



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14171 OF 2023.

- | | | |
|----|--|-------------------------------|
| 1) | Kai. DILIP PAWAR MAJOOR SAHAKARI |] |
| | SANSTHA MARYADIT, SHIRGAON, |] |
| | RATNAGIRI |] |
| | THROUGH, Mr. Janardhan Keshav Pawar |] |
| | Age Adult, Occ: farming |] |
| | Address : at post : Shirgaon |] |
| | Taluka: Chiplun :- Ratnagiri |] |
| 2) | PRIYADARSHNI MAJOOR SAHAKARI |] |
| | SANSTHA MARYADIT, BHARNE, RATNAGIRI |] |
| | THROUGH, Mr. Dinakar Ganpat Mohite |] |
| | Age Adult, Occ: Majoor/farming |] |
| | Address : at post : Bharne |] |
| | Taluka: Khed, Dist :- Ratnagiri |] |
| 3) | SHRI MAHALAXMI MAJOOR SAHAKARI |] |
| | SANSTHA MARYADIT, KHED, RATNAGIRI |] |
| | THROUGH, Mr. Subhash Ramchandra Desai |] |
| | Age Adult, Occ : Majoor/farming |] |
| | Address : at post : Khed |] |
| | Taluka : Khed, Dist : Ratnagiri |] |
| 4) | PALI PANCHAKROSHI MAJOOR SAHAKARI |] |
| | SANSTHA MARYADIT, PALI, RATNAGIRI |] |
| | THROUGH, Mr. Vinayak Yashwant Shivagan |] |
| | Age Adult, Occ: Majoor/farming |] |
| | Address :at post : Pali |] |
| | Taluka : & District : Ratnagiri |] |
| 5) | MAHATAMA PHULE MAJOOR SAHAKARI |] |
| | SANSTHA MARYADIT, KARLE, RATNAGIRI |] |
| | THROUGH, Mr. Sunil Manohar Joshi |] |
| | Age: Adult, Occ: Majoor/farming |] |
| | Address : at post : Karle |] |
| | Taluka : Lanja, Dist : Ratnagiri |] |
| 6) | KOKANVAIBHAV MAGASVARGIY MAJOOR |] |
| | SAHAKARI SANSTHA MARYADIT, KHED, |] |
| | RATNAGIRI |] |
| | THROUGH, Mr. Suresh Keshav Jadhav |] |
| | Age Adult, Occ: Majoor/ farming |] |
| | Address : at post : Daavkhol |] |
| | Taluka : Sangmeshwar, Dist: Ratnagiri |] |
| | | <u>...Petitioners.</u> |

Versus

- 1) LD. DISTRICT CO-OP. ELECTION OFFICER @
DISTRICT DEPUTY REGISTRAR,
COOPERATIVE Society, RATNAGIRI
Add : 821, 1st Floor, Ratnagiri Prathamik
Shikshak Co-operative Societies,
Near Canara Bank, Majgaon Road
Ratnagiri : 415612
- 2) ASSISTANT REGISTRAR, CO-OPERATIVE
SANSATHA RATNAGIRI,
DISTRICT RATNAGIRI
- 3) RATNAGIRI, DISTRICT MAJOOR SAHAKARI
SANSHTCHA SANGH MARYADIT, RATNAGIRI
Add : Ratnadeep Corner, 1st floor, Opposite
Congress Bhavan, at Ratnagiri,
Tal & District : Ratnagiri
- 4) M/S SATYAM MAJOOR SAHAKARI SANSTHA
MARYADIT, RATNAGIRI
Age Adult, Occ: Majoor/farming
Add : at post : Ratnagiri,
Taluka: & District : Ratnagiri
- 5) M/S Siddharth MAJOOR SAHAKARI
SANSTHA MARYADIT, RATNAGIRI
Age Adult, Occ: Majoor/farming
Add : at post : Devadhe,
Tal : Lanja, District : Ratnagiri
- 6) SEVAGIRI MAJOOR SAHAKARI SANSTHA
MARYADIT, RATNAGIRI
Age Adult, Occ: Majoor/farming
Add : at post : Kulwandi,
Taluka : Khed District : Ratnagiri
- 7) AKANSHA MAJOOR SAHAKARI SANSTHA
MARYADIT, RATNAGIRI
Age Adult, Occ: Majoor/farming
Address : at post : Khed,
Taluka : Khed, District : Ratnagiri
- 8) SHRI GANESH MAJOOR SAHAKARI
SANSTHA MARYADIT, RATNAGIRI
Age Adult, Occ: Majoor/farming
Address : at post : Khed,
Tal : Khed, District : Ratnagiri

