

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

**WRIT PETITION NO. 10190 OF 2018**

Vilas S/o Vasantrya More,  
Age: 47 years, Occu:- Advocate,  
R/o: Morewadi, Tq. Ambejogai,  
Dist: Beed.

... PETITIONER

**VERSUS.**

1. The State Co-operative Election Authority,  
Maharashtra State, Pune,  
Through its Secretary.
2. The Taluka Co-operative Election Officer,  
and Assistant Registrar, Co-Operative  
Societies Ambejogai, Dist. Beed.
3. E.M. Mortale,  
The Returning Officer,  
Vrundawan Co-Operative Housing Society,  
Ltd. Morewadi, Tq. Ambejogai, Dist. Beed.
4. Vrundawan Co-Operative Housing Society,  
Ltd. Morewadi, Tq. Ambejogai, Dist. Beed,  
Through its Secretary,
5. Madan Suryabhan Maske,  
Age: 71 yrs, Occu- Pensioner,  
R/o: Ambejogai, Tq. Ambajogai,  
Dist: Beed.

... RESPONDENTS

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Mr. Kamlakar J. Suryawanshi, Advocate for petitioners  
Mr. S.K. Kadam, Advocate for respondents No. 1 to 3  
Mr. L.H. Kawale, Advocate for respondent No. 4  
Mr. D.J. Chaudhary, Advocate for respondent No. 5

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**CORAM : V.L. ACHLIYA, J.**

**DATED : 10<sup>th</sup> SEPTEMBER, 2018**

**ORAL JUDGMENT :-**

1. Leave to correct the date of impugned order as 28-08-2018 in place of 29-08-2018 mentioned in petition. Amendment be carried out forthwith.

2. Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission.

3. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Order dated 28-08-2018 passed by respondent No. 2. By impugned Order, the respondent No.2 has deleted the name of petitioner from voters list of the respondent No. 4-Vrundawan Co-operative Housing Society Ltd. Morewadi, Tq. Ambejogai, Dist. Beed (in short, "society").

4. Heard Mr. Suryavanshi, learned counsel representing petitioner, Mr. S. K. Kadam, learned counsel representing respondent Nos.1 to 3, Mr. L. H. Kawale, learned counsel representing respondent No. 4 and Mr. D. J. Choudhary, learned counsel representing respondent No.5. Perused record and proceedings, and more particularly, the impugned order dated 28-08-2018 deleting the name of petitioner from the voters list of the respondent No.4 society.

5. In brief, it is the case of petitioner that, petitioner is a member of respondent No.4 society since 2008. Respondent No. 5 had filed Dispute No. 240 of 2014 before the Co-operative Court at Latur seeking declaration and injunction against respondent No. 4 society as well as petitioner to declare the resolution No. 3 passed by respondent No. 4 in its meeting held on 06-04-2008 is void and further declare that respondent No. 2 is not the member of respondent No. 4-Society. By the Judgment and Award dated 14-06-2017, the Co-operative Court decided the dispute and declared petitioner as not the member of respondent No.4-society and further declared the resolution dated

06-04-2008 as void. Against the said Judgment and Award, the petitioner has filed an Appeal before the Maharashtra State Co-operative Appellate Court, Bench At Aurangabad, which came to be registered as Appeal No. 136 of 2017. After hearing the parties which includes respondent No.5, the Co-operative Appellate Court vide Order dated 14-11-2017 stayed the effect operation and implementation of the Judgment and Award dated 14-06-2017 passed by the Co-operative Court. It is the contention of the petitioner that, in view of Order dated 14-11-2017, which is still in force, the petitioner continued to hold status as a member of respondent No.4 society. The respondent No. 4 society has prepared the voters list of its existing members who are entitled to participate and vote in the election of respondent No. 4 society. The list was published on 10-07-2018 showing the name of petitioner as one of the member of society to vote and participate in the election of respondent No. 4-Society. The list was forwarded to respondent No. 2 on 16-07-2018.

6. It is the specific contention of petitioner that, without any notice and opportunity of hearing being afforded to the petitioner, respondent No.2 has passed the impugned Order dated 28-08-2018 and deleted the name of petitioner from voters list. While doing so the respondent No.2 has assigned no reason for deleting the name of petitioner from voters list of respondent No.4 society. In this background, learned counsel submits that impugned order is *per-se* illegal, bad-in-law and against principles of natural justice and liable to be set aside.

7. On the other hand, Mr. Choudhary, learned counsel for

respondent No. 5 supported the order passed by respondent No.2 and submits that petitioner is not entitled to include his name in the voters list of respondent No. 4-Society in terms of bye-laws of respondent No. 4-society. It is submitted that, respondent No.4 society was constituted way back in the year 1982. In the year 1992, lay out plan of the land owned by respondent No. 4 society was prepared. In terms of decision taken by the society, the plot No. 1 admeasuring 477 Square Meters was allotted to respondent No.5. Besides respondent No.5, plots admeasuring 248 Square Meters each were allotted to other 15 members of the society. Although, allotment of the plot was made in the year 1983, a letter of allotment of plot was issued to respondent No. 5 in the year 1989. By taking advantage of the position as a Secretary of the society, the father of petitioner got passed resolution of society in the year 2001 to equalize all plots having same size i.e. 248 Square Meters which include the plot No.1 allotted to respondent No. 5. The said decision was subject to approval of sub-division of said plot by Town Planning Department. The Town Planning Department communicated to respondent No. 4 that as the plot No.1 is abutting to highway, the size of said plot cannot be reduced less than 452 Sq. Meters. He submits that respondent No. 5 has filed dispute before the Co-operative Court, Latur challenging the resolution passed by respondent No. 4- Society, in which the Co-operative Court held that allotment of the plot is a prerogative of Society and refused to interfere with decision of society. The matter went upto the Apex Court, wherein the Apex Court refused to interfere with the orders passed by Courts below.

8. It is submitted that in the year 2008, respondent No. 4 - Society has passed another resolution and carved out the plot admeasuring 203 Sq. Meters from plot No. 1 of respondent No. 5 and allotted the same to the present petitioner. The said decision of the Society came to be challenged by respondent No. 5 by filing Dispute No. 240 of 2014, in which, the Co-operative Court has held that the resolution dated 06-04-2014 passed by the Society i.e. in respect of carving out plot admeasuring 203 sq. meters and allotting the same to the petitioner as void and further declared that petitioner is not the member of respondent No. 4 - Society. He further submits that as against said decision, the petitioner as well as respondent No. 5 preferred separate appeals. The appeal preferred by respondent No. 5 has been registered as Appeal No. 107 of 2017 before the Co-operative Appellate Court, Mumbai, Bench at Aurangabad. In appeal filed by respondent No. 5, the Co-operative Appellate Court vide order dated 16/08/2017 directed to maintain *status-quo* in respect of plot No.1 admeasuring 477 Sq. Meters until further orders. In the light of order dated 14-06-2017 passed by the Co-operative Court, Latur and order dated 16-08-2017 passed by the Co-operative Appellate Court, learned counsel submits that respondent No. 2 has rightly deleted the name of petitioner from the voters list of respondent No. 4-Society and supported the order passed by respondent No. 2.

9. Mr. Kadam, learned counsel appearing for respondent Nos. 1 to 3 submits that the voters list received from the respondent No. 4-Society was published as provisional voters list and two days time was granted to raise objection. The list was published on 10-07-2018. But

no one raised objection within two days. However, subsequently, on 03-08-2018 written objections came to be received from respondent No. 5 in which respondent No. 5 contended that the petitioner is not the member of the respondent No. 4 Society nor he has been allotted any plot in respondent No. 4-Society. On receipt of written objection, notices were sent to the Chairman / Secretary of the Society as well as the person who raised objection to the voters list. The notices were issued on 14-08-2018 and kept the hearing on 21-08-2018. On 21-08-2018 hearing could not take place as the Secretary of respondent No. 4 society could not attend the hearing. On 28-08-2018 the hearing took place in presence of Chairman/Secretary of the Society and respondent No. 5. On the basis of hearing, respondent No. 2 decided to delete the name of petitioner. The reasons for deleting the name of petitioner has been recorded in the roznama written by respondent No. 2. Mr. Kadam, learned counsel for respondent Nos. 1 to 3 fairly conceded that opportunity of hearing was not given to petitioner before passing the impugned order by respondent No. 2.

