

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5193 OF 2022

Tanaji Navnath Jarag

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

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Mr.Manoj A. Patil a/w. Mr.Akash M. Morudkar i/b. Mr.Ashish Pawar, Advocate for the Petitioner.

Mr.M.M. Pable, AGP for Respondent – State.

Mr.Deelip Patil Bankar, Chief Standing Counsel SCEA, Advocate for Respondent Nos.2 and 3.

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**CORAM : NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE : 21 DECEMBER 2023.

P.C. :

This Writ Petition was filed on 21 April 2022 initially for a prayer that the Assistant Registrar, Co-operative Societies should take cognizance of the Petitioner's complaint and restrain Respondent Nos.5 and 6 from casting their vote in the election of the Chairman and Vice Chairman of Respondent No.4–Rajewadi Vivid Karyakari Sahakari Sanstha Mydt. Rajewadi, Sangli society which was scheduled on 22 April 2022.

2 This Writ Petition came up on board on 22 April 2022 when notice was issued by this Court.

3 The elections to the post of Chairman and Vice Chairman were but not stayed were made subject to the outcome of the Writ Petition. Thereafter, on 29 August 2022, this Writ Petition was listed alongwith Writ Petition No.6791 of 2022. As elections proceeded, the Petitioner amended the Petition and sought to challenge the election process and the election of Chairman and Vice Chairman of Respondent No.4–Society.

4 The Petitioner is a member of Respondent No. 4–Society and by amended prayer seeks to quash and set aside the election process of the Chairman and Vice Chairman. After the amendment, the Petition has remained pending and has come up in regular course.

5 The position, therefore, is that the election has taken place in April 2022 as to the post of Chairman and Vice Chairman of Respondent No.4–Society and, the they have continued for almost one and half years. This Court had not stayed the election process and though had stated that the result will be subject to the outcome of the Petition, does not mean that the basic position of law that for challenge to the election result there is a substantive remedy available under the Maharashtra Co–operative Societies Act, 1960 is deviated from. In the order dated 22 April 2022, which was an order passed while issuing notice at the time of production of the Petition, there is no such specific finding that after the elections are held, the Petitioners need not avail of the statutory remedy and that inspite of the statutory remedy this Court will consider the challenge.

6 Since a substantive remedy of approaching the Court under the Maharashtra Co-operative Societies Act, 1960 is available to the Petitioner, we are not inclined to keep the Petition pending. The contention of the Petitioner is that in view of the obvious factual position and statutory bar the concerned election was vitiated, can also be urged before the forum available under the Act.

7 That being the position, keeping the contentions of all parties open in case the Petitioner approaches the forum under the Act, we dispose of the Writ Petition.

8 In case the issue of limitation arises, we have no doubt that the concerned Court will keep in mind the pendency of this Petition in the above circumstances.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)