

*Vinita*

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**WRIT PETITION NO.42 OF 2022.**

SHREE SHRIPAD SRIVALLABH  
DEVASTHAN TRUST, A Public Trust  
constituted under The Indian Trust Act,  
1882 having its registered office Near  
the Temple of Shree Shripad  
Shrivallabh, House no.622/Z-14,  
Camarshet, Pratikurvapur,  
Mugale,Curtorim, Goa Represented by  
its Chairman and Trustee, Shri Suresh  
Phadte, Son of Roghuvir Phadte Age 69  
years, married, Resident of J.B  
Apartments, Aquem Alto, Margao, Goa .... Petitioner.

Versus

1. STATE OF GOA,Through the Chief  
Secretary, With office at Secretariat  
Goa legislative Assembly complex
2. ASSISTANT REGISTRAR OF CO-  
OPERATIVE SOCIETIES, South  
Zone, 3<sup>rd</sup> Floor, Gomant Vidya  
Niketan Building Margao, Goa.

3. SHRIPAD SHRIVALLABH CO-  
PERATIVE HOUSING SOCIETIES  
LTD., Through its Secretary, With  
office at Camarshet, Abhinav,  
Kurvapur, Mugale, Curtorim ,Goa
4. SHRI DAMODAR PANDURANG  
PHADTE Son of Pandurang Phadte,  
Major of age, Residing near  
Shripad Shrivallabh Mandir,  
Camarshet, Curtorim, Salcete, Goa. .... Respondents.

Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira, Advocates for  
the petitioner.

Mr. J. J. Mulgaonkar, Advocate for the respondent no.3.

Mr. Nigel Da Costa Frias and Mr P. Bazilio, Advocates for the  
respondent no.4.

Mr. D. Shirodkar, Addl. Govt. Advocate for the State

WITH

WRIT PETITION NO. 67 OF 2022

1. Shree Shripad Shrivallabh, Through the  
President, Shripad Shrivallabh  
Devasthan, Shri. Damodar Pandurang  
Phadte, 61 years of age, Abhinav

Kuravpur, Camarshet, Curtorim,  
Salcete-Goa. ...Petitioner.

Versus

1. Assistant Election Officer & Asst.  
Registrar of Co-operative societies,  
South Zone, 3<sup>rd</sup> floor, Gomant Vidhya  
Niketan Bldg, Margao-Goa.
2. Shripad Sreevallabh Co-operative  
Housing Society Ltd, Through its  
Secretary, Camarshet, Curtorim,  
Salcete-Goa-403709.
3. Assistant Election Officer & Asst.  
Registrar of Co-operative societies,  
South Zone, 3rd floor, Gomant Vidhya  
Niketan Bldg, Margao-Goa. 2) Shripad  
Sreevallabh Co-operative Housing  
Society Ltd, Through its Secretary,  
Camarshet, Curtorim, Salcete-Goa-  
403709.
4. The Chief Election officer & the Dy.  
Registrar of Co-operative Societies,  
(Tech), & Sahakar Sankul, Patto, Panaji-  
Goa.

5. State of Goa, Through its Chief  
Secretary, Secretariat, Alto Porvorim,  
Bardez-Goa. .... Respondents.

Mr. Nigel Da Costa Frias and Mr P. Bazilio, Advocates for the  
petitioner.

Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira, Advocates for  
the respondent no.3.

Mr. D. Shirodkar, Addl. Govt. Advocate for the State.

**WITH**

**MISC. CIVIL APPLICATION NO.567 OF 2022-F**

UMAKANT KORKANKAR .... Applicant

Vs

STATE OF GOA AND ORS. .... Respondents.

Mr. V. Naik, Advocate for the applicant.

**CORAM. A. K. MENON, J.**

**DATE: 5<sup>th</sup> April, 2022.**

**JUDGMENT :**

1. These petitions being called for admission are taken up for

final hearing and disposal upon the consent of the parties. Accordingly, issue Rule, returnable forthwith. It would be appropriate to set out a few facts as appearing in Writ Petition No. 42 of 2022.

**2.** The Petitioner is a public Trust constituted under the Deed of Trust dated 12.4.2006 registered with Sub Registrar of Salcete. It is represented by its Chairperson and Trustees in terms of Clause 30 of the Deed. The Petitioner challenges an order dated 28.1.2022 passed by the Assistant Registrar of the Co-operative Society. It pertains to objection/omission of Petitioner to the list of voters of the respondent no.3 Cooperative Society which would have enabled the Petitioner to participate in the Election of the Board of the respondent no.3.

**3.** The gravamen of the petitioner's grievance is that its name was included in the Society's voters list and therefore enabled to participate in the election by order dated 18.1.2022. This was thereafter reversed on 28.1.2022 without authority in law.

**4.** In village Curtorim there exists a plot of land comprised of four inter connected parts under survey nos. 330/1 and 330/3

admeasuring about 20350 sq. mts then belonging to one Kudalkar family. The land was purchased by respondent no.3 Society hereinafter "the Society" and was sub divided into 41 plots out of which 38 plots were allotted to Society members for constructing residential houses. In 1998 the Society subscribed to one share bearing no.40 to Shree Shripad Srivallabh Devasthan "the Devasthan" by paying a sum of Rs.100. A share certificate dated 27.1.1989 came to be issued. Two plots bearing nos.1 and 3 were allotted to the Devasthan. A certificate dated 19.10.1988 was issued certifying the allotment of the plots in favour of the Devasthan. Some individuals who were Settlers of the Petitioner Trust constructed a temple on plot no.1 and managed the affairs of the temple through a committee of a persons that they chose. Later it appears that the Devasthan as traditionally known was not qualified to become a member of the Society since they did not meet the criteria under Section 21 sub section 2 of the Goa Co-operative Societies Act 2001.

**5.** It is contended by Mr. Usgaonkar appearing in support of the Petitioner that in 2006 when these Settlers realised that the

Devasthan was not a legal entity and did not qualify for membership, they decided to constitute the Petitioner, a legal entity to manage the affairs of the Temple. Accordingly, the Settlers constituted the Petitioner Trust as a Public Trust with the main object of owning, managing, administering the temple, existing structures and facilities.

6. Out of 38 members of the Society, 18 were Settlers of the Trust. Spouses of three members of the Society also subscribed to the Deed of Trust as Settlers. So also a son of one member subscribed as such Settlor. After executing the Deed of Trust, the Board of Trustees applied to the Executing Committee/ Board of Directors of the Society claiming to be allottees of the two plots for the Trust to be made a member and for placing the record in proper manner and transferring the plots in the name of Petitioner's Trust. On 12.10.2010 at a meeting of Board of Dissectors/ Executing Committee of the society, the Society resolved to transfer share certificate no. 40 to the Petitioner's Trust thereby recognising it as a member of the Society in place of the Devasthan and plot nos. 1 and

3 were also shown as that of the Trust. The resolution refers to “transfer” of the temple from Devasthan to the Trust contending it was only a change of name. This share certificate was endorsed in the name of the Trust and the Society certified the same on 5.11.2010. The Minutes of the Meeting held on 12.10.2010 was later confirmed by the Board of Directors on 26.1.2011 and a resolution to that effect was passed unanimously.

7. Mr. Usgaonkar, learned Counsel appearing for the Petitioner pointed that under Section 62(1) read with Section 59 of the Act, admission of members and related matters were within the exclusive domain of the Board of Directors. The resolution dated 12.10.2010 was formally read out by the Secretary at the Annual General Meeting of the Society held on 11.12.2011 and the General Body Meeting ratified the Minutes recorded by the Executive Committee/Board of Directors during financial year 2010-2011 unanimously. That included the decisions recorded in the Minutes of the Meeting held on 12.10.2010. Mr. Usgaonkar submitted that the Trust as a member of Society and allottees of plot nos. 1 and 3 has

been exercising rights as a member including participating in Annual General Body meetings through its Chairperson and also were administering and managing the affairs of the temple for more than 10 years. A final list of voters for election for the period 2017-2022 was notified by the Society on 15.11.2016. The Trust was one of the voters at item no. 40.