10. On due consideration to the submissions advanced by the learned counsel representing the parties and considering the overall facts of the case, the undisputed position emerges that, before passing the impugned order, respondent No.2 has not given an opportunity of hearing to the petitioner. The order passed is in clear breach of principles of natural justice. It was expected on the part of respondent No.2 to have given notice and afforded an opportunity of hearing to the petitioner before passing the impugned order.

11. From the orders passed by the Co-operative Court and the Co-

operative Appellate Court, the undisputed position emerges that since 2008 the Society has recognized the petitioner as a member of respondent No. 4 Society and allotted plot by carving out the plot admeasuring 203 Square Meters from plot No.1 allotted to respondent No. 5. The decision of the society to admit the petitioner as a member and allotment of plot was challenged before the Co-operative Court by respondent No. 5. In which, the Co-operative Court declared the resolution dated 06-04-2008 passed in favour of the petitioner to allot plot as void and further held the petitioner is not the member of respondent No. 4-Society. However, decision rendered by the Co-operative Court came to be challenged by petitioner by filing appeal before the Co-operative Appellate Court, Mumbai, Bench at Aurangabad as Appeal No. 136 of 2017. The said appeal came to be filed by respondent No. 4 - Society as well as petitioner. The Co-operative Appellate Court, after due notice to the parties which includes respondent No. 5-disputant in Dispute No. 204 of 2014, passed detailed order on 14-11-2017. By order dated 14-11-2017, the Co-operative Appellate Court has stayed the execution, operation and implementation of Judgment and Order dated 14-06-2017 passed by the Co-operative Court in Dispute bearing No. 240 of 2014 and more particularly findings to issue Nos. 3 and 7 which relates to declaration of resolution No. 3 passed in special general body meeting dated 06-04-2008 as null and further declared membership of present petitioner of respondent No.4 society as void. The relevant text of Order dated 14-11-2017 passed in Appeal No. 136 of 2017 reads as under:-

*"10. Be it as it may, admittedly, the appellants have challenge the said judgment by filing present appeal. **Thus, in order to maintain the position as existing as on the date of filing of dispute and further to avoid multiplicity in the proceeding. I find it will be appropriate to grant stay to the execution, operation and implementation of judgment and award dated 14-06-2017 passed by the Ld Trial Judge cooperative court Latur in dispute bearing No. 240/2014 to the extent of findings recorded on issue Nos. 3 and 7 and accordingly the stay is hereby granted. At the same time, the appellants are hereby directed not to create third party interest in respect of suit property till the decision of appeal.** I find no harm of prejudice will be caused to the disputant/respondent if such order is passed. In view of this finding proceed to pass following order."*

12. Thus, in the light of order dated 14-11-2017 passed by Co-operative Appellate Court, Mumbai, Bench at Aurangabad in Appeal No. 136 of 2017, the petitioner continue to hold status as a member of respondent No. 4-Society. The appeal filed by the petitioner is pending before the Co-Operative Appellate Court. The order dated 14-11-2017 is still in force. It appears that order dated 14-11-2017 passed by Co-operative Appellate Court was not brought to the notice of respondent No. 2 while passing the impugned order. In view of order dated 14-11-2017 operating in favour of petitioner, neither society nor respondent No. 5 can object inclusion of name of petitioner in the voters list of respondent No.4-Society. So also, the petitioner cannot be prevented to participate in the process of election. In that view, the impugned order passed by respondent No. 2 is not sustainable in law

and liable to be set aside.

13. The impugned order passed by respondent No. 2 is also not sustainable in law for the reason the same has been in passed in clear breach of principles of natural justice. It is an admitted position that before passing the impugned order neither any notice nor opportunity of hearing was given to the petitioner.

14. In view of the above, the impugned order passed by respondent No. 2 deserves to be set aside. Accordingly, the petition is allowed in terms of prayer clause "B" to the extent of petitioner with no order as to cost.

15. It is clarified that challenge raised in the petition being confined to the impugned order dated 28-08-2018 passed by respondent No. 2 deleting name of petitioner from the voters list of respondent No. 4-Society. None of the observations and findings recorded by this Court shall have bearing upon the appeals pending before the Co-operative Appellate Court.

16. Rule is made absolute in above terms.

**( V.L. ACHLIYA, J. )**

MTK.