to proceed under Rule 78 of Rules 2014. In that event, all contentions of the respective parties are kept open.

5. The writ petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE