

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2984 OF 2021

Mohammed Habib Khan & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

WITH
CHAMBER SUMMONS (L) NO. 201 OF 2019
IN
WRIT PETITION NO. 2984 OF 2021

Mr.Nikhil Rajeshirke, Advocate for the Petitioners/Applicants.

Ms.Uma Palsule – desai, AGP for Respondent Nos.1 and 4.

Mr.Vijay Kurle a/w. Mr.S. Shah, Advocate for Respondent No.2.

Mr.Hassan Khan, Advocate for Respondent No.5.

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

DATE : 28 August 2023.

P.C. :

This Writ Petition is filed for the following prayers:

- “a) *That this Hon’ble Court be pleased to issue the writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus, directing the Respondent No.4 to include the names of the Petitioners in the final voters list for the purpose of conducting the election of the Respondent No.2 society as per the representation preferred by the Petitioners and the Respondent No.3 be directed to allow the Petitioners to participate in the election process;*

- b) *This Hon'ble Court be pleased to issue the writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus, directing the Respondents to take necessary action and consider the Representation dated 09.02.2019 and pass the reasoned order before conducting the election of the Respondent No.2 society;"*

2 This Writ Petition came up on Board on 2 May 2019 when the reply of Respondent No.4 was filed. The Petitioners were directed to implead MHADA, as party Respondent. An Intervention Application was filed and while adjourning the Petition to 6 June 2019, as an interim measure, the Division Bench directed not to refix the date of election without leave of the Court meaning thereby staying the election process.

3 The Petition thereafter remained pending with the interim relief being continued. As a sequitur, there is no election of the concerned Respondent No.2–Society since the year 2019. First concern, therefore, is that there should be a speedy election process to be conducted for Respondent No.2–Society.

4 According to the Petitioners, the Petitioners on the basis of share certificates are entitled to be included in the final voters' list. The Intervention Application does not survive as the learned counsel for the Intervenor represents Respondent No.2–Society. According to Respondent No.2–Society, the share certificate is false and

fabricated, and suitable action be taken against the Petitioners. The learned counsel for the Petitioners submits that Respondent No.4 should atleast give an opportunity to the Petitioners to demonstrate that they are liable to be included in the final voter's list.

5 Considering the fact which we have emphasised above, we are not inclined to postpone the elections any further. Respondent No.4 would give an opportunity to the Petitioners and take a decision in respect as to whether Petitioners should be included in the final voters' list or not. The contention of the Respondent No.2–Society that the share certificate is false and fabricated is kept open.

6 Respondent No.4 will complete this exercise within six working days from today, and thereafter from the tenth working day declare the programme for the election to be completed in time bound manner.

7 We make it clear that in case Respondent No.4 decides against the Petitioners, then, the Petitioners will have statutory remedies and not to approach this Court for stay of the election on the ground that the order is against them, which is also accepted by the Petitioners.

8 Writ Petition is accordingly disposed of.

9 In view of disposal of the Writ Petition, Chamber Summons (L.)No.201 of 2019 does not survive and stands disposed of accordingly.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)