

Anand

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

WRIT PETITION NO. 14111 OF 2023

Sarita Arjun Gavde & anr.

.Petitioners

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. Ashish Kachole, Advocate, for the Petitioners

Mr. P. G. Sawant, AGP, for Respondent No. 1 – State

Mr. Deelip Patil – Bankar, Chief Standing Counsel SCEA a/w.

Ms. Pooja Deelip Patil, for Respondent Nos. 2 & 3

Mr. Chetan G. Patil, Advocate, for Respondent No. 7

CORAM : MADHAV J. JAMDAR, J.

DATE : 09.11.2023

P. C.

1. Heard Mr. Kachole, learned counsel appearing for the Petitioners, Mr. Sawant, learned AGP appearing for Respondent No. 1 – State, Mr. Patil – Bankar, learned counsel appearing for Respondent Nos. 2 & 3 and Mr. Chetan Patil, learned counsel appearing for Respondent No. 7.

2. The challenge in the Writ Petition filed under Article 226 of the Constitution of India is to the legality and validity of the order dated 23.10.2023 passed by Respondent No. 3. By the impugned order, objection raised to the draft voters list is rejected. It is the contention of Mr. Kachole, learned counsel

appearing for the Petitioners that the Minutes dated 05.03.2021 in which certain members were accepted as members are fraudulent minutes. It is his submission that the Secretary was one Mr. Tukaram Vithoba Choukulkar and in the said Minutes dated 05.04.2021, one Mr. Prakash Pandurang Gawade is shown as Secretary. It is the further contention that Respondent Nos. 20, 22 & 7 are residents of village - Kajrne, Post - Hindgao, Taluka - Chandgad, District - Kolhapur. It is his further contention that Respondent Nos. 6, 8, 19, 20 & 25 are not eligible to vote, as they have not complied with certain requirements.

3. Mr. Chetan Patil, learned counsel appearing for Respondent No. 7 submitted that the minutes of the Resolution were passed in the General Body Meeting on 05.04.2021. He submitted that earlier Secretary, Mr. Tukaram Vithoba Choukulkar resigned from the post of the Secretary and by the Resolution dated 05.03.2021, a new secretary i. e. Mr. Prakash Pandurang Gawade has been appointed. Insofar as the contention raised by the Petitioners is concerned, Mr. Patil has relied on the decision of a learned single Judge of this Court in the case of *Rajan Dinkarrao Pharate and others Vs. State of Maharashtra and others*, reported in (1997) 1 Mah LJ 543. He more

particularly relied on paragraph 21 of the said decision. In the said decision, it has been held that the Collector has no power to enquire about whether such person is empowered to be a member or not.

4. In view of the Resolution dated 05.03.2021 passed by Respondent No. 4 – Society which shows that as earlier secretary Mr. Tukaram Vithoba Choukulkar has resigned, a new secretary namely Mr. Prakash Pandurang Gawade has been appointed, there is no substance in the contention raised by the learned counsel appearing for the Petitioners that Resolution dated 05.04.2021 is fraudulent. Insofar as other contention raised by learned counsel appearing for the Petitioners is concerned, in the said decision of *Rajan Dinkarrao Pharate (Supra)*, a learned single Judge of this Court has held that the collector has no power to enquire about whether such person is empowered to be a member or not. Accordingly, no interference in the impugned order is warranted.

5. It is clarified that the observations made in this order are only for the purpose of considering challenge to the impugned order and the Petitioners have got an alternate remedy of filing

an Election Dispute in the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and all contentions of concerned parties are expressly kept open.

6. Accordingly, the Writ Petition is dismissed with no order as to costs, however, subject to above.

(MADHAV J. JAMDAR, J.)