

V/s

... Applicant

Indian Chest Society & Ors.

... Non Applicants

ORDER BELOW EXH-2

(Delivered on 15th September, 2022)

1. Present application is filed by the applicant u/s 41A of M.P.T. Act, 1950 for grant ad interim reliefs as prayed in the prayer clauses.
2. The applicant contended that Rules and Regulation of Indian Chest Society (in short the society) provided that election of the governing body should be completed before 31st August every year. The immediate past President shall be returning officer of election of said society. Non-applicant No.3 immediate past president declared election programme on 27/07/2022. On-line voting for the governing body started on 16/08/2022 and ended on 26/08/2022. Result of the said election declared on 26/08/2022. Election of the governing body of the society is already completed. Applicant further stated that members of governing body received email from Dr. Rajesh Swarankar for calling emergency meeting on 01.09.2022 at 8.00 p.m. On 02/09/2022 members received email from Dr. Dhruvajyoti Roy that election process has started a fresh. Non Applicant No.2 past President appointed as Returning officer for governing body election of the society for year 2022-2023. Declaration of fresh election is not permissible under Rules and Regulation of the society. Therefore, declaration of second/fresh election is illegal and perverse. There is 7 days prior notice for

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calling emergency meeting of the society. Notice of emergency meeting of the society was given on 01/09/2022 for meeting of governing body on 01/09/2022. It is violated Rules and Regulations of the society. He prayed that Non applicant No. 1 and 2 may be directed not to proceed with re-election of the society as per circular dated 02.09.2022 and non applicant no.1 may be directed that not to declare, notify, continue any fresh election of the governing body of the society. He prayed that ad-interim relief may be granted.

3. Non applicant No.1 filed say and opposed the application. He contended that all the allegations made in the application are relevant in inquiry under section 22 of the Act. Non Applicant No.1 has taken objection to the maintainability of the present application. There is no merit in the application. He prayed that application may be rejected.

4. Non applicant No.3 filed his say at Exh.10. He stated he is immediate past president of the society. He was declared election programme of the society on 27/07/2022. On-line voting for the members of the governing body ended on 26.08.202. The result of the election declared on 26.08.2022. The said election process is not challenged before any court or authority. He stated that application may be decided by taking into consideration facts put forward by way of his affidavit.

5. The learned advocate for the applicant submitted that election of the society should be completed before 31st August every year. The constitution of the trust provided past President shall be returning officer for election of the society. Election of the

governing body already completed on 26.08.2022. Non applicant No.1 secretary filed application u/s 41A of M.P.T. Act, 1950 for the stay of election process. However, this authority has rejected his ad interim relief. Therefore, governing body again illegally passed resolution on 01.09.2022 and called meeting for conducting re-election. As per constitution of the trust there is no provision for re-election. Non-Applicant No.2 is illegally declared election program of the society. Notice of meeting of governing body not served on elected members of the society. The re-election declared by the governing body and Non-Applicant No.2 is illegal. Therefore, he prayed that Non Applicant No.1 & 2 may be directed not to proceed with re-election of the society. In support of his contention he relied on case laws, *Ronaldo Fernandis V/s State of Goa and Ors, 2021 SCC Online Bom 275 and State of Goa and Anr V/s Fauzia Shaikh, (2021) 8 Supreme Court Cases 401.*

6. The learned advocate for Non Applicant No.3 submitted that election of the said society already completed on 26.08.2022. Non Applicant members 1 & 2 are conducting re-election of the society. He is immediate past President of the trust. Non applicant No.2 is not immediate past President of the society. Therefore, he is not qualified to conduct election process. Non Applicant No.1 not provided copy of resolution to him. Re-election declared by the Non Applicant No.1 & 2 are illegal. Therefore, he prayed that election declared by non applicant No. 1 & 2 may be declared as illegal.

7. Learned advocated for Non-Applicant No.1 submitted that governing body passed resolution for re-commencement of election process of the society. Accordingly, election process of the society

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is already started on 03.09.2022. Nomination forms are received by the governing body. Governing body is not made a party to the proceedings, in absence of governing body members, no order can be passed against them. In emergency there is no period mentioned for giving notice for governing body meeting. Governing body meeting of the society was held on 01.09.2022. The said meeting is not challenged by the applicant. Prayers in the application are in nature of mandatory injunction. Therefore, such reliefs can not be granted u/s 41A of the M.P.T. Act, 1950. If there is any illegality in the election process that can be challenged u/s. 22 of the M.P.T. Act. Therefore, he prayed that application of ad interim reliefs may be rejected. In support of his submission he relied on case law *Smt. Vanmala Kambli and Ors V/s Deputy Charity Commissioner, Nagpur and Ors, 2012 (22) RCR (Civil)*.

8. Perused the application, say and record. Considered rival submission of learned advocate for applicant and non applicants. It is contention of the applicant that election of governing body the society/trust already completed on 26.08.2022. New members of governing body are elected in the said election. Therefore, the governing body is illegally conducting re-election/second election of the society. The governing body have illegally conducted meeting on 01.09.2022. Governing body has not a given notice to elected members of the society. Non applicant no.2 is declared re-election program on 02.09.2022. Non-Applciant No.1 has not disputed fact of election process of governing body. Learned advocate for the non-applciant No.1 argued that governing body of the society declared election of the society. After perusal of copy of election program of the society dated 02.09.2022, it appears that

the returning officer declared election program of the society for filling vacant post of governing body for the year 2022-2023. The said election program started on 03.09.2022 and last date of election result is on 07.10.2022. From the above facts and document, it appears that election process is already commenced on 3rd September 2022. In present case applicant has not made governing body as party to the proceeding. Considering facts and circumstances of present case, case laws cited by the learned advocate for the applicant are not applicable to the present case. In case of *N.P.Ponnuswami Vs. The Returning Officer, AIR 1952 Supreme Court*, Hon'ble Supreme Court held in Para No.16 that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and the disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. Considering above facts and circumstances, and ratio laid down in *N.P. Ponnuswami Vs. The Returning Officer* case, I am of the view that, in present case election process has commenced, therefore, it would not just and fair to interfere with the election process. In view of the above facts and circumstances, I am not granting any relief at this stage. The application (Exh.2) is disposed of.

Place: Mumbai.
Date: 13/09/2022



Bhramant
13/09/2022
(B.S.Gaikwad)

(I/c) Assistant Charity Commissioner-V,
Greater Mumbai Region, Mumbai.

Pending app
Certified to be a True Copy
Balk
13/9/22
Superintendent (Certified Copy)
Public Trust Registration Office
Greater Mumbai Region

15/9/22