

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.988 OF 2022

DASHRATH S/O BANDAPPA AGALE
VERSUS
THE STATE CO-OPERATIVE ELECTION AUTHORITY
MAHARASHTRA STATE PUNE THROUGH ITS SECRETARY
AND OTHERS

.....
Advocate for Petitioner : Mr. S. S. Shinde
Advocate for Respondents No.1 and 2 : Mr. V. H. Dighe
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-01-2022.

ORDER :

1. The controversy relates to elections to the Managing Committee of 'Vivid Karyakari Seva Sahakari Sanstha M. Akola, Taluka Ambajogai District Beed'. Respondent No.1 had published the election program of the election to the Managing Committee of above said Vivid Karyakari Society (Hereinafter referred to as the "society"), and as per the said program, the provisional voters list would be published on 27-12-2021, objections were invited between 27-12-2021 to 05-01-2022. Objections would be heard on 13-01-2022 and the final voters list would be published on 18-01-2022. The present petitioner raised objection on 04-01-2022 on various grounds. It was then stated that certain members who are now no more, their names are included in

the provisional voters list. Some are minor and some alleged members are not having land within the jurisdiction of the society, name of such persons has been included. Three lists were attached by the petitioner along with the objection, which were, (1) those persons having no agricultural land in village Akola, Taluka Ambajogai District Beed, (2) those members who are no more, and (3) those members who are not resident of village Akola, Taluka Ambajogai District Beed. Thereafter, the petitioner was called for hearing by giving notice on 05-01-2022. It appears that accordingly the petitioner appeared on 10-01-2022, and on the same day, the order was pronounced that his objections were partly allowed. One of the person who was minor, his name has been directed to be deleted. However, as regards the names of those persons who have less than 10 R land in the village, refused to be deleted. Therefore, the petitioner is before this Court praying for exercise of Constitutional powers of this Court under Article 226 and 227 of the Constitution of India.

2. Heard learned Advocate Mr. S. S. Shinde for petitioner and learned Advocate Mr. V. H. Dighe for respondents No.1 and 2.

3. Learned Advocate appearing for the petitioner while supporting

the petition has taken this court through all those lists, impugned order and also the by-laws which state that a condition is there that those persons can vote or become member who have specified area of land within the jurisdiction of the society.

4. Per contra, the learned Advocate for respondents No.1 and 2 strongly opposed the petition and took preliminary objection about the maintainability of the writ petition and submitted that there is specific provision in Section 91 of the Maharashtra Co-operative Societies Act, wherein the remedy may be available to the petitioner. Therefore, exercise of power under Section 226 and 227 of the Constitution of India does not arise at all. Reliance has been placed on the Full Bench decision of this Court at the Principal Seat in *Karmaveer Tulshiram Autade and Ors. Vs. State Election Commission, Mumbai and Ors.*, reported in 2021 (2) Mh.L.J. 349, it was observed that :-

“Though the said case before the Full Bench was in respect of Village Panchayat Act, yet provisions in respect of filing Election Petition are *pari materia* with the provisions contained in Maharashtra Co-operative Societies Act, 1960, by which a right or liability is created by a Statute which provides a special remedy for enforcing it.”

The impugned order passed by the District Co-operative Election Officer would clearly show that those persons in respect of whom objections were taken, were not party before him. So also they are not party to this writ petition. They cannot be contempt or their names cannot be deleted without hearing them. The point that has been raised would be a disputed fact because whether a person is an agriculturist or not, or whether he resides in the jurisdiction of the society or not, will have to be raised before the Registrar of Co-operatives and it cannot come within the jurisdiction of the Election Officer. No appeal was filed by the present petitioner under Section 11 of the Maharashtra Co-operative Societies Rules, and therefore, those objections were not considered at all. It is a legal order which cannot be interfered at the fag end.

5. At the outset, this Court in Writ Petition No.12006 of 2021 has given a detailed order and had take a note of the earlier decisions by the Hon'ble Apex Court as well as the Full Bench decision of this Court in *Karmaveer Autade (Supra)*. The reasons given by District Co-operative Election Officer appears to be *prima facie* correct. When there is disputed fact, the Election Officer cannot go into that disputed facts. Further, without hearing the said person, no decision

about the deletion of his or their name cannot be taken. Even to this petition, those persons whose names the petitioner want to get deleted, are not before this Court. Definitely alternative efficacious remedy is available under the Maharashtra Co-operative Societies Act. Under such circumstance, the constitutional powers under Article 226 and 227 of the Constitution of India cannot be exercised. By keeping all the contentions open, the writ petition stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-