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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 4858 OF 2022

Bandenawaj Mansur Makandar ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. V.,H. Narvekar i/by Mohammad S. Mulla for the Petitioner.

Mr. Deelip Patil Bankar, Chief Standing Counsel, SCEA a/w Abhishek Patil for Respondent no.2.

Mr. R.P. Kadam, AGP for Respondent no.1.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**
DATED : 25^h APRIL 2022

P.C. :

1. The Petitioner is one of the member of Respondent no.5 - Pitapur Vividh Karyakari Seva Sahakari Sanstha Ltd., Taluka Akkalkot, District Solapur. The Petitioner is seeking following substantive reliefs:

"(a) this Hon'ble Court be pleased to issue writ of mandamus and or any other writ order or direction in the nature of

mandamus thereby directing the Respondent no.2 to forthwith withdraw the order/direction dated 18.04.2022 bearing no.4195 of 2022 passed by it rejecting the objection of the Petitioner to the inclusion of the names of the Respondent nos. 6 to 116 in the provisional voters list;

- (b) this Hon'ble Court may be pleased to issue any writ, order, or direction and thereby be pleased to quash and set aside the impugned order dated 18.04.2022."

2. By the impugned order dated 18th April 2022 passed by the Respondent no.2- District Co-operative Election Officer, Solapur, the objection filed by the Petitioner to inclusion of the names of Respondent nos. 6 to 116 in the provisional voters list has been rejected. The Respondent no. 2 rejected said objection inter alia on the ground that the complaint/application of the Petitioner regarding removal of names of Respondent nos. 6 to 116 as members preferred under Section 11 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the said Act") is pending and therefore their names cannot be deleted from the voters list.

3. Heard Mr. Naverkar for the Petitioner, Mr. Patil-Bankar, the learned Chief Standing Counsel for Respondent no.2 and Mr. R.P. Kadam, the learned AGP for Respondent no.1.

4. It is the main contention of Mr. Narvekar that the Respondent no.2 passed the impugned order without considering the merits of the objection. He submitted that the Respondent nos. 6 to 116 were added as members by the Secretary and Chairman of the Society. He submitted that the said Respondents do not have even the basic criteria for obtaining the membership of the Respondent 5 - Society. He submitted that these Respondents do not hold agricultural land within the area of operation of the Respondent no.5 - Society. He relied on the report given by Talathi of Mauje Pitapur, Taluka Akkalkot, District Solapur stating that in the revenue record of Mauje Pitapur and Mauje Akatnal, the names of said respondents are not appearing. He submitted that the Respondent no. 2 completely ignored the said report submitted by the Talathi.

5. Mr. Patil-Bankar, learned Chief Standing Counsel appearing for Respondent no. 2 and Mr. Kadam, learned AGP for Respondent no.1 submitted that as the election process has commenced, the writ petition is not maintainable. They relied on the judgment of this Court in the case of

Dattatray Genaba Lole and Ors. Vs. Divisional Joint Registrar, Co-operative Societies and Ors., reported in ***(2021) SCC Online Bom. 4579***.

They also submitted that scope of Rule 8 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as "the Election Rules") is very limited and the respondent no.2 could not have gone beyond the same. Therefore, they supported the impugned order dated 18th April 2022.

6. In this case, the respondent no. 2 declared the programme of finalisation of the voters list on 29th March 2022. As per the said programme, provisional voters list was to be published in accordance with Rule 6(3) of the Election Rules on 30th March 2022, the objections to be submitted as per Rule 8(1) between 30th March 2022 to 8th April 2022. If objections are not received to the provisional voters list then the final voters list to be published on 13th April 2022. If objections are received to the provisional voters list then the same to be decided on/or before 18th April 2022 in accordance with Rule 8(3) of the Election Rules. The final voters list to be published on 22nd April 2022 in accordance with Rule 8(3) of the Election Rules.

7. In the present case, the provisional voters list was published by the Respondent no.2- District Co-operative Election Officer, on 30th March 2022. The Petitioner filed objection to the same on 4th April 2022, inter alia raising contention that the Respondent nos. 6 to 116 do not fulfill the basic criteria for obtaining membership and therefore their names be deleted from the list. The said objection was rejected by the impugned order dated 18th April 2022.

8. It appears that on 20th February 2020, the Petitioner has filed a complaint/application with the Collector, Solapur, District Deputy Registrar Co-operative Societies, Solapur and Assistant Registrar Co-operative Societies, Akkalkot, Solapur regarding addition of alleged bogus members by the Secretary and Chairman of the Society. In the impugned order, it is mentioned that enquiry under Section 11 of the said Act is pending and no final decision is taken and therefore it would not be proper to delete the names of said members at this stage.

