

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

WRIT PETITION NO. 859 OF 2022

Bhaskar Ramchandra Khaladkar,
Age : 65 years, Occu. : Agri.,
R/o. : Rampur, Tq. Rahuri,
Dist. Ahmednagar.

.... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Cooperative and Textile Minister,
Mumbai – 32.
2. State Election Authority,
Old Central Building B.J. Road,
Pune.
3. The District Cooperative Election Officer
and Regional Joint Director Sugar,
Ahmednagar.
4. The Election Officer
Rampur Co-Operative Society,
Tq. Rahuri, Dist. Ahmednagar.
5. The Managing Director,
Rampur Multi Purpose Service
Co-Operative Society,
Tq. Rahuri, Dist. Ahmednagar.
6. Kolhar (Kh) Multi Purpose Service
Co-Operative Society, Tq. Rahata,
Dist. Ahmednagar.
7. Nana Raoji Dhole,
Age : 60 years, Occu. : Agri.,

8. Machindra Raoji Dokhe
Age : 67 years, Occu. : Agri.,
9. Ganpat Baburao Dokhe,
Age : 45 years, Occu. : Agri.,
10. Dashrath Shankar Lokhande
Age : 73 years, Occu. : Agri.,
11. Shankar Tukaram Lokhande,
Age : 60 years, Occu. : Agri.,
12. Suryabhan Sukhdeo Lokhande,
Age : 36 years, Occu. : Agri.,
13. Chandrakant Sukhdeo Lokhande,
Age : 33 years, Occu. : Agri.,
14. Bhausahab Vishwanath Lokhande,
Age : 60 years, Occu. : Agri.,
15. Sampat Chiman Kshirsagar,
Age : 60 years, Occu. : Agri.,
16. Ganesh Namdeo Lokhande,
Age : 35 years, Occu. : Agri.,
17. Somnath Shivaji Abhang
Age : 32 years, Occu. : Agri.,
18. Lilabai Uttam Kapate,
Age : 57 years, Occu. : Agri.,
19. Vatsala Yamaji Kokate,
Age : 62 years, Occu. : Agri.,
20. Gangadhar Punjaji Dokhe,
Age : 60 years, Occu. : Agri.,
21. Sonubai Dagadu Dokhe,
Age : 62 years, Occu. : Agri.,

22. Hirabai Machindra Dokhe,
Age : 55 years, Occu. : Agri.,
23. Kusum Tukaram Dokhe,
Age : 66 years, Occu. : Agri.,
24. Bajirao Baburao Dokhe,
Age : 52 years, Occu. : Agri.,
25. Maruti Baburao Dokhe,
Age : 47 years, Occu. : Agri.,
26. Gorakshnath Mathaji Tidke,
Age : 62 years, Occu. : Agri.,
27. Sindhe Yashwant Tajane,
Age : 63 years, Occu. : Agri.,
28. Bajabai Dashrath Thete,
Age : 66 years, Occu. : Agri.,
29. Gangubai Parvat Nalkar,
Age : 67 years, Occu. : Agri.,
30. Shakuntala Changdeo Nalkar,
Age : 50 years, Occu. : Agri.,
31. Sangita Bhaskar Nalkar,
Age : 40 years, Occu. : Agri.,
32. Yamunabai Rangnath Nalkar,
Age : 66 years, Occu. : Agri.,
33. Punjabai Sakhahari Nalkar,
Age : 70 years, Occu. : Agri.,
34. Savita Dilip Pathare,
Age : 43 years, Occu. : Agri.,
35. Annasaheb Jivan Bhosle,
Age : 52 years, Occu. : Agri.,

36. Kailas Tulshiram Bhosle,
Age : 53 years, Occu. : Agri.,
37. Raosaheb Bapu Bhosle,
Age : 43 years, Occu. : Agri.,
38. Prakash Kashinath Bhosle,
Age : 39 years, Occu. : Agri.,
39. Sunita Prakash Bhosle,
Age : 37 years, Occu. : Agri.,
40. Tanhubai Jivan Bhosle,
Age : 60 years, Occu. : Agri.,
41. Babasaheb Kashinath Bhosle,
Age : 45 years, Occu. : Agri.,
42. Balasaheb Narhari Musmade,
Age : 32 years, Occu. : Agri.,
43. Raosaheb Dada More,
Age : 48 years, Occu. : Agri.,
44. Laxmibai Devram Lokhande,
Age : 52 years, Occu. : Agri.,
45. Chandrabhaga Yashwant Lokhande,
Age : 66 years, Occu. : Agri.,
46. Manohar Kisan Lokhande,
Age : 59 years, Occu. : Agri.,
47. Mohan Kashinath Lokhande,
Age : 66 years, Occu. : Agri.,
48. Keru Raghunath Lokhande,
Age : 61 years, Occu. : Agri.,
49. Bhagwant Thamaji Varpe,
Age : 47 years, Occu. : Agri.,

