

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP No.32594 of 2018

Uttam Sopan Babar	..Petitioner.
Vs	
State of Maharashtra	..Respondents.
Through Hon'ble Minister	
for Cooperation and Ors	

WRIT PETITION STAMP No.32595 of 2018

Sudarshan Manik Misal	..Petitioner.
Vs	
State of Maharashtra	..Respondents.
Through Hon'ble Minister	
for Cooperation and Ors	

WRIT PETITION STAMP No.32591 of 2018

Janardan Sukhadev Shinde	..Petitioner.
Vs	
State of Maharashtra	..Respondents.
Through Hon'ble Minister	
for Cooperation and Ors	

WRIT PETITION STAMP No.32593 of 2018

Sanjay Sadhu Dabhade	..Petitioner.
Vs	
State of Maharashtra	..Respondents.
Through Hon'ble Minister	
for Cooperation and Ors.	

Mr. Atul Damle, Senior Advocate i/by Mr. Sushant S. Prabhune,
Advocate for petitioner in all petitions.
Mr. Deelip N. Patil (Borkar), Chief Standing Counsel for
Respondent No. 4, 6 in all petitions.
Mr. Abhijit Kulkarni, Advocate i/by D.D. & Abhijeet Associate
for Respondent No.7 in WPSt/32594/18 and WPSt/32595 and

respondent No.7,8 in WPSt/32591/2018 and Respondent No. 7,89 in WPSt/32593/2018.

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : NOVEMBER 24, 2018

P.C. :

1 Heard learned counsel for the petitioners and the learned counsel for the respondents.

2 All these four writ petitions can be disposed of by this common order, because the similar issue is involved in all these petitions.

3 By these writ petitions filed under Article 226 of the Constitution of India, the petitioners are seeking a direction from this Court against the respondent Authority to reject the nomination forms of contesting candidates of the election to the management committee- respondent no.6 as the non-compliance of the model by-laws No. 28 (2) of the respondent No.6.

4 The learned Senior Counsel for the petitioners submits that though the voting is scheduled tomorrow i.e. 25th November, 2018, this Court can interfere under Article 226 of

the Constitution of India. In support of his contention, he relies on a judgment of the learned single Judge of this Court in the matter of Ashok Pundlikrao Patil Vs. Shaashikant s/o Sidram Patil and others reported in 2011 (6) Mh.LJ 239.

5 On the other hand, learned counsel for the respondent- contesting candidates submits that in Civil Writ Petition No. 13166 of 2018 Ajinath Narayan Raut Vs. State of Maharashtra and Ors, High Court Appellate Side, this Court (Coram : Justice R.G.Ketkar) by order dated 22nd November, 2018 rejected the petition in respect of election to the Committee of the same Society on the ground that the election process has already been commenced. He relies on paragraphs 5 and 6 of the said order which read thus :

“5. On the other hand, learned counsel for the respondents submitted that the consequences of appointing Administrator under Section 78 of the Act will not result in disqualification of respondent No.7 from contesting the election of the 5th respondent. It was further submitted that the last date of filing nomination was 14.11.2018. The allocation of symbols was published on 15.11.2018. Printing of ballot have been completed by 19.11.2018 and the elections are scheduled on 25.11.2018 between 8:00 a.m. and 5:00 p.m. In other words, the election process has already commenced. As the election process is set in motion,

interference of this Court is not warranted.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that respondent No.4 recorded that the petitioner did not produce the order appointing Administrator under Section 78 of the Act. That apart, in view of the fact that the election process is already set in motion and the polling is scheduled on 25.11.2018, I do not find that this is a fit case for invocation of powers under Article 227 of the Constitution of India. Reserving liberty to the petitioner to exhaust alternate remedy, the Petition is dismissed. It is made clear that if such remedy is exhausted, the concerned Authority will decide the same in accordance with law uninfluenced by the observations made in the impugned order as also in this order. All contentions of the parties on merits are expressly kept open. Order accordingly.”

6 The learned Counsel for the Respondents-contesting candidates also submits that the Apex Court in the matter of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr Vs. State of Maharashtra & Ors. 2001 (8) SCC p. 509 has laid down the law that the Court shall not interfere once the election process commenced. Paragraph 12 reads thus :

“12. 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 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.”

7 The learned Counsel for the Respondent-contesting candidates submits that as election process is already commenced and voting is scheduled tomorrow i.e. 25th November, 2018 the petitioners have efficacious alternative remedy in case they decide to challenge the election result. Hence, there is no question of passing any orders in these petitions.

8 In view of the above, at this stage, we find no reason to entertain these petitions. Hence, all these petitions stand rejected with liberty to the petitioners, if they so desire, to take appropriate proceedings before appropriate Forum

and those proceedings shall be decided in accordance with law, on their own merit, after hearing both the parties, without being influenced by any of the above observations.

No order as to costs.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)