

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO. 13018 OF 2023

Mr. Jayprakash Gupta,
The Director & Authorised Representative
Of The Loot (India) Pvt. Ltd.
Aged about 48 years, Occ.: Business,
Hindu, Indian Inhabitant, having office at
004/D, Ground floor, Poonam Chambers 'B'
Wing Premises Co-operative Society Ltd.,
Shivsagar Estate, Plot No. G.
Dr. Annie Besant Road, |
Worli, Mumbai- 400018.

... Petitioner.

V/s.

1. Poonam Chambers 'B' Wing Premises
Co-operative Society Limited,
Having address at Shivsagar Estate,
Plot No. G, Dr. Annie Besant Road,
Worli, Mumbai- 400 018. (Through
The Administrator Mr. Ananda Patil).
2. The Deputy Registrar of Co-operative
Societies, G/S Ward, 6" Floor,
Malhotra House, Opp. G.P.O,
Fort, Mumbai- 400001.
3. Mr. Dinanath Kale (Returning Officer),
Room No. 30 Building No.108,
Rambhavan Building, Dadasaheb Phalke
Road, Dadar (East), Mumbai- 400 014.
C/o. The Office of the Deputy Registrar CS,
G/S Ward, 6" Floor, Malhotra House,

**SANJAY
KASHINATH
NANOSKAR**

Digitally signed by
SANJAY KASHINATH
NANOSKAR
Date: 2023.12.20
20:05:00 +0530

Opp. G.P.O, Fort, Mumbai- 400001.
M: 8108755227
Email.: poonambwing@yahoo.co.in

4. Mr. Ananda Patil,
Administrator of Poonam Chambers
'B' Wing Premises Co-operative Society
Limited, C/o. The Office of the Deputy
Registrar CS, G/S Ward, 6" Floor,
Malhotra House, Opp. G.P.O, Fort,
Mumbai- 400001.
M: 9764193452
Email.: poonambwing@yahoo.co.in
5. Shri Chirag Shah,
Aged about 50 years, Occ.: Builder,
Hindu, Indian Inhabitant,
having office at 101/A, 1st Floor,
Poonam Chambers 'B' Wing Premises
CSL Shivsagar Estate, Plot No. G,
Dr. Annie Besant Road, Worli,
Mumbai- 400018.
9619179169
Email.: sales@steelfabgroup.com
6. Shri. Mahavir Murarka,
Aged about 55 years, Occ: Employee
Of Soyuz Trading Co. Ltd.
Hindu, Indian Inhabitant, having
office at 302/B, 3rd Floor, Poonam
Chambers 'B' Wing Premises Co-operative
Society Ltd., Shivsagar Estate, Plot No. G,
Dr. Annie Besant Road, Worli,
Mumbai- 400018.
M: 8976237810
Email.: mahavir@jindalegroup.com

7. Mr. Ashwani K. Shrivastava,
Aged about 60 years, Occ.: Employee
of Ms/ Samarjit Realities & Farma Pvt. Ltd.,
Hindu, Indian Inhabitant having office at
5th Floor, Poonam Chambers,
501/A, Fifth Floor, Poonam Chambers 'B'
Wing Premises Co-operative Society Ltd.,
Shivsagar Estate, Plot No. G,
Dr. Annie Besant Road, Worli,
Mumbai- 400018.
M: 9167222101
Email.: info.niwastrust@essar.com
8. Sonu G. Samtani
Aged about 65 years, Occ. Business,
Hindu, Indian Inhabitant, having office at
001/A, Ground Floor, Poonam Chambers
'B' Wing Premises Co-operative Society Ltd.,
Shivsagar Estate, Plot No. G,
Dr. Annie Besant Road, Worli,
Mumbai- 400018.
M: 9323092383
Email.: s.samtani@yahoo.com
9. Shri. Devendra Agarwal,
Aged about 50 years, Occ. Employee
Of Jindal Buildmart Ltd.,
Hindu, Indian Inhabitant,
having office at 102/B, Gr. Floor, Poonam
Chambers 'B' Wing Premises CSL,
Shivsagar Estate, Plot No. G,
Dr, Annie Besant Road, Worli,
Mumbai- 400018.
M: 9892427100
Email.:devendra@jindalgroup.com

10. The Maharashtra State Co-Operative
Election Authority, 2nd Floor,
New Central Building,
Dr. Baba Saheb Ambedkar Road,
Pune, Maharashtra 411001.

... Respondents.

Mr.Subhash Jha with Ms.Usha Tiwari, Ms.Manshi Jain and
Ms.Praveena Venkatraman i/b. Law Global for the Petitioner.

Ms.Mandakini Sinh for Respondent No.3.

Mr.Bhavin Gada i/b. Atul Thakkar for Respondent Nos.5 to 9.

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

DATE : 20 December 2023.

JUDGMENT : (Per Nitin Jamdar, J.)

The Petitioner is a member of Respondent No.1 - Poonam Chambers 'B' Wing Premises Co-operative Society Limited. The petition challenges the nominations of Respondent Nos. 5 to 9 for contesting the election of the Managing Committee of Respondent No.1 - Society.

2. The election took place during the pendency of this petition, and Respondent Nos. 5, 7, 8, and 9 were elected, while Respondent No. 6 was not elected. After the election, the Petitioner

has the remedy of filing an election dispute as per the provisions of the governing statute. The reason the petition continued and was heard further was that, according to the Petitioner, the Returning Officer did not decide on the objections raised by the Petitioner to the nominations of Respondent Nos. 5 to 9.

3. When the petition first came up on board on 23 October 2023, a query was put to the Petitioner as to whether the Petitioner had taken objections to the nominations of Respondent Nos.5 to 9 and whether the copies of the objections are on record. At that time, the learned counsel for the Petitioner took time to file an additional affidavit to place on record the objections taken. Then on 26 October 2023, the Petitioner filed an additional affidavit but the counsel for the Returning Officer was unable to inform the Court whether the objections had been decided. The counsel for Respondent Nos.5 to 9 accepted the position that the objections have not been decided. Thereupon the petition was adjourned to 8 November 2023 without staying the election as, if Respondent Nos.5 to 9 would not have been elected, the petition would not have survived. Thereafter on the next date, the Court was informed that Respondent No.6 was not elected and the other Respondents were elected. Having recorded that the objections to the nominations of Respondent Nos.5 to 9 were not decided, to address the question as to the scope of the proceeding thereafter, the petition was adjourned directing that Respondent Nos.5, 7, 8 and 9 would not attend the

meetings of the Managing Committee till the next date and their absence would not be held against them if the Petitioner does not succeed. Thereafter replies and rejoinders have been filed.

4. We have heard Mr. Subhash Jha, learned advocate for the Petitioner, Ms. Mandakini Sinh learned advocate for Respondent No.3- Returning Officer and Mr.Bhavin Gada learned advocate for Respondent Nos.5 to 9.

5. The position as of today is that the election to the Managing Committee of Respondent No.1 has taken place. Respondents Nos.5, 7,8 and 9 have been elected. The legal provision is not debated before us that a challenge to the election results of the co-operative society have to be adjudicated by filing proceedings under the Maharashtra Co-operative Societies Act, 1960. The proceedings before the Court under Act, 1960 are full-fledged proceedings where the Court has the power to receive evidence, render factual findings and pass suitable orders. The order of the Court can be challenged in the Appellate Forum. Therefore, there is full-fledged machinery in deciding the questions of fact governing the results of the election under the Act of 1960.

6. Though it is the duty of the Returning Officer under the statutory scheme to decide the objections to the nominations, the writ court cannot proceed on the basis that because the Returning Officer has not decided the objections raised to the nominations, the

objections deemed to be valid and election of the elected members should be set aside without any further enquiry. Such a course of action will prejudice the elected members. Therefore, even though the writ court may be called upon to look into the objections raised to the nominations of the elected members after the election in these circumstances, such scrutiny cannot be akin to a trial before the trial Court. The scrutiny of writ court in such circumstances, if at all, would be only to ascertain whether on the face of it without looking into any factual aspect the election can be set aside. If not, the proper course of action would be to relegate the objectors to the remedy under the Act of 1960. This, however, is subject to the objector lodging the objection in time and before the correct authority and on an unexplained failure of the authority to decide the objections.

7. Therefore, the first aspect to be considered will be the factum of lodging the objections by the Petitioner in time before the Returning Officer. Respondent Nos.5 to 9 contend that there is serious doubt as to whether the Petitioner filed objections before the Returning Officer and the Petitioner has come to the Court with unclean hands with the sole intention of disrupting the elections.

8. The election programme of the Respondent- Society for the elections to the Managing Committee is on record. The provisional list of voters for the election of the Managing Committee of the Respondent- Society was published on 12 June 2023. As per

Rule 76E of the Maharashtra Co-operative Societies (Election to Committee) Rules of 2014, objections had to be raised with respect to the provisional voters list within 10 days. Thereafter final voters list was published on 23 September 2023. According to the Petitioner, some of the objections raised by the Petitioner could have disqualified Respondent Nos.5 to 9 from even being voters. Nothing is on record to show that the Petitioner raised any objection. The provisional voter's list became final.

9. Respondent Nos.5 to 9 have contended that there is serious doubt as to whether the Petitioner submitted objections to the nominations of Respondent Nos.5 to 9 in time. As per the election programme declared on 25 September 2023, the nominations were to be submitted from 25 September 2023 to 3 October 2023 and the list of nominations received was to be published on 3 October 2023. A scrutiny of nominations was to be done on 4 October 2023 with the publication of nominations on 5 October 2023. Therefore, after the publication of nominations on 3 October 2023 till the date of scrutiny of nominations i.e. 4 October 2023 at 11.00 a.m. The objections had to be lodged so that it would be scrutinized and the list would be published on 5 October 2023.

10. As regards lodging of objections, it would be fruitful to examine the contentions of the Petitioner. In paragraphs- 3(cc) and (dd) of the petition, the Petitioner has stated as under:

(cc) The Respondent No. 3 on 05-10-2023 after 05:00 p.m, published the List of Valid Nomination Forms dated 05-10-2023. In the said List the name of the Respondent Nos. 5 to 9 are listed at the serial Nos.8, 6, 10, 3(woman category) and 1 respectively. The Petitioner states that the names of the Respondent No.5 to 9 have been illegally included in the Valid Nomination List because the Respondent Nos. 5 to 9 are not eligible and disqualified under the said Act, MCS Rules and Respondent No.1 Society Bye-Laws to contest election of the Managing Committee of the Respondent No.1 society. Hereto annexed and marked as Exhibit "P" is a copy of the List of Valid Nomination Forms dated 05-10-2023.

(dd) After receipt of list of valid Nomination after scrutiny from the Respondent No.3 the Petitioner by his Letter dated 06-10-2023 requested the Respondent No.3 to provide the Petitioner certified copy of the Nomination Forms submitted by all the members contesting election, The Respondent No.3 refused to accept the said Letter hence the Petitioner WhatsApp the said Letter to the Respondent No.3 but till date the Respondent No.3 has not provided any document to the Petitioner. Hereto annexed and marked as Exhibit "Q" is a copy of the Petitioner's Letter dated 6-10-2023.

When the petition was filed what was annexed to the petition was a letter dated 6 October 2023 issued by the Petitioner to Respondent No.3- Returning Officer for certified copies of the nomination forms and documents referred for the scrutiny of nominations. Another communication to Respondent No.10- Maharashtra State Election Authority was placed on record. The communication dated 6 October 2023 to the Returning Officer did not refer to any objections but only called for information. The communication to the Election Authority on the same date reproduced all that Petitioner wanted to point out regarding the validity of the

nominations. As to why such detailed communication was not addressed to the Returning Officer is not explained. As the Rules and as per the election programme declared, the objection to the nominations has to be lodged with the Returning Officer.

11. According to Respondent Nos.5 to 9, even the proof of communicating through social media WhatsApp is also not placed on record with relevant screenshots etc. In the additional affidavit, objections have been reproduced. It is to this additional affidavit that the letter on the letterhead of the Returning Officer dated 4 October 2023 is annexed. In the body of the petition in the chronology of events, we do not find specific assertions regarding this communication dated 4 October 2023. The communication dated 6 October 2023 annexed to the petition addressed to the Returning Officer does not refer to the objections stated to be lodged on 4 October 2023. To add to the confusion, the Returning Officer in his affidavit referred to the letter of 4 October 2023. In this state of affairs, it is not possible for us to record a conclusive finding that the Petitioner did submit his objections on 4 October 2023. Nothing stopped the Petitioner from asserting this position on oath and annexing the objections so filed when the petition was filed, especially, when the contention is that the Returning Officer did not deal with the objections. We do not wish to conclude on this aspect but state this would require adjudication of various disputed facts.

12. Even assuming that the objections so lodged are not decided, the question will arise as to the degree of scrutiny in writ jurisdiction. Respondent Nos.5 to 9 contend that all the objections raised by the Petitioner are frivolous and baseless and none of Respondent Nos.5, 7, 8 and 9 can be held to be disqualified based on the material.

13. As regards Respondent No.5 Steel Fab, the Petitioner in the additional affidavit, has stated that it is a defaulter member of the Respondent No.1 society. The Respondent No.5 is not an active member. Respondent No.5 has carried out repair/renovation in violation of the Order dated 26 April 2001 passed by this Court. Respondent No.5 has refuted the accusations, asserting that all maintenance charges owed to Respondent No.1 Society have been duly settled. There are no outstanding dues pertaining to the maintenance charges for M/s.Steelfab Building Systems. Given that no repair work has been executed in Respondent No.1 Society's building, it follows that there can be no outstanding dues for such work. There cannot be billing of major repair contributions in the absence of corresponding work. It is stated that the question of outstanding dues for major repair work that has not been undertaken does not arise. Further, it is stated that M/s.Steelfab Building Systems is not listed in the defaulters' column of the Provisional List and no demand notice for the recovery of outstanding dues has been issued by Respondent No.1 Society. Hence, the assertion that M/s.Steelfab Building Systems is a defaulter is unfounded.

Respondent No. 5 contends that on 5 May 2022, Jignesh P. Shah, another member authorized Respondent No.5 to participate in and vote at the Managing Committee election of Respondent No.1 Society. Regarding the renovation of Unit No.101/A in 2011, all necessary permissions were obtained, as communicated by the Architect in a letter dated 20 January 2011. However, no subsequent renovation or interior work has been carried out in Unit No.101/A since then. It is stated that Respondent No.5 has consistently attended the Annual General Body Meetings of Respondent No.1 Society, including the one held on 30 September 2021. These rival contentions show various areas of debate regarding the extent of dues, repair work, whether the name of Respondent No.5 was included in the defaulter's list, whether Respondent No.5 has authority in and a NOC for renovation etc.

14. About Respondent No.7, the Petitioner asserts in paragraph 4 of the supplementary affidavit that one Samarjit Realities and Farms Private Limited (Samarjit) is a member of the Respondent No.1 society for Unit No.501/A on the 5th Floor, as claimed by Respondent No.7, who purports to be the authorized representative. Petitioner contends that Respondent No.7 has presented authorization from both Samarjit and Matix Fertilizers and Chemicals (Matix). However, Matix is not a member of the society for the mentioned unit. Respondent No.7 has submitted two authorizations, one from a member and another from a non-member of the society, both dated the same day for the same unit. Also, these

resolutions do not empower Respondent No.7 to participate in the election. The nomination for Respondent No.7 is proposed by a nominee and not a member of the society. This resolution contravenes the statutory provisions since it grants authorization for more than one person to vote. Respondent No.7 is not a director of either of the companies. These members have entered into a Leave and License Agreement without the NOC of the Respondent-Society and have undertaken repairs and renovation of the unit without the approval of Respondent No.1 Society. Respondent No.7 rebuts the aforementioned allegation by stating that Samarjit initiated the process by requesting Respondent No.1 Society, through a letter dated 24 March 2022, to issue a No Objection Certificate and a No Due Certificate for the sale of the premises located at the 5th Floor, 501-A in Respondent No.1 Society in favour of Matix. Subsequently, Samarjit executed a Deed of Sale on 31 March 2022, for the said premises in favour of Matix. Respondent No.1 Society, in response to Samarjit's letter dated 24 March 2022, communicated on 11 April 2022, that, in accordance with the society bye-laws, it cannot issue NOC and No Due Certificate until all society dues are settled by Samarjit. It is stated in response, that Samarjit settled the outstanding dues by issuing two cheques dated 20 April 2022, and 29 April 2022, amounting to Rs.16,73,294/- and Rs.12,258/-, respectively, both of which were duly encashed. Matix took steps to transfer the membership from Samarjit's name to Matix, issuing a letter on 31 May 2022, and approaching the authorities under the

Maharashtra Cooperative Societies Act 1960 for the necessary changes. It is stated that despite these efforts, the society did not effect the transfer. Respondent No.7 asserts that the authority from Samarjit to contest the election is valid, as Samarjit had fulfilled all requirements for obtaining the NOC for the Deed of Sale, but Respondent No.1 Society failed to facilitate the necessary transfer. Respondent No.7 states that Samarjit has been a member of Respondent No.1 Society since 2008, rendering the argument that two years have not elapsed since enrolment moot. Respondent No.7 clarifies that the application is solely for contesting the election on behalf of Samarjit, who remains a recorded member of Respondent No.1 Society. Furthermore, Samarjit settled outstanding maintenance dues and interest on 20 April 2022, and 29 April 2022, respectively. Respondent No.7 also affirms attendance at Annual General Meetings. These are the rival contentions. Again, these rival contentions are in the arena of disputed facts and need to be more appropriately dealt with by way of election dispute.

15. Concerning Respondent No.8, the Petitioner asserts that Respondent No.8 is not a member of the Respondent No.1 society but is only a nominee, occupying the fifth position in the sequence of nominees. Furthermore, Respondent No.8 has not presented the Consent Letters from the other four nominees, enabling her to participate in the election. Respondent No.1 Society has lodged complaints of forgery against both Respondent No.8 and Respondent No.9. The collapse of the Respondent No.1 Society

building during renovation work led to the loss of lives, attributed to members of the concerned Unit. Despite this, Respondent No.8 proceeded to carry out repairs and renovations in violation of the Court's Order dated 26 April 2001. Additionally, Respondent No.8 has obstructed the fire exit of the Respondent No.1 society building. Examining Share Certificate No.2 issued by Respondent No.1 Society, which was transferred to Mrs. Kamla Manu Daswani, it indicates her and others as mere nominees with Respondent No.8. Respondent No.8 has contravened these allegations asserting that Respondent No.8, along with four sisters are members of Respondent No.1 Society. Share Certificate No.2 issued by Respondent No.1 Society in their favour is relied upon. It is stated that four sisters of Respondent No.8 issued a No Objection Certificate on 5 May 2022, permitting Respondent No.8 to participate in the managing committee election of Respondent No.1 and granting voting rights to Respondent No.8. Respondent No.8 asserts of being a joint member in Respondent No.1 Society. It is stated that this arrangement is supported by the Minutes of the Annual General Body Meeting of Respondent No.1 Society on 24 September 2016. The mother of Respondent No.8 communicated in a letter dated 23 December 2015, that her licensee had secured the necessary permissions for interior/renovation work from the Municipal Corporation of Greater Mumbai. It is stated that in the 2017 managing committee election, the published list of members featured the name Sonu Samtani and others as the member for Unit

No.001/A. Consequently, Respondent No.8 and her four sisters have recognized as members of Respondent No.1 Society. These rival contentions again would require adjudication of the factual aspects.

16. As regards Respondent No.9, the Petitioner asserts that Jindal Buildmart holds membership in the Respondent No.1 society, of which Respondent No.9 claims to be the authorized representative. It is emphasized that Respondent No.9 is not the Director of the mentioned member, and the nomination form submitted by him is proposed by a non-member. Furthermore, Respondent No.9 has undertaken repair/renovation work in contravention of the order of this Court. A letter dated 28 January 2022 is issued by Respondent No.9 to the society, acknowledging the renovation in violation of the aforementioned court order. Respondent No.9 has filed an affidavit challenging these assertions. According to him, there was no renovation conducted in Unit No.102/B in the year 2019. The Petitioner is attempting to link the renovation work to the circular dated 20 March 2019, issued by Respondent No.1 Society, however, the circular does not specifically mention any renovation activity in Unit No.102/B; instead, it has a general nature, emphasizing that members should refrain from engaging in illegal and unauthorized work. The alterations in Unit No.102/B took place in 2009, with all necessary permissions obtained and compliance with the rules observed. Following the Petitioner's complaint, the investigating officer, in a letter dated 2 May 2022 communicated that no offence was established against

Respondent No.9. The nomination form for Respondent No.9 was proposed by another member, Respondent No.8, who has submitted an affidavit affirming her membership in Respondent No.1 Society. These are the justifications of Respondent No.9.

17. Therefore, from the above discussion what emerges is that there is doubt as to the submission of objections of the Petitioner to the nominations of Respondent Nos.5 to 9 in time and to the correct authority. Each of the allegations will require adjudication. In affidavits, the parties have levelled allegations against each other. There appears to be a history of inter se disputes within society and various court orders have been passed. There have been allegations against the Petitioner as well and the parties have filed complaints against each other. In this state of affairs, thorough adjudication of various aspects would arise for consideration.

18. Reverting to the position referred to at the outset, ordinarily if the election is held the writ court would not set aside the election if there is adequate efficacious remedy of challenging the results of the election is available. In the present case, there is no dispute that such a remedy is available. The Petitioner had contended that the objections to the nominations were not decided and, therefore, since the elections were imminent, we had deferred the hearing while not stopping the process of election to examine whether the objections to the nominations raised by the Petitioner

could be considered of such a nature that no scrutiny whatsoever required assuming that writ jurisdiction can be exercised. We find this is not a fit case where the writ jurisdiction should be exercised and the matter must be left to the appropriate authority/ court under the Act to decide the dispute if the Petitioner chooses to approach the same.

19. It is during the hearing of the final arguments that the learned counsel for the Petitioner sought to contend, based on rejoinder, that the Government by order dated 21 February 2023 has sought to remove Respondent No.3- Returning Officer from the list of administrators and that he should not have been appointed. These documents were placed on record on 6 December 2023 when the election was already held, and the day before the matter was heard and closed for orders on 7 December 2023. This ground does not appear in the writ petition which was filed on 23 October 2023 even though the communications relied upon are of the period from 22 December 2022 to 22 February 2023. There is no justifiable reason as to why this ground was not raised when Respondent No.3 was appointed as Returning Officer. It was not raised when the petition was filed before the election. The election has now been held and, therefore, we are not inclined to take this ground into consideration which is now raised post-election when the same can be raised in the election dispute.

20. Thus, we decline to entertain the petition any further leaving it open to the Petitioner to agitate his grievance before the appropriate statutory forum.

21. The writ petition is disposed of accordingly.

22. The observations made in this order are only the reasons why the dispute raised in this petition cannot appropriately be decided in writ jurisdiction and if the Petitioner files a dispute/proceeding before the appropriate forum/ court, it will be decided on its own merits.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)