50. Vitthal Thamaji Varpe,
Age : 53 years, Occu. : Agri.,
51. Anjanabai Anshabapu Sable,
Age : 66 years, Occu. : Agri.,
52. Bhausahab Deoram Sable,
Age : 52 years, Occu. : Agri.,
53. Prerna Raosaheb Sable,
Age : 40 years, Occu. : Agri.,
54. Nirmala Rahul Sable,
Age : 37 years, Occu. : Agri.,
55. Shital Bhausahab Sable,
Age : 35 years, Occu. : Agri.,
56. Sandip Annasaheb Sable,
Age : 40 years, Occu. : Agri.,
57. Nitin Annasaheb Sable,
Age : 28 years, Occu. : Agri.,
58. Sunil Anshabapu Sable,
Age : 45 years, Occu. : Agri.,
59. Rajendra Vitthal Sable,
Age : 42 years, Occu. : Agri.,
60. Anita Goraksha Sable,
Age : 43 years, Occu. : Agri.,
61. Vanita Machindra Sable,
Age : 39 years, Occu. : Agri.,
62. Arun Vitthal Sable,
Age : 46 years, Occu. : Agri.,
63. Savita Raosaheb Sable,
Age : 55 years, Occu. : Agri.,

64. Dagdu Sakharam Dokhe,
Age : 62 years, Occu. : Agri.,
 65. Appasaheb Tukaram Dokhe,
Age : 45 years, Occu. : Agri.,
 66. Sakharbai Dattatraya Nalkar,
Age : 72 years, Occu. : Agri.,
 67. Sunita Gokulchand Lodha,
Age : 50 years, Occu. : Agri.,
 68. Gokul Amarchand Lodha,
Age : 55 years, Occu. : Agri.,
 69. Dashrath Shankar Lokhande,
Age : 66 years, Occu. : Agri.,
 70. Sushma Dilip Sable,
Age : 46 years, Occu. : Agri.,
 71. Bhausahab Laxman Bhosle
Age : 60 years, Occu. : Agri.,
- ... Respondents.

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Mr. Ajeet B. Kale, Advocate for the Petitioner
 Mr. S.G. Sangle, AGP for Respondent No.1
 Mr. V.H. Dighe, Advocate for Respondent Nos. 2 to 4
 Mr. V.V. Tarde, Advocate for Respondent no.5 and 6
 Mr. V.B. Wagh and Mr. Shriniwas S. Wagh, Advocates for
 respondent Nos. 7 to 17 and 20 to 71

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CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 16.02.2022

Pronounced on : 18.02.2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally at admission stage with the consent of all the parties.
2. The dispute relates to election of Respondent no.5 / Rampur Multi Purpose Service Co-Operative Society, Tq. Rahuri, Dist. Ahmednagar.
3. It would be necessary to have a glance on the dispute in narrow compass.
4. The election of Managing Committee of respondent no.5 / Rampur Multi Purpose Service Co-Operative Society was declared by respondent no.3 / The District Co-operative Election Officer and Regional Joint Director (Sugar), Ahmednagar for the term of 2021/2022 to 2025-2026. Respondent nos. 3 and 4 have declared the voters list program on 08.12.2021. As per the program, the date for raising objection for the same was from 09.12.2021 to 20.12.2021. The date of decision on the objection was 30.12.2021. The date for finalizing of the voters list was 04.01.2022. The petitioner filed objections before respondent no.3 on 20.12.2021 in respect of names of respondent nos. 7 to 16 in the voters list stating that they are members of respondent no.5 society as well as

respondent no. 6 Co-operative society. The petitioner has requested to the Election Officer to delete the names of respondent nos. 7 to 16. The petitioner has also raised objection that respondent nos. 7 to 16 are resident of Kolhar (Kh) and not the resident of Rampur. They have their agricultueal lands at village Kolhar (Kh).

5. According to the provisions of the Maharashtra Co-operative Societies Act, 1960, dual membership is prohibited and the Assistant Registrar is empowered to delete the names of such members. Respondent no.3 / District Co-operative Election Officer was pleased to reject the objection raised by the petitioner on the ground that the statute does not authorize him to exercise the power to delete the names of respondents / members herein.

6. In that background, the petitioner approached the Assistant Registrar of Co-operative Society, Rahuri and raised grievance about the same and requested to delete the names of said respondents/members by making an application on 30.12.2021. The Assistant Registrar was pleased to issue notices to the respondents/members on 31.12.2021, thereby taking cognizance. The Assistant Registrar of Co-operative Society Rahuri passed the

order on 13.01.2022 and thereby disqualified 63 members. Even then, respondent no.3/District Co-operative Election Officer refused to delete the names of respondents/members by stating that there is no such provision to delete the names of members at present and their names shall not be deleted from the voters

7. Feeling aggrieved by the impugned order, the petitioner has approached this Court and challenged the said order produced at Exhibit 'D'.

8. Heard Mr. A.B. Kale, learned counsel for the petitioner, Mr. S.G. Sangle, learned AGP for respondent no.1, Mr. V.H. Dighe, learned counsel for respondent nos. 2 to 4, Mr. V.V. Tarde, learned counsel for respondent nos. 5 and 6, and Mr. V.B. Wagh and Mr. Shriniwas Wagh, learned counsel for respondent nos. 7 to 17 and 20 to 71 at length. Perused the impugned order passed by the District Co-operative Election Officer, copy of the voters list program dated 08.12.2021, copy of objection application dated 20.12.2021 and the communication dated 24.12.2021 and the copy of *Rojnama*, copy of the report dated 27.12.2021 and the copy of bye-laws, copy of order passed by the competent authority, copy of representation made by the petitioner dated 30.12.2021

and the notice issued on 31.12.2021, copy of the order dated 13.01.2022 and the copy of order passed in writ petition no. 1013 of 2016 dated 15.10.2016.

9. Mr. Ajeet Kale, learned counsel for the petitioner vehemently submitted that according to the provisions of the Maharashtra Co-operative Societies Act, 1960 and the bye-laws of respondent no.5 society, a person can be a member of only one society at a time and there is no dual membership. The dual membership is prohibited by the bye-laws. He submitted that as per the voters list program declared by respondent nos. 3 and 4, the petitioner filed objection application before the competent authority on 21.12.2021 against the names of respondents/members in the voters list contending that those respondents are the members of respondent no.5 society as well as respondent no.6 Co-operative society. As such, the petitioner has requested to delete the names of those respondents/members. According to the report of Talati, respondents/members neither have their agricultural lands in the vicinity of the respondent society, nor they are resident of respondent no.5 society. According to bye-laws of respondent no.5 society, a person to be eligible as a member, it is necessary that he should be a permanent resident of

the locality as well as should be an owner of 10 R agricultural land. Respondent no.3 has turned down the objection application filed by the petitioner on the ground that the statute does not authorize him to exercise his power to delete the names of respondents/members herein. The petitioner approached to the Assistant Registrar, Co-operative society, Rahuri under Section 25 of the Act of 1960 by making an application and raised grievance about the same and requested to delete the names of respondents/members. The Assistant Registrar was pleased to issue notices to concerned respondents/members. The Assistant Registrar of Co-operative Society, Rahuri was pleased to pass the order on 13.01.2022 after giving an opportunity to the concerned respondents/members and disqualified 63 members.

10. Mr. Kale, learned counsel for the petitioner submitted that it is *prima facie* evident that the respondents/members who are disqualified, their names appear in the voters list. In democratic set up, elections should be fair. If, the respondents/members who are disqualified allowed to vote, it is against the provisions of the Act and bye-laws. As such, it is necessary to quash and set aside the final voters list, which has included the names of disqualified members.

11. Mr. Kale, learned counsel for the petitioner invited my attention to the copy of order passed in writ petition no. 1013 of 2016 dated 15.10.2016 as well as citation in case of ***Karbhari Maruti Agawan and others Vs. State of Maharashtra and others*** reported in ***AIR 1994 Bombay 304*** . By placing reliance, Mr. Kale submitted that this Court has power to intervene when the body in power has played mischief and avoided to delete the names of disqualified members from the voters list. Mr. Kale has further placed his reliance in case of ***Shivaji S/o Marotra Suryawanshi Vs. The State of Maharashtra and others*** reported in ***1993(3) ALL MR 628***. He submitted that the writ petition is maintainable in view of above factual scenario.

12. Mr. V.H. Dighe, learned counsel for respondent nos. 2 to 4, Mr. V.V. Tarde, learned counsel for respondent nos. 5 and 6, Mr. V.B. Wagh and Mr. Shriniwas Wagh, learned counsel for respondent nos. 7 to 17 and 20 to 71 strenuously argued that the petition is not at all maintainable. They invited my attention to the order passed by this Court (Coram: Nitin B. Suryawanshi, J.) dated 04.01.2022 in writ petition no. 22 of 2022. By placing reliance on the said order, they submitted that practically same prayers were

made in the said writ petition, more particularly prayer clauses (B) and (C).