- 9) SHRI PRAGATI MAJOOR SAHAKARI]
SANSTHA MARYADIT, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Add : at post : Khed,]
Taluka : Khed, District : Ratnagiri]
- 10) SHRI NAVNATH MAJOOR SAHAKARI]
SANSTHA MARYADIT, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Murde,]
Taluka : Khed, District : Ratnagiri]
- 11) SHRI ASMITA MAJOOR SAHAKARI]
SANSTHA MARYADIT, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Khed,]
Taluka : Khed, District : Ratnagiri]
- 12) SHRI SUYOG MAJOOR SAHAKARI SANSTHA]
MARYADIT, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Khed,]
Taluka : Khed, District : Ratnagiri]
- 13) SAMARTHA MAJOOR SAHAKARI SANSTHA]
MARYADIT, MUNDHE RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Mundhe,]
Taluka : Chiplun, District : Ratnagiri]
- 14) SHRAMSHAKTI MAJOOR SAHAKARI]
SANSTHA MARYADIT, KADVAI, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Kadvai,]
Taluka: Sangmeshwar,]
District : Ratnagiri]
- 15) DHANLAXMI MAJOOR SAHAKARI SANSTHA]
MARYADIT, PHANSAT, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Phansat,]
Taluka : Sangmeshwar, District : Ratnagiri]
- 16) SHRAMSAPHALYA MAJOOR SAHAKARI]
SANSTHA MARYADIT,]
KONDAPHANSAVANE, RATNAGIRI]
Age Adult, Occ: Majoor/farming]
Address : at post : Kondaphanasvane,]
Taluka : Chiplun, District : Ratnagiri]
VIJAY MAJOOR SAHAKARI SANSTHA]

- 17) MARYADIT, MUNDHE RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Mundhe,]
 Taluka : Chiplun, District : Ratnagiri]
- 18) SWAMIKRUPA MAJOOR SAHAKARI]
 SANSTHA MARYADIT, DAHIWALI RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Dahiwali,]
 Taluka : Chiplun, District : Ratnagiri]
- 19) SAISHARADDHA MAJOOR SAHAKARI]
 SANSTHA MARYADIT, CHIPLUN RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Chiplun,]
 Taluka : Chiplun, District : Ratnagiri]
- 20) SEVAGIRI MAJOOR SAHAKARI SANSTHA]
 MARYADIT, MORAVANE RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Morevane,]
 Taluka : Chiplun, District : Ratnagiri]
- 21) RASHATRAVADI MAJOOR SAHAKARI]
 SANSTHA MARYADIT, CHIPLUN RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Chiplun,]
 Taluka : Chiplun, District : Ratnagiri]
- 22) SHRAMDHARA MAJOOR SAHAKARI]
 SANSTHA MARYADIT, MUNDHE RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Alore,]
 Taluka : Chiplun, District : Ratnagiri]
- 23) KEDARDEV KISAN MAJOOR SAHAKARI]
 SANSTHA MARYADIT, AAGAVE RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Aagave]
 Taluka : Chiplun, District : Ratnagiri]
- 24) SAIKRUPA MAJOOR SAHAKARI SANSTHA]
 MARYADIT, CHIPLUN, RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Chiplun,]
 Taluka : Chiplun, District : Ratnagiri]
- 25) BHAGYODAY MAJOOR SAHAKARI]
 SANSTHA MARYADIT, MUNDHE RATNAGIRI]
 Age Adult, Occ: Majoor/farming]
 Address : at post : Mandangad,]

	Taluka : Mandangad, District : Ratnagiri	]
26)	VIRESWAR MAJOOR SAHAKARI SANSTHA	]
	MARYADIT, MUNDHE RATNAGIRI	]
	Age Adult, Occ: Majoor/farming	]
	Address : at post : Chiplun,	]
	Taluka : Chiplun, District : Ratnagiri	] <u>...Respondents.</u>

Ms. Smita Gaidhani i/b Mr. Vishnu Chavan for the Petitioners.

Mr. Deelip Patil Bankar, Senior Advocate along with Mr. Abhishek Patil i/b Dilip Bodake and Ms. Pooja Patil for the Respondent No. 1.

Mr. Shirish V. Pitre, Mr. Amol Ghuge and Mr. Rahul Kasbekar for the Respondent No. 3.

Mr. P. D. Dalvi for the Respondent No. 19.

Ms. Aditi Raykar i/b Mr. Siddharth Desai for the Respondent No. 8.

Ms. Tanu Bhatia, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : August 20, 2024

Pronounced on : 6th September, 2024.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith and taken up for final hearing with the consent of parties.

2. By this petition filed under Article 227 of the Constitution of India, the Petitioner seeks quashing of the order dated 6th November 2023 passed by the District Cooperative Election Authority in Objection Application No.2 to 23 and 25 of 2023.

FACTUAL MATRIX:

3. The Respondent No.3 is a Federal Society classified as Type "B" Society under Rule 4 of the Maharashtra State Co-operative Societies

(Election to Committee) Rules 2014 [for short, "Rules of 2014"]. The Petitioners are the members of Respondent No.3 Society. The election of Respondent No.3-Society was due for the term of 2023-24 to 2028-29. The order of 3rd October, 2023 passed by the State Co-operative Election Authority provided for the cut off date of 1st October 2023 for preparing the provisional voter's list.

4. By a communication dated 4th October 2023 addressed by the Respondent No.3's in-charge Secretary to the Chairman of Petitioner No.5 it was stated that as per the oral directions given by the Respondent No 3's Chairman Shri Rakesh Jadhav, the receipts of 30th September 2023 are being prepared on 4th October 2023 and that receipt No.7001 to receipt No.7022 have been prepared and a sum of Rs.10,25,698/- has been received today in cash. On 6th October 2023 the Petitioner No. 5 addressed a communication to the Respondent Nos.1 and 2 stating that after receipt of the order dated 3rd October, 2023, he visited the office of Respondent No.3 Society where he found that the Secretary was preparing 22 back dated receipts though the cut off date was 1st October, 2023. It was alleged that the Chairman in conspiracy was preparing backdated 22 receipts though the cash amount was received on 4th October 2023 and requested for *suo moto* action be taken against the Chairman and the voting right of 22 Societies be rejected as they are defaulters.

5. On 17th October 2023 the programme for the date of publication of provisional voters list to the publication of final voters list was declared. As per the said programme the provisional list of voters was to be published on 18th October 2023, Objections to the provisional voters list to be raised between 18th October 2023 to 27th October 2023, the decision on the objections to be taken by 6th November 2023 and the final voters list to be published on 10th November 2023. On 18th October 2023 the provisional voters list was published which included the names of Respondent Nos.4 to 26. On 27th October 2023 the Petitioners filed Objection Applications No.2 to 23 and 25 of 2023 under Rule 11 of the Rules of 2014 seeking deletion of names of 23 Societies from the provisional voter's list contending that the yearly subscriptions were not deposited by 23 Societies whose names have been illegally included in the provisional voter's list. It was contended that the 23 Societies had paid their yearly subscription on 4th October 2023 in cash and the said amount was deposited in the bank account of Respondent No.3 on the same date.

6. The counter of the Respondent No.3 was that in the Annual General Meeting of Respondent No.3 held on 29th September 2023 there was a detailed discussion about the yearly subscription to be paid and the member Societies were called upon to pay the subscription before the end of month of September. About 23 member Societies on

30th September 2023 deposited their yearly subscription with the Chairman late in the night. For the purpose of issuing the necessary receipts and depositing the said amount in the bank account, the Chairman had attended the office of Respondent No.3 on 30th September 2023 however due to the Annual General Meeting held on the previous day, there was certain urgent work to be completed and due to shortage of staff it was not possible to verify the payments made and to issue the receipts and being a Saturday as well as the half yearly closure of the banks it was not possible to deposit the amount in the bank. 1st October 2023 was a Sunday and 2nd October 2023 was a bank holiday. On 3rd October 2023 the Chairman and other office bearers were required to go to Mumbai for attending a meeting organised by the Divisional Commissioner and therefore on 4th October 2023 the cash amount which was deposited on 30th September 2023 was deposited in the bank after issuing proper receipts. It was contended that for hampering the work of Respondent No.3 some of the member Societies on 4th October 2023 visited the office of Respondent No.3 and after threatening the in-charge Secretary, obtained the communication 4th October 2023 in respect of which the in-charge Secretary had requested the Chairman by a written representation to take action.

7. The Respondent No.1 by order dated 6th November 2023 dismissed the Petitioner's Objection Application No.2 to 25 of 2023. The Respondent No.1 observed that the Assistant Registrar had submitted a report after inspection of the Society records stating that as per the cash book on 30th September, 2023 three labour Societies had deposited a sum of Rs.1,88,538/- in the Respondent No 3's bank account. The counterfoil of Receipt No.7001 to 7023 shows that 23 Societies had deposited Rs.10,63,658/- with the Respondent No.3 Society. As 1st October, 2023 was Sunday and 2nd October, 2023 was holiday, the cash book entry was continued and on 3rd October, 2023, the balance is shown as Rs.10,64,320/-. On 4th October, 2023 five labour Societies had directly deposited Rs.24,450/- in the bank account.

8. The Respondent No.1 held as per the resolution passed in the AGM held on 29th September, 2023 the member Societies were called upon to deposit the supervision fee by 30th September, 2023. The Respondent member Societies had deposited the supervision fee by way of cash with the Respondent No.3 on 30th September, 2023 which was noted in the cash book and Receipt Nos.7001 to 7023 were issued to 23 member Societies which is evident from the counterfoil of receipts. 1st October 2023 was a holiday and 2nd October 2023 was a bank holiday and therefore the cash book entry of 30th September 2023 continued. The in-charge Secretary has denied the issuance of

document dated 4th October 2023. The cash book entries, the counterfoil of receipts issued and the bank statement *prima facie* tally. The cash amount was paid by the members of Respondent No.3 Society on 30th September 2023, however, the same was not deposited in the bank account on that day and on 4th October 2023 the said amount was deposited in the bank account. The Respondent No.1 came to a finding that the Respondents are not defaulters as on the cut off date of 1st October 2023 and rejected the objection applications.

SUBMISSIONS:

9. Ms. Smita Gaidhani, learned counsel appearing for the Petitioners would submit that the names of only the active members as on the cut off date of 1st October 2023 could be included in provisional voters list. Drawing support from Part V of Rules of 2014, she submits that the publication of programme for preparation of voter's list would not commence the election process and therefore the Petitioner does not have the remedy of filing Election Petition.

10. On merits she would submit that by communication dated 4th October 2023, the in-charge Secretary has stated that the supervisions fees were deposited respondent members on 4th October 2023. Pointing out to the reply of Respondent No.3, she would submit that the reply makes contradictory statements by stating that the amount was deposited with the Chairman on 30th September 2023 late at night

and and thereafter stating that for purpose of preparing receipts and depositing the amount the Chairman had attended the Society's office on 30th September 2023. She would further submit that the Respondent No.1 has not appreciated the communication of 4th October, 2023 which establishes the preparation of back dated receipts. To buttress the said submission, she submits that there is no plausible explanation for the Respondents to travel for long distances to make payment in cash despite the online facility being available. She would further submit that in the Resolution of 29th September, 2023 the member Societies were called upon to give details about the work done by them as the subscription is based on the percentage of the amount received by the respondent member Society. She submits that the requirement was therefore to make deposit along with the details and there are no details submitted in the present case. She submits that to show the payment before cut off date the Respondent member's books were also required to be produced which was not done and the records of Respondent No.3 were produced. She further points out to the affidavit dated 8th December 2023 of Respondent No.19 stating that on 29th September 2023 the Chairman of Respondent No.3 Society had requested the members to pay the supervision charges before the cut off date of 1st October, 2023 to avoid disqualification which could not have been informed in the

meeting of 29th September, 2023 as the order setting the cut off date of 1st October 2023 was in fact issued on 3rd October 2023. She would further point out the affidavit of Respondent No.8 stating that Receipt No 7018 has been shown to be issued in their favour however they have not deposited any amount and no receipt has been received by them. She would rely upon the decision of the Apex Court in the case of ***Himat v. Rajendra [Civil Appeal No. 905 of 2021 dtd. 15th March 2021]***.

11. Mr. Deelip Bankar, learned Senior Advocate appearing for the Respondent No.1 has drawn the attention of this Court to Rule 11 of the Rules of 2014 and submits that the Assistant Registrar was appointed to produce the records and based on records, the Respondent No.1 has passed the impugned order. He would point out that the findings of Respondent No.1 have been arrived at on the basis of cashbook, the receipts on record and the inquiry report of Assistant Registrar. He submits that the Petitioner's case is based on the solitary communication of 4th October 2023 and during the hearing of the objection application, reply filed by the in-charge Secretary states that on 4th October 2023 the said communication was obtained by threatening the in-charge Secretary. He would further submit that it is well settled that the preparation of electoral roll is part of election process and if there is any breach or any illegality in preparing the

electoral roll the same can be called into question after the declaration of result of election by means of an election petition. He points out Rule 78 of the Rules of 2014 and submits that a conjoint reading of section 91, section 94(1)(a) of the MCS Act read with section 78 provides for filing of election petition.

12. Mr. Pitre, learned counsel appearing for the Respondent No.3 would submit that bye-law No.55 permits the acceptance of cash by the Chairman and in event of amount exceeding Rs.1,000/- as per the balance, the same has to be deposited in the bank account within 3 working days which has been done considering that 30th September 2023 was half working day at bank, the amount was not deposited and the next day was Sunday, the second day was 2nd October which was holiday. He submits that it is not required that there should be an audit done as regards the amount received by the member Society before accepting the supervision charges.

13. Mr. Dalvi, learned counsel appearing for the Respondent No.19 would submit that Rule 11(3) of the Rules of 2014 was considered in the recent decision of this Court in the case of ***MIDC Prkalpgrasth Majur Sahkari Sanstha v. District Dy. Registrar [WP No. 3318/2022 (Nagpur Bench) dtd. 1st August 2022]*** and this Court has held that if the serious disputed questions of fact are sought to be raised by the Petitioner, the only remedy is filing of election dispute under Section

91 of the MCS Act read with Rule 78 of the Rules of 2014.

14. Ms.Raykar, learned counsel appearing for the Respondent No.8 Society would stand by their affidavit and would submit that they have neither deposited any amount nor received any receipt.

15. Mr.Pitre, learned counsel appearing for the Respondent No.3 would submit that copy of the reply filed by the Respondent No. 8 was not served upon the Respondent No.3 and therefore the Respondent No.3 was unable to file any rejoinder and the averments made therein cannot be accepted.

REASONS AND ANALYSIS :

16. The moot question to be considered is whether the preparation of provisional voters list is an intermediate stage in the process of election and thus the election process having been put in motion whether interference in exercise of powers under Article 227 of the Constitution of India is warranted. It is only if the answer to the same is in the negative, then it will be necessary for this Court to enter into the merits of the matter and decide whether the Respondent members of Respondent No.3 Society were defaulters for non payment of supervision charges before the cut off date of 1st October 2023 resulting in their exclusion from the provisional voters list.

17. It will be necessary to have a look at the relevant statutory provisions governing the conduct of elections. In exercise of powers

conferred under Section 165 of the MCS Act which *interalia* permit the framing of rules setting out the procedure and manner of holding elections, the State Government has framed The Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. Prior to the framing of Rules of 2014, the Rules of 1971 were in existence. Part III of the Rules of 2014 provides for the preparation of electoral roll and governs the procedure from preparation of provisional list of voters to the adjudication of claims and objections till the finalisation of list of voters.

18. The Apex Court in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509]*** considered the provisions of Section 144-X and Section 165 of MCS Act read with the Rules of 1971 and held thus in paragraph 7 and 12:

"7.....A perusal of the Rules discloses that the preparation of provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occurs in the Rules which cover the entire process of the election. The Rules framed for election of specified Societies are a complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process for constituting the Managing Committee of a specified Society....

12. In view of our finding that preparation of the electoral roll

being an intermediate stage in the process of election of the Managing Committee of a specified Society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll....”.

19. The above decision of the Apex Court was rendered prior to the deletion of Chapter XI-A in the year 2013 by considering the statutory provisions alongwith Section 144-X which specifically provided for framing of rules to provide for matters relating to the various stages of elections including preparation of list of voters. The issue of deletion of Chapter XI-A arose for consideration before Division Bench of this Court in ***Dattaraya Genaba Lole & Ors vs The Divisional Joint Registrar of CHS (Writ Petition No 5878 of 2021)***, upon a contention being raised that the decision of ***Shri Sant Sadguru Janaradhan Swami (Moingiri Mahraj) Sahakari Dugha Utpadak Sanstha & Another*** (supra) will cease to have application upon deletion of the provisions of Amendment Act of 2013 and the Division Bench held as under:

“8.16 Before the deletion of Chapter XI-A of the Act, that Chapter dealt with the election of the committee of management and officers of certain specified Societies referred to in Section 73G of the Act. Section 144T of the erstwhile Chapter XIA provided that disputes relating to an election shall be referred to a tribunal and that tribunal was conferred with powers akin to a Court in respect of the matters enumerated therein. Section 144T(4) of the deleted Chapter XIA provided for expeditious disposal of election petitions filed under those provisions. Section 144X of Chapter XIA contained a specific rule making power without prejudice to the power to make rules elsewhere in the Act. It is pursuant to this power that the State

Government framed the 1971 Rules. The 1971 Rules were intended to supplement the scheme of Chapter XI-A and provided for various matters starting from the preparation of the provisional voter list till actual polling of an election.

8.17 Since the scheme for filing an election petition in respect of specified Societies was covered by Chapter XI-A read with the 1971 Rules, disputes arising in relation to such matters were, during the time that Chapter XI-A was in force, expressly excluded from the purview of Section 91 of the Act. Even at that time, it may be noted, the scheme under Chapter XI-A only covered Societies in Section 73G and not all Societies under the Act.

8.18 This position changed by the enactment of the Maharashtra Act 16 of 2013 dated 13th August 2013 (w.e.f. 14th February 2013) by which Section 73G and Chapter XI-A were deleted. However, that by itself does not affect the existence of an efficacious and alternative remedy for disputes relating to elections under the Act because at the same time the provisions of Section 91 of the Act were also amended to expand its scope and application. This was achieved by deleting from Section 91 of the Act the exclusion of disputes that were previously covered by Section 73G read with Chapter XI-A. In other words, the disputes previously encompassed by Section 73G read with Chapter XI-A were consciously and deliberately brought into the fold of Section 91 of the Act by the legislature. Notably, this change to the language of Section 91 of the Act was brought into effect by the same Amending Act 16 of 2013 that effected the deletion of Chapter XI-A.

8.19 To ensure that the present scheme for filing election petitions is complete and exhaustive, after the amendments to the Act in 2013, new Rules (referred to above as "the Rules") of 2014, notified on 11th September 2014, have come into force. In fact, in yet another indication that the old regime of election disputes was to give way to the amended Section 91 of the Act and the Rules, by a Government Notification of 30 th August 2014, Chapter VA (dealing with Election to Notified Societies etc. containing Sections 56A to 56Z and Section 56A-1 to 56A-35) of the Maharashtra Co-operative Society Rules, 1961 was also deleted.

8.20 By Rule 78 of the Rules, also noted above, all election petitions would lie before the Co-operative Court. The Co-operative

Court is a forum with trappings of a Court. It has been constituted under Section 92 of the Act. Its powers of procedure and as regards the taking of evidence are set out in Section 94 of the Act. It includes summoning or enforcing the attendance of witnesses and the taking of evidence on oath. It also has the powers to make necessary interlocutory orders under Section 95. Thus, it has adequate powers to deal with issues that may be raised for determination in an election petition as is, in that sense, also an efficacious remedy.

8.21 *Additionally, it may be noted that the Objection Application that has given rise to this Writ Petition has also been filed under Rule 11 by Respondent No. 1. That is a statutory recourse that has been exercised by the Petitioners. It is implausible that the adjudication of the Objection Application under Rule 11 of the Rules would then, if assailed, not be covered by Rule 78 (of the same Rules) read with Section 91 of the Act."*

20. The position of law as regards the preparation of voter's list being an intermediate stage of election process is no longer *res integra* in view of **Shri Sant Sadguru Janaradhan Swami (Moingiri Mahraj) Sahakari Dugha Utpadak Sanstha & Another** (supra) and **Dattraya Genaba Lole** (supra). The issue then remains whether despite the remedy of election petition being available whether the facts of the case warrant interference in exercise of powers under Article 227 of Constitution of India. It is well settled position in law that the Courts should not ordinarily interfere when the election process has been set in motion.

21. **In Pandurang Laxman Kadam v. State of Maharashtra [2016(6) Bom.C.R. 75]** the Division Bench of this Court held that all grounds including the validity of the electoral roll, validity of nominations,

correct practices, irregularities and illegalities in electoral process as a whole can be raised by way of election petition.

22. In recent decision of this Court ***MIDC Prkalpgrasth Majur Sahkari Sanstha v. District Dy. Registrar*** (supra) learned Single Judge of this Court after considering catena of decisions in the context of a similar Society, has held that the final voters list determined by Respondent No.1 cannot be said to be requiring an interference in the writ jurisdiction. The Court held that the election officer has arrived at a reasonable conclusion and if at all the serious disputed questions of fact are sought to be raised by the Petitioner, filing of election petition is the only remedy.

23. In the case of ***Zamsingh Bhuraji Yerne v. District Co-op. Election Officer [WP No.1146/23 (Nagpur Bench) dt. 9th March 2023]*** learned Single Judge of this Court has upon considering Part-III of the Rules of 2014 held that the inquiry contemplated under Rule 11(3) of the Rules of 2014 has to be of such a nature that it would require any detailed or in-depth investigation in the matter and can be decided on the admitted position as would be reflected from the records maintained by the concerned Society. If the claim and objection requires a detailed inquiry it cannot be done at this stage and has to be left to be conducted at a later stage.

24. If the facts of present case are considered the Petition raises

disputed questions of fact as to whether the amounts were paid on 30th September, 2023 or on 4th October, 2023, whether back dated receipts were prepared and whether the communication dated 4th October, 2023 has been obtained under duress.

25. It is well settled that in adjudicating the objections raised to the provisional voters list under Rule 11 of Rules of 2014, the Respondent No.1 has limited jurisdiction to conduct a summary inquiry based on the records of the concerned Society. Essentially, the Petitioners seek a finding that though reflected in the cash books, the receipts issued and the bank statements, the supervision fees were received after the cut-off date of 1st October, 2023. The objection is based on the visit of the office bearer of Petitioner No.5 to the office of Respondent No.3 on 4th October, 2023 and the communication dated 4th October, 2023 addressed by the Incharge Secretary which communication has been denied by the Incharge Secretary during the hearing.

26. The nature of dispute arising in the present case demonstrates the need for an detailed indepth inquiry which is not contemplated under the Rule 11 of the Rules of 2014. The Respondent No.1 on the basis of documentary evidence in the form of cash book, the bank statement and the receipts has adjudicated the objections raised by the Petitioners herein and has arrived at a reasonable conclusion warranting no interference under Article 227 of the Constitution of

India.

27. The disputed questions of fact will necessarily have to be resolved by fact finding inquiry upon recording evidence. Similarly, in exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot enter into the disputed questions of fact and render a finding of fact whether the amounts were paid subsequent to the cut off date based on pleadings. In view of the settled position in law that the preparation of voters list is an intermediate step in the election process, even if there is any illegality or irregularity committed in preparation of provisional voters list, the same can be questioned only by an election petition to be filed under Section 91 of the MCS Act read with Rule 78 of the Rules of 2014.

28. The decision in case of *Himat vs Rajendra & Ors.* (supra) relied upon by Ms.Gaidhani is rendered in different factual scenario where admittedly the Society had paid the dues much beyond the cut off date. In the present case there is a factual dispute about the date of payment of supervision charges and therefore the decision does not take the case of the Petitioners any further.

29. As far as the Affidavit of Respondent No.8 is concerned, apart from the fact that the copy of Affidavit was not served upon the Respondent No.3 to enable a response, the averments therein lend credence to the position that disputed questions of fact are raised

which cannot be gone into by the Respondent No.1.

30. In the light of above, I find no reason to interfere once the election process has been set in motion. It is open for the Petitioners to file an election petition after the elections challenging the validity of voters list. As this Court is not inclined to interfere in the election process, this Court has refrained from making any observations on the merits of the dispute.

31. Petition fails and stands dismissed. Rule stands discharged.

[Sharmila U. Deshmukh, J.]