8. A communication notifying that election will be held on 25.12.2016 came to be issued on 29.11.2016. The Election programme was also notified and Directors were elected unanimously, since there was no contest among the Board of Directors. A copy of the list of voters appears on Exh. "I" to this petition.

9. It is contended that on 3.9.2021, a letter was received from one Umakant Korkankar claiming to be authorised representative of the Society, acting on the Society's behalf and alleging that the resolution passed in the Managing Committee meeting held on 12.10.2010 was passed erroneously without consent of the transferor. The resolution was allegedly found to be unauthorised

and illegally passed and therefore revoked vide resolution dated 25.7.2021 in the Special General Body meeting held on 25.7.2021 and which was ratified in the Annual General Body meeting held on 29.8.2021. Copy of the letter was marked to respondent no. 2 Assistant Registrar of Co-operative Societies. An extract of the resolution was also forwarded which included a resolution of revocation to revoke Resolution no.2 dated 12.10.2010 as also the transfer certificate of plot nos.1 and 3. It sought to authorise Shri Umakant Korkankar as representative of the Society for setting right the allegedly erroneous passing of the resolution of 2010 and also resolving that all acts and decision taken by Shri Umakant Korkankar are binding on the members.

**10.** Mr. Usgaonkar, submitted that the Trust was not issued any notice of the General Body Meeting dated 29.8.2021 and as a consequence Petitioner's caused a search to be taken of the records of the Society through the office of the respondent no.2 and during the inspection it was noticed that two resolutions were passed in the Special Annual General Body meeting. Resolution one authorised

Shri Umakant Korkankar to represent the Society for necessary steps to be taken to correct the Trust Deed dated 12.4.2006 for allegedly showing wrong name of the owner of the property and the resolution no.2 to authorised Shri Umakant Korkankar to represent the Society to deal with the objections raised at the Executive Committee meeting for corrections pertaining to plot nos.1 and 3 for the competent authority.

**11.** The Petitioner objected to the letter dated 3.9.2021 and highlighted the fact that no opportunity was given to the Petitioner to show cause against passing of such resolutions. Resolution 3(2) said to have been passed in the meeting on 25.7.2021 did not exist. The Society was also informed the fact that the resolution taken in the meeting of 12.10.2010 were legal and the Board was competent to pass the resolution. The said resolution was also ratified at the Annual General Body meeting at which the said Umakant Korkankar was also present.

**12.** Mr. Usgaonkar invited my attention to the fact that the Minutes of the Annual General Body meeting dated 29.8.2021

disclosed that the meeting discussed and decided that the resolution nos.1 and 2 require corrections and a comparison of the Minutes of the Meeting dated 25.7.2021 with Minutes of Meeting dated 29.8.2021 revealed modification to the resolution passed by the Special Annual General meeting based on a contention that the Minutes and Resolutions were not correctly recorded and that modifications by the previous general body meeting was illegal and in violation of the bye law no.104 of the society. That the said Umakant Korkankar had acted, representing himself as secretary of the Society and had submitted a provisional list of voters excluding the name of the Petitioner Trust from the list. Action of the respondent no. 3 Society was allegedly bad in law, because it failed to follow procedure required for removal of the Petitioner from the society. Its action is assailed by Mr. Usgaonkar as arbitrary and illegal since the Petitioner in fact continues to be a member and shareholder of the society.

**13.** The respondent no.2 in his capacity as the Election Officer meanwhile issued a notice dated 4.1.2022 stating that it proposes to

hold elections for Board of Directors for the period of 2022-27. Provisional list of voters was published as of 31.3.2021 and inviting claims and objections on or before 19.1.2022. A final list was to be published on 29.1.2022. The Petitioner's name was conspicuously omitted from the list. The membership and allotment of plot nos. 1 and 3 were not mentioned. As a result of which this the Petitioner filed objections to the voters list submitted by Mr. Umakant Korkankar and pointed out that omission of the Petitioner's name was fraudulent. Its right to vote could not have been curtailed by such act without following procedure of law, 10 years after the Petitioner was admitted as a member. It is contended that the Petitioner continued to be a member and therefore, it is entitle to vote. The respondent no. 2 took cognizance of the Petitioner's objection and issued a notice dated 14.1.2022 to the Chairman of the Society and called upon him to file his say on 18.1.2022 and conducted an inquiry on that date. Based on the conclusions arrived by him the respondent no.2 directed Society to include the name of the Petitioner in the voters list and submit a final list of voters by communication dated 18.1.2022.

**14.** In the meanwhile, the Secretary of the Society vide letter dated 15.1.2022 provided a copy of the Minutes of the Annual General Meeting held on 29.8.2021 stating that resolution 2 passed by the managing committee at its meeting on 12.10.2010 was passed erroneously, without consent of the transferor and that if Trust was aggrieved by the decision of the board as recorded in 29.8.2021, it could prefer an appeal before the competent authority. On 18.1.2022 the fourth respondent claiming to be the President of the Committee of the Devasthan along with one Dhiraj Naik filed objection to the provisional voters list claiming that they were office bearers and members of Society holding shares contending that allotment is by way of transfer of the certificate dated 9.5.1988 and 19.10.1988. The respondent no.2 then issued notice of objection dated 19.1.2022 to the society. Vide its reply dated 20.1.2022 sought dismissal of the objection. The respondent no.2 fixed a hearing on 20.1.2022 in relation to the said objection. The Petitioner then intervened in the matter of objections of respondent no.4 and the second respondent by order communicated to the Petitioner on 1.2.2022 held that the basis for transfer of share certificates and membership was not legal and

that the subsequent transfer of the share certificates was questionable. That the matter require a detailed inquiry, the respondent no.2 therefore contended that the direction issued to the Society on 18.1.2022 was withdrawn. That order dated 28.1.2022 is assailed in this petition.

**15.** On 29.1.2022 the respondent no. 2 issued a election notice notifying a provisional voters list. Two claims were received one from the Petitioner and another from the president of the Devasthan which were decided by the separate orders. The Assistant Registrar published a final voters list notifying that Society had maintained list of voters on 4.1.2022 based on the impugned order. As a result of the notice being displayed the elections were to be scheduled in March 2022 .

**16.** Mr. Usgaonkar has relied upon the decisions of this Court in First Appeal No.6 of 2010 in the matter of *Shri Kantu Shankar Dessai and another Vs Sociedade Agricola Dos Gauncares de Cuncolim Veroda* and connected matters. Mr. Usgaonkar placed reliance on the decision of the Supreme Court in the matter of

*Narendra Kumar and others Vs Government (NCT of Delhi), (2019)*

**9 SCC416.** The submission being that it is settled law that power to review can be exercised only when statute provide for the same. Reliance is also placed on a Division Bench order of this Court in the matter of *Deorao Vitoba Kale Vs Divisional Joint Registrar Co-operative, 1982 Mh. L. J. 543* which reiterates basic principles that removal of a member under Section 78(1) (b) of the Maharashtra Co-operative Societies Act (24 of 1961) without issuing a show cause notice is violative of the principles of natural justice. The Court was then concerned with the fact that the only power under review of the Act was to be found in Section 150 and the power of review in that case does not exist. He, therefore, submitted that petition is liable to allowed and the impugned order deserves to be set aside. He invited the Court to hold that the resolution by which the Trust was to be added to the the transfer of share and the inclusion of the Trust in the voters list was a matter of internal management and outsider is not expected to know mechanics by which decision came to be taken. Mr. Usgaonkar invited my attention to paragraph 9 of the judgment in which the Court found that the president in that

Case was authorised to represent the society.

**17.** On behalf of the Society, Mr. Mulgaonkar supported the Petitioner contending that General Body resolution cannot be altered. That any dispute relating to the transfer of plot or share should be under Section 83 of the Goa Co-operative Societies Rules, 2003 and subject to law of limitation. He submitted that the only reason for current development is the fact that the Devasthan was not eligible since it was not capable of holding the shares and therefore, shares were transferred in the name of the Trust. He further submitted that Chairman of the Trust had a casting vote, a fact that was not disputed. Since majority votes was not available Chairman casting vote carries weight.

**18.** On behalf of the Intervener Shri V. Naik, submitted that there were total 38 members and 28 members had called for Special General Body Meeting and therefore 2/3rd of the members had requisition the meeting. It is submitted that under Rules 53 and 55 of the Goa Co-operative Societies Rules, the name of the Trust could only have been in provisional lists. The Intervener has contended

that it was he who had informed the Assistant Registrar about the decision of the General Body wherein it was resolved to revoke the transfer certificate which he claims was issued fraudulently, issued to the Petitioner on the basis of which the Petitioner was claiming membership. According to the intervener the Society had prepared a list of voters after taking into consideration the resolution taken in the Special General Body meeting held on 25.7.2021 and he had submitted the same to the Assistant Registrar for the necessary action. The intervener had filed his objections to the provisional list of voters and when the Assistant Registrar had issued notice to the Society it was represented by the applicant as secretary and as an representative in terms of the resolution dated 25.7.2021.

**19.** It is contended that when notice was issued to the Society through its secretary, the chairman had appeared and had ordered a lawyer to file a appearance without a valid resolution of the managing committee. The Chairman of the Society was also Vice-Chairman of the Trust which the Petitioner and ought to have recused and refrained from taking a decision in the matter since he

was vitally interested in the matter. It is therefore contended that the applicant is a necessary party in the present proceedings for effective adjudication and to assist the Court and he therefore seeks to intervene. Intervention application has annexed thereto the copies of the relevant resolutions. Since the petitions were being taken up for final disposal, I have heard the intervener counsel Mr. Naik in support. Having considered the submissions on behalf of the Intervener, I find no reason to implead him.

**20.** On behalf of the Devasthan Mr. Da Costa Frias, has urged that bye law no. 17 provides for members eligibility and individual who is competent to contract under the Indian Contract Act and who intends to settle down or who does not own any house or plot or flat in his name is eligible to become a member of the Society. He has invited my attention to the conditions of the membership under bye law No.19 and in particular bye law no. 20 which provides for a firm, company or other body corporate registered under law is also eligible to become a member of the Society. The transfer of shares and interest in the capital and property of the Society is provided for

in bye law no.34-A and to the extent applicable bye law no.59A provides for application for admission to membership, receipt of application and for secretary of the Society to scrutinize them and to bring shortcomings therein to the notice of the members. Under bye law no. 105 final authority vest in the General Body summoned in the manner provided.

**21.** On behalf of State Mr. Shirodkar, learned Addl. Govt. Advocate submitted that the review in the instance case is not a statutory review but one of the procedure. He submitted that there is a procedural error that appears to have been committed in passing the impugned order. However, in cases of procedural errors, the Assistant Registrar did have the power to correct such errors and in this behalf he invited my attention to the impugned order and the recording of the fact that the Secretary of the Society had produced a true copy and abstract of the resolution no.3(2) passed by the Special General Body meeting on 1.8.2021 whereby the General Body had resolved to revert back the resolution taken by the Executive Committee on 12.10.2010 for erroneously resolving to

transfer the plots of the Society to the Trust.

**22.** According to Mr. Shirodkar, the error recorded is something that the Assistant Registrar could correct on his own. He did not to have support of a provision in the statute. In this behalf he relied upon the decision of the Supreme in the case of *Kapra Mazdoor Ekta Union Vs Birla Cotton Spinning and Weaving Mills Ltd and anr.* (2005)13 SCC 777. He relied upon the observations of the Court in paragraph 18 which also quoted with approval to decision in *Grindlays Bank Ltd. S Central Govt. Industries Tribunal, 1980 Supplement SCC 420* in which the Supreme Court observed in paragraph 13 that the different considerations arise on review and the expression “review” is used in the two distinct senses, one being a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by its and second a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. No review would lie on merits unless a statute specifically provides for it and when a review is sought due to a

procedural defect, the inadvertent error committed by the Tribunal must be corrected ex-debito justitiae to prevent the abuse of process and such power inherent in every Court or Tribunal.

**23.** The learned Counsel for the state therefore sought to contend that in the present case the the impugned order is the result of a error in procedure and hence could not be reviewed in a different and but in more practical approach. Mr. Shirodkar sought to suggest that the elections are not now relevant since candidates concerned have been elected opposed unelected and today the issue is academic. He therefore contended that there is no need to this Court to interfere in this Writ Petition.

**24.** The Devasthan in the meanwhile filed Writ Petition No. 67/2022 against Assistant Election Officer and Assistant Registrar of Co-operative Societies wherein the Society Devasthan Trust, the Chief Election Officer and Deputy Registrar of the Co-operative Societies and the State are respondents.

**25.** In its Petition the Devashtan is aggrieved by final voters list declared by the first respondent and published by the society.

According to the Devasthan its a Hindu Religious institution and presiding deity is a juridical person. It narrates the course of events by which Devasthan were allotted plots nos.1 and 3. It refers to the fact that the affairs of the temple were managed by it and the election process for the period 2022 to 2027 were set in motion by the Managing committee of the Society vide its letter dated 30.8.2021. It narrates the fact that pursuant to notice publishing, the provisional list of voters and inviting objections, two objections were filed, including one by the petitioner. The objections were heard on 20.1.2022 and 24.1.2022. The Trust also filed an objection raising exclusion of Trust as one of voters. The petition narrates factual aspects of the allotment of the plots and the transfer of allotment from the petitioner to the respondent no.3 Trust and the fact that the shares have already been transferred in favour of the Trust. It sets out the fact that the post hearing objections of the respondent no.1 had directed inclusion of the name of the Trust to be included, but thereafter this direction was withdrawn pursuant to the impugned order dated 28.1.2022. The petitioner, therefore, seeks quashing of the order dated 28.1.2022 to the limited extent its rejects the claim of

the petitioner for inclusion in the voters list. A Mandamus is sought directing the first respondent to prepare a final list of voters as also directing respondent no.1 to act on the complaint dated 24.11.2021 filed by the second respondent within a stipulated time period. It also seeks interim relief to keep the process of the election in abeyance That is an aspect which is now need not be considered in view of the fact that from the contesting candidates requisite number have been elected uncontested. The submission to this effect has been made on behalf of the respondent no.1 represented by Mr. Shirodkar.

**CONCLUSIONS :**

**26.** Having heard the learned counsel at some at length, I am of the view that the impugned order dated 28.1.2022 deserves to be set aside. The record indicates that on or before 19.10.1988 the Society certified that plot nos.1 and 3 at Curtorim Salcete Goa had been allotted to the Devasthan. This was confirmed by issuance of a certificate on that date. The Devasthan was required to obtain permission from Society for carrying out construction and execute a Lease Deed and thereafter hold the shares of the society. Shares were

subsequently issued as evident from the share Certificates no.40 dated 27.1.1989. These shares are seem to have been transferred to the Petitioner's Trust on 12.10.2010 pursuant to the Executive Committee resolution no. 2 of that date.

**27.** On 1.10.2010, the Trust is seen to have written to the Society seeking transfer of plots to its name since when the allotment of plots was done for transfer of shares there was no legal entity for the management of the Trust but in the year 2006, the petitioner Trust was constituted by a lawful deed duly registered with the Sub Registrar of Salcete and with the department of the Income Tax. This communication is to be found at Exh.E to the petition and in accordance therewith the Devasthan sought transfer of allotment of plot nos. 1 and 3 to the name of the Trust. In fact the Trust is the alter ego of the Devasthan. The interest of the Devasthan is that of the Trust itself. The Minutes of the Meeting annexed to the petition also reveals that on 12.10.2010 the Executive committee met at about 6.30 p. m in the presence of three out of five members. The intervener Mr. Umakant

Korkankar was absent Mr. Damodar Phadte was also absent. Three other persons part of the Executive Committee namely Chairman, Secretary and Treasurer were present and all signed the attendance register and have resolved that plots no.1 and 3 and the share certificate bearing no.40 being transferred in favour of the Trust. This was proposed by one Mr. Kiran Vernekar, Treasure, Seconded by Mr. Umesh Shiroadkar being the Chairman. Later it is found that at the meeting held on 26.12.2011 the Executive Committee consisting of five members met. Mr. Damodar Phadte does not appear to have been present on that day however, four other members Mr. Umesh Shiroadkar, Mr. Gangaram Naik, Mr. Kiran Vernekar and Mr. Umakant Korkankar were present. They approved the Minutes of the last meeting. The Secretary had then read out minutes of the last meeting held on 12.10.2020 and only after discussions, it was unanimously approved. The unanimous approval of the Executive Committee is material in this respect since Mr. Umakant Korkankar was part of the Executive Committee and was present when the resolution was approved.

28. In these circumstances there is no justification in Mr. Umakant Korkankar having now contended that the procedure was not followed. I find from the record that vide Deed of Trust dt. 12.4.2006 the petitioner Trust has been constituted by the settlors in accordance to the Indian Trust Act 1882. The Trust Deed records that there is no lawful institution to own and manage the temple and the plot on which the temple has been constructed. For that reason plot has not been transferred by the Society in the name of any institution. Thus it is for first time that Trust having been formed, the Society approved the request for transfer of plots recording the name of the petitioner as the member of the Society and holder of the shares. In effect the transfer was only notional since the interest of the Devasthan is the interest of the Trust. The Devasthan's interest was thus embodied in the Trust. It cannot be disputed that by virtue of being holder of shares the Trust would no doubt be entitled to be beneficial ownership of two plots. It is the shares that constitute the property of the Trust. The transfer of shares have not been questioned, it is only the transfer of plots that has now sought to set aside more particularly the name of the Trust is sought to be

removed from the list of voters of the Society. The Trust continues to be a member it continues to be a shareholder and by virtue of such shareholding the Trust would no doubt would be entitled to beneficial ownership of the said plots and all rights of members.

**29.** The impugned order proceeded to delete the name of Trust from the list of voters. It also does so on the basis that the Trust failed to submit a documentary evidence of their subscription towards share capital of the Society, Payment of transfer fees and entrance fees. That due procedure has not followed while admitting the member of the Society. So also respondent no.1 observed that the Devasthan does not fit within the ambit of Section 21 of the Act. As a result subsequent transfer of share certificate and membership in favour of the Trust which is based on such membership is without any legal base. The respondent no.2 has thus questioned the basis on which the Share certificate membership was transferred to the Trust and seeks to hold it as illegal. All of these has been done without notice to the Trust itself. Thus, the Trust is sought to be deprived not only to his right to vote but very fact that the Trust being member of

Society is now indirectly sought to be questioned and that is the reasoning adopted by the respondent no. 2.

**30.** In *Shri Kantu Shankar Dessai* (supra), the Division Bench of this Court had occasion to observe matters of execution of the Lease Deed and the authority of the person to execute the Lease Deed on behalf of the owner, namely a Co-operative society. It considered the fact that the charter of the Society on record suggest that the Society would be represented by a Manager acting as the President of the committee who would have wide powers but only restriction being he shall not take any initiative on important subjects prescribed in the internal statute of the Society without the resolution of the Administrative Body. Mr. Usgaonkar's submission that management of the affairs of the Society would be covered by the doctrine of indoor management and the persons who deals with Society must familiarise himself with constitution of the society. But once it is found that that there is no restriction on the authority of a person to act there is no duty cast upon a person to inquire into the internal management of the Society or co-operative body for that

instance.

**31.** In the present case, once the respondent no.2 had issued the directions on 18.1.2022 to include the name of the Trust in the list of voters, it was not open to the respondent no.2 to withdraw that direction on his own and that too without notice to the petitioner. The decision dated 18.1.2022 duly communicated on the same day to the society, had been acted upon and the Chairman of the Society had then appeared and submitted that the earlier list had been submitted without his knowledge and that the name of the Trust ought to have been included in the list of voters since share certificate has already been endorsed in favour of the Trust. I am in agreement with Mr. Usgaonkar's submission that the respondent no.2 had no powers to review that order on his own. Review not being a inherent powers, it can be exercised if statute provided for the same and the Goa Co-operative Societies Act does not empower the respondent no.2 to review his own order. In the absence of such a power, the impugned action is bad in law and deserves to be set right.