13. It is submitted that this Court was pleased to dismiss the writ petition by granting liberty to the petitioner to avail alternate remedy by keeping all the contentions open, by relying upon the decision of the Division Bench of this Court in case of ***Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar, Co-operative Societies, Pune and others*** (Writ Petition No.5878 of 2021, dated 26.11.2021). They have also referred the copy of order passed by the Division Bench in writ petition no. 3202 of 2021 (Ravindra Vitthal Kadus and others Vs. State of Maharashtra and others) dated 01.03.2021 (Coram : S.V. Gangapurwala and Shrikant D. Kulkarni, JJ.). By placing reliance on the said order, they submitted that once the voters list is finalized and election program is declared, the appropriate remedy available to the petitioner to assail the same by election dispute / petition as permissible under the law. They have also relied upon the common order passed in writ petition no.12006 of 2021 with connected petitions passed by this Court (Coram : R.N.Laddha, J.) (Vacation Court) and submitted that when the voters list is

finalized, it would not be appropriate to interfere in the election program.

14. I have considered the submissions of learned counsel for the petitioner and the learned counsel appearing for the respective respondents.

15. It is an admitted position that one Machindra Dada More (one of the objectors) had filed writ petition no. 22 of 2022 before this Court and sought following reliefs.

“(B) To quash and set aside the orders passed by the respondent no.3 which are at Exhibit “D” to this petition and for that purpose issue necessary orders.

(C) To delete the names of the respondent number i.e. respondent no. 7 to 16 from the voting list of respondent no.5 society.”

16. The petitioner has practically sought the same reliefs in this petition, which read thus.

“(B) To quash and set aside the orders passed by the respondent no.3 which are at Exhibit “D” to this petition and for that purpose issue necessary orders.

(C) To quash and set aside the final voter list prepared by the respondent authorities.”

(D) To delete the names of respondents members i.e. respondent nos. 7 to 75 (correct Nos. 7 to 17 and 20 to 71) from the voters list of respondent no.5 society.

17. This Court (Coram: Nitin B. Suryawanshi, J.) while disposing the writ petition no. 22/2022 made following observations in para nos. 4 and 5, which read thus:

“4. This Court, by relying on decision of the Division Bench of this Court at Principal Seat in **Dattatray Genaba Lole and Others Vs. The Divisional Joint Registrar, Cooperative Societies, Pune and Others, Writ Petition No.5878/2021**, has already taken a view that, in view of availability of alternate and efficacious remedy under Section 91 of the Maharashtra Cooperative Societies Act, 1960, read with Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014, the petition is not maintainable.

5. In that view of the matter, the writ petition is dismissed with liberty to the petitioner to avail the alternate remedy. All the contentions of the petitioner are kept open.”

18. In the above background of first round of litigation, how second petition practically seeking same reliefs can be entertained. The simple answer is no. The coordinate Bench of this Court has taken a view that in view of alternate and efficacious remedy available under Section 91 of the Maharashtra Cooperative Societies Act, 1960, read with Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014, the petition is not maintainable. I do not see any reason to take a different view.

19. Mr. Kale, learned counsel for the petitioner has heavily relied upon the decision of this Court in writ petition no. 1013 of 2016 dated 15.10.2016 and sought practically same reliefs in the instant petition. However, recent decision of the Division Bench of this court in case of *Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar, Co-operative Societies, Pune and others* (Writ Petition No.5878 of 2021) dated 26.11.2021 relied by Mr. Dighe, learned counsel for respondent nos. 3 and 4 is binding on this Court and needs to be applied. Secondly, the voters list is finalized and the election program of Managing Committee is also declared. The election is scheduled to be held on 20.02.2022 on

Sunday, which is just one day away from today. It may not be appropriate to interfere in the election program of Managing Committee of respondent no. 5 at this late stage in the background of the Division Bench decision of this Court (supra).

20. It is also pointed out by Mr. S.S. Wagh and Mr. Shriniwas Wagh, learned counsel for respondent nos. 7 to 17 and 20 to 71 that these respondents have preferred an appeal against the order passed by the Assistant Registrar before the Divisional Joint Registrar, Co-operative Society, Nashik Division, Nashik on 08.02.2022, by taking aid of provisions of appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960. The order passed by the Assistant Registrar regarding deletion of names of contesting respondents is also under scrutiny at the hands of competent authority. Certainly, writ petition cannot be entertained when the impugned order is also challenged before the competent authority.

21. There is no need to touch other aspects of the petition though vehemently argued by Mr. Ajeet Kale, learned counsel for the petitioner. The petition must fail.

ORDER

- (i) The writ petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to the costs.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane