

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

904 WRIT PETITION NO.2801 OF 2022

**INDRABHAN MARUTI MUSALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners: Mr. S. S. Thombre
AGP for Respondent/State: Mr. S. K. Tambe
Advocate for Respondent No.2: Mr. V. H. Dighe

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 26th FEBRUARY, 2022

PER COURT:

1. The Petitioners claim to be the members of Respondent N. 5 Society. Provisional voters list was published. The Petitioners raised objection to the names of 56 persons on the ground that they do not possess 10 Are land required to be a valid member. The objection of the Petitioners is rejected, aggrieved thereby the present petition.

2. Mr. Thombre, learned Advocate for the Petitioners submits that the Petitioners had given the details of 56 persons not possessing the lands

in the village required as per the bye-laws. In view of that, they could not be the valid members of the Society *inter alia* could not have found place in the voters list.

3. The learned Counsel further submits that in spite of the fact that the detailed objection was raised by the Petitioners within the stipulated time the Returning Officer failed to exercise his jurisdiction and in a casual manner ignored the objection of the Petitioners relying only upon the membership register. As per Sub-rule 3 of Rule 8 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (*hereinafter referred to as 'Rules-2014'*), the Election Officer is required to make an inquiry and consider each claim / objection and give his decision thereto in writing and thereafter the final voters list is to be published. It is only after deciding all claims and objections the list becomes final. The learned Advocate for the Petitioners submits that the Petitioners to substantiate their contention had also placed on

record the list affirmed by the *Talathi* showing that these 56 persons do not possess land and still their names appear in the voters list. No order has been passed by the Returning Officer in view of the objection raised. He has only observed that the names of these 56 persons appear in the register of the Society as members and there is no provision to delete their names as such has rejected the applications. In fact, the Returning Officer ought to have conducted an enquiry, ample time was available with the Returning Officer. The impugned order is illegal. The learned Advocate to substantiate his contention that this Court can interfere with the preparation of the voters list relies upon the Judgment of the Apex Court in the case of **State of Goa and others Vs. Fouziya Imtiza Shaikh and others** dated 12.03.2021 and submits that the Apex Court has held that if the assistance of writ court is required in the progress of the election proceedings and facilitating its completion the writ court may issue orders. The election programme is declared.

The date for publishing of the final voters list is 28.02.2022. The Returning Officer can still decide the objection of the Petitioners by issuing notices to the Petitioners and / or by issuing publication notice.

4. Mr. Dighe, learned Advocate submits that the Petitioners have alternate remedy available. Out of these 56 persons the names of 44 persons were appearing as valid voters even in the previous elections. Only 12 members are newly registered. Their names appear in the register of members maintained by the Society. In such an event, this Court may not interfere. The learned Advocate relies on the Judgment of the Division Bench of this Court at Principal Seat dated 26.11.2021 in Writ Petition No. 5878 of 2021.

5. The provisional voters list is published on 02.02.2022. The objections were invited to the provisional voters list from 02.02.2022 to 11.02.2022. The decision on the objections was to be taken on 21.02.2022 and the final voters list

is to be published on 28.02.2022. The election programme has to be published within 10 to 20 days of the publication of the final voters list.

6. It appears that the Petitioners had raised objection to the inclusion of 56 members in the provisional voters list. The said objection it appears was referable to Rule 8 of the Rules-2014. Sub-rule 3 of Rule 8 of Rules-2014 mandates the election Officer after making the enquiry as it may deem necessary consider each claim or objection and give his decision thereto in writing to the persons concerned and thereafter only final voters list should be published.

7. In the present case, the Returning Officer has only observed that names of these 56 persons appear in the register of the members of the Society and there is no provision to remove their names from the voters list. The Returning Officer did not exercise his jurisdiction within the meaning of Sub-rule 3 of Rule 8 of Rules-2014. The Returning Officer certainly ought to have

considered the objection and decided the contentions on merits. The Petitioners it appear had also subsequently on 17.02.2022 presented the certificate of the *Talathi* to contend that these 56 persons do not possess any land in the village.

8. The Returning Officer was supposed to issue notice to those 56 persons before arriving at conclusion and then ought to have taken decision. No notice was issued and as observed above on the basis of the opinion / report received from the Assistant Registrar that the names of these persons appear as members in the register of Societies and that there is no provision for removing their names from the voters list rejected the objection.

9. The Returning Officer certainly was required to carefully consider the objection and ought to have made an enquiry as contemplated under Rule 8(3) of Rules-2014. The Returning Officer had failed to do so.

10. Be that as it may, the objection of the Petitioners is rejected thereby deciding in favour of 56 persons. These 56 persons are not parties to the Writ Petition. It would not be possible now to enter into the enquiry in respect of the eligibility of these persons on the basis of owning the property to the extent of 10 Are. The same would now require enquiry and also Say would be required to be called from them. 28.02.2022 is the last date for finalising the voters list.

11. Though we observe that Returning Officer failed to exercise his powers under Sub-rule 3 of Rule 8 of Rules-2014 however considering the time frame for publishing the final voters list and that these 56 persons against whom objections were raised and rejected are not parties in the present Petition, it will not be possible to set aside the said order in their absence and direct further steps to be taken. Even otherwise, the Petitioner can certainly assail the same after the election is over in the appropriate proceedings permissible. In that event, all contentions of the

Petitioners are kept open to be raised at the relevant time.

12. The Writ Petition accordingly stands disposed of. No costs.

13. Authenticated copy be given.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

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