**32.** In my view in the facts of the present case there is no occasion to have so decided without proper notice to the Trust and without hearing to the Trust. In the absence of such statutory power to review, this is not a case where the impugned order can be termed as a procedural review. It may refer to absence of procedure being followed for transfer of the shares to the Trust. However, the act of removing the name of the Trust from the list of voters is certainly not a procedural matter in which a error was committed when the transferor was recognized and when the name of the Trust was included into the list of voters by an order dated 18.1.2022. Needless to mention, the fact that the Trust has been holder of the plots since 2010 is something that has not even been considered and after 12 years of the shares having being held by the Trust, the impugned order seeks to deprive the benefits of such share holding while deletion of the name of the Trust from the voters list. In paragraph 19 **Kapra Mazdoor Ekta Union (supra)** observed that it apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merits proceeds to do so, its judgment or order can be reviewed on merit only if the Court, or the quasi judicial

authority is vested with power of review by express provision or by necessary implication. Procedural review belongs to a different category and in such a review, the authority has jurisdiction to adjudicate and proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently an order is passed thereon. Power to exercise procedural reviews may be invoked where the authority passes an order without notice to the opposite party under a mistaken impression that the notice had been served upon the opposite party, when a matter is taken up for hearing and a decision is rendered. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on record. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made inasmuch as the opposite party concerned was not heard for no fault of his or if the matter was heard and decided on a date other than the one fixed for hearing of the matter and he could not attend for no fault of his. In such

cases, therefore, the matter has to be re-heard in accordance with law without going into the merits of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself was vitiated by an error of procedure or mistake. In this behalf it may be observed in *Grindlays Bank Ltd.* (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again. Therefore, I am unable to accept the contention of Mr. Shirodkar that this is merely a procedural review and no statutory provisions is required for the purpose of reviewing the decision dated 18.1.2022. The decision dated 18.1.2022 was issued apparently on the subject to satisfaction of the concerned authority at the relevant time if business transacted by the Society at that stage for transfer of the share certificate from the Devasthan to the Trust is sought to be questioned. It was clear as day light that they would have hear the Devasthan and the Trust prior to passing any order which would have the effect of nullifying the benefits of membership.

**33.** In the instant case, I do not find it necessary to delve into the internal affairs of the Trust. Suffice it to say that the petitioner has succeeded in demonstrating the fact that the impugned order could not have been passed without following due process namely that of granting of personal hearing to Devasthan and Trust prior to deletion of the name of the Trust from the voters list. The Trust has now been deprived of its very rights to claim as a share holder. In the absence of transfer of shares being nullified, there is no question of respondent no.2 having reviewed its own decision dated 18.1.2022 and having deleted the name of the petitioner from the voters list.

**34.** In my view the dispute pertaining to transfer of shares, the validity of such transfer and legal sanctity of such transfer and whether or not proper procedure has been followed is not a matter that could have been agitated before the Assistant Registrar without a proper application for setting aside the transfer followed by a challenge to the voters list. In the instant case, it appears that on a challenge to inclusion of the name of the Trust in the voters list, the

rights accruing from transfer of shares in the year 2010 is sought to be impaired.

**35.** In conclusion, the impugned order is liable to be set aside. I find that petition must succeed. Accordingly I pass the following.

- (i) Order dated 28.1.2022 Exh. A to the petition bearing No. 137– Elec–SSCH/BOD/ARCS/SZ/21 is hereby quashed and set aside.
- (ii) Rule is made absolute in the above terms. It is made clear that this Court has not examined the validity of the contentions of the parties qua the transfer of shares from the Devasthan to the Trust and that is the matter that will be considered before the appropriate forum without being influenced by the observations made in this petition.

**36.** In view of the disposal of the Writ Petition in the above terms no further directions are required in Writ Petition no. 67 of 2022. That Writ Petition also stands disposed of in the above terms. All pending applications, if any, stand disposed of.

**37.** Rule is made absolute in the above terms. No costs.

**A. K. MENON, J.**