9. It is also significant to note that on 29th March 2022, the Respondent no.2 issued programme regarding finalisation of the voters list, as more particularly set out hereinabove. Pursuant to said notice, the Petitioner filed the said objection to the provisional voters list, which was dismissed by the

impugned order. It is settled position of law that the process of finalisation of voters list is also part of election process. In the judgment in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. Vs. State of Maharashtra & Ors.***, reported in **(2001) 8 SCC 509**, it has been held that preparation of the electoral roll for election of the specified society is an intermediate stage in the process of election. The judgment on which the Respondents have relied on in the matter of *Dattatray and Ors (supra)* is also arising out of the order by which objection to the exclusion of name from the preliminary voters list was taken. In that case, the Court framed following question for consideration:

- "i. Whether this petition ought not to be entertained under Article 226 of the Constitution of India because the Petitioner has available to it an alternative and efficacious remedy to challenge the election itself under the provisions of the Act read with the Rules ?"

In that case, in paragraph 97, this Court recorded the conclusion as follows :

- "97. *We accordingly, uphold the preliminary objection as raised by the Respondents and conclude that we are not inclined to entertain the present Writ Petitions challenging the Impugned Order, being a part of the intermediate stage of the election process. The Petitioners are at liberty to file an election petition under*

Section 91 read with Rule 78 after the election result is declared. That petition, if filed, will be decided on its own merits uninfluenced by any observation that has been made in this order. There shall, however, be no order as to costs."

(Emphasis added)

10. Thus there is substance in the contention raised by the respondent nos.1 to 3 that the writ petition is not maintainable.

11. Apart from the aspect of maintainability of the writ petition, it is important to note that, the present objection is taken under Rule 8(3) of the Election Rules. The impugned order is passed under said Rule 8(3). Rules 7 and 8 of the said Rules are relevant. The said rules are quoted hereinbelow for ready reference :

"7. Particulars to be included in the provisional list of voters for co-operative societies having individuals as members

The provisional list of voters in case of individual shareholders, shall contain the surname, name, father's or husband's name (in alphabetical order), if any, with address as recorded in the register of members in Form 'E-3' of every person entitled to be registered as voter with such other particulars as may be necessary to identify him.

8. Claims and objections to the provisional list of votes, and the final list of voters for co-operative societies having individuals as members:

- (1) When the provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society during office hours within ten days from the date of publication of the provisional list of voters.
- (2) Every claim or objection shall be in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.
- (3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, or as directed by the SCEA, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalised by the election officer after

deciding all claims and objection shall be final list of voters.

- (4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalisation of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any."*

Rule 7 read with Rule 8(1) clearly shows that the objection to the provisional list of voters as contemplated under Rule 8(1) is regarding omission or error in respect of name or address or other particulars in the provisional list of voters and therefore the Respondent no.2 has no jurisdiction to consider the objection raised by the Petitioner namely that the Respondent nos. 6 to 116 do not hold the basic criteria for obtaining membership. The said Respondents are admittedly the members of the society and therefore their membership can be challenged/terminated as per provisions of Section 11 read with Section 22 of the said Act. Section 25-A of the said Act provides that the committee of a society shall remove from the register of its members the name of a person who has ceased to be a

member or who stands disqualified by or under the provisions of this Act or the rules made thereunder for being the member or continuing to be the member of a society. It is further provided that if the society does not comply with the requirement of this section, the Registrar shall direct such society to remove the name of such person, and the society shall be bound to comply with such direction.

12. Thus, although there is substance in the contention raised by the Respondents that the writ petition is not maintainable, however, even assuming that the writ petition is maintainable on merits also, the impugned order passed by the Respondent no. 2 is required to be sustained. The Respondent no.2 has rightly held that unless Section 11 application filed by the Petitioner is decided, their names cannot be deleted from the voters list.

13. In view of the above discussion, we are not inclined to interfere in the impugned order.

14. However, it is to be noted that the application filed by the petitioner under Section 11 of the said Act is pending since 20th February 2020. Therefore, we direct that the Respondent no. 3A- the Assistant Registrar, Co-operative Societies, Akkalkot, District Solapur to decide the application

pending under Section 11 of the said Act expeditiously and in any event within a period of six months from today.

15. The writ petition is disposed of in above terms.
16. All parties to act on authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.

BHALCHANDRA
GOPAL
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