

AGK

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

WRIT PETITION NO.3813 OF 2024

Kamalnath Govind Kerkar & Anr. ... Petitioners
V/s.
The Returning Officer (Election)
& Ors. ... Respondents

Mr. Ashish P. Dalvi i/by Mr. Parmeshwar A. Bhise for
the petitioners.

Mrs. D.S. Deshmukh, AGP for respondent No.1/State.

Mr. Jagdish G. Aradwad (Reddy) for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 19, 2024

P.C.:

1. By the impugned order, the Cooperative Court has stayed election process of a cooperative society in a dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960.
2. The issue of maintainability of election dispute before the Cooperative Court before declaration of result is settled by this Court in **Subhash Fakirchand Agarwal v. State of Maharashtra** reported in 1994 (1) Mah.L.J. 487 and **Karbhari Maruti Agawan & Ors. v. State of Maharashtra & Ors.** reported in AIR 1994 Bom. 304. This Court has held that once the process of election starts by publishing provisional list of voters,

the Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960 has no power to interfere that process of election. Approving said judgment, the Apex Court in case of **Shri Sant Sadguru Janardan Swami (Monigiri Maharaj) Sahakari Dughda Utpadak Sanstha & Anr. v. State of Maharashtra & Ors.** reported in (2001) 8 SCC 509 has held that it is consistent view taken by this Court that in so far as process of election of cooperative societies are concerned, the Courts including Constitutional Courts shall not interfere with this.

3. Despite such law having been laid down, the Cooperative Court has entertained the dispute and stayed the election. Hence, despite availability of alternative statutory remedy, the petitioner has made out a case for grant of stay to the order of the Cooperative Court.

4. Issue notice to the respondents, returnable on **11 June 2024.**

5. Until further orders, there shall be ad-interim relief in terms of prayer clause (c).

(AMIT BORKAR, J.)