

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION (REVIEW) NO.2 OF 2022
IN
WRIT PETITION NO.661 OF 2022 (F)**

ROHIT BRAS DE SA AND ANR. ... Applicants

Versus

THE ASSISTANT REGISTRAR OF CO
OPERATIVE SOCIETIES AND ASSISTANT
ELECTION OFFICER CENTRAL ZONE ... Respondent

Mr Rohit Bras De Sa with Mr P. Naik, Advocates *for the Applicants.*

Mr Jitendra Supekar, Advocate for the Original Petitioners.

Mr P. Arolkar, Additional Government Advocate *for the Respondent.*

Coram: M.S. SONAK, J.

Date: 2nd February 2024.

ORAL ORDER:

1. Heard Mr Rohit Bras De Sa, Applicant No.1, who appears on his own behalf and on behalf of the 2nd Applicant.
2. Mr Supekar appears for the Original Petitioners, and Mr Arolkar appears for the Original Respondent.
3. This application seeks the review of this Court's order dated

13.04.2022 in Writ Petition No. 661/2022 (F). The Review Petitioners were not parties to this petition, but by submitting that they are aggrieved by the order made, this Review Petition was instituted.

4. Mr Rohit Bras De Sa submits that the Original Petitioner suppressed the fact that elections to the Models Marine Vistas Cooperative Housing Maintenance Society had already concluded on 10.10.2021. He submits that this fact was relevant and vital, and if it were to be disclosed to the Court, there was no question of making the first part of the order dated 13.04.2022.

5. Mr Supekar, learned Counsel for the Original Petitioner, refers to paragraph 5 of the original Writ Petition and based on the same, Mr Supekar submits that it was never the intention of the Original Petitioner to question the elections that had concluded on 10.10.2021. He points out that the Original Petitioners were only interested in securing two votes in respect of the two apartments that they hold in the Society. He submits that even if it is ultimately held that the Original Petitioners are entitled to two votes, based on such a decision, there was no question of the Original Petitioners seeking any reliefs in respect of the elections that concluded on 10.10.2021. Mr Supekar submits that the two votes would be employed or used only in future elections. He submits that if the matter is viewed from this perspective, there is no suppression whatsoever.

6. Mr De Sa submits that the Applicants in this review petition also own two apartments in the Society but have been granted only one vote. Further, he submits that the material on record shows that the Original Petitioners were duly served. He further submits that there was no good ground to interfere with the impugned order dated 27.08.2021 and for granting any additional opportunity to the Original Petitioners.

7. Mr De Sa states that in the proceedings before the Assistant Registrar of Cooperative Societies, the Original Petitioners did not bother to make other apartment holders parties. He submits that any orders that the Assistant Registrar of Cooperative Societies would pass would affect the Applicants in this review petition. He submits that this is yet another ground for dismissing Writ Petition No.661/2022 (F) after allowing this review petition.

8. The rival contentions now fall for my determination.

9. The learned Coordinate Bench (A.K. Menon, J.) made the order dated 13.04.2022, of which review is applied in two parts. The first part comprises paragraphs 1 and 9 by which Rule was made absolute, the impugned order dated 27.08.2021 was set aside, and the matter was remanded to the Assistant Registrar of Cooperative Societies for fresh hearing and fresh decision.

10. The second part of the order dated 13.04.2022 records that after the first part was dictated, Applicant No.1 appeared in the matter though

he was not a party and pointed out that the election results had already been declared on 10.10.2021 and that this fact was suppressed from the Court. Accordingly, in the second part of the order comprising paragraphs 10 to 14, the learned Coordinate Bench ordered that the first part of the order shall be kept in abeyance with liberty to the Applicant to file a review petition. Accordingly, the Applicants have instituted the present review petition.

11. In paragraph 5 of the original petition, the Original Petitioners have referred to the elections being scheduled on 10.10.2021. From the pleadings, no case of suppression can be inferred because the challenge was not to the concluded elections. Paragraph 5 reads as follows:

“5. The Petitioners state that after filing of the Application there was no communication from the Respondent as regard the hearing of the said Application dated 10/8/2021. Since the Application was filed on 10/8/2021 i.e. just before the election, the Petitioners were under belief that due to shortage of time and prevailing covid pandemic the Respondent will hear the Petitioners and pass necessary orders after hearing the parties and that for the elections which were scheduled on 10/10/2021 the Petitioners will have to cast only one vote. The Petitioners further believed that since there are other members in society who are also similarly placed, any favourable decision in Petitioner’s favour may affect the entire election procedure. The Petitioners under belief that the Respondent Authority may require more time to decide the issue at hand sought it fit to wait for the decision even if the same is passed after the elections.”

12. The Original Petitioners also expressed some hope which they had that the matter would be sorted out by the Assistant Registrar of Cooperative Societies before 10.10.2021 so that if the Original Petitioners' contentions were to be accepted, they would have two votes instead of one. The Original Petitioners have explained that when the matter was pending before the Assistant Registrar of Cooperative Societies, there was a COVID-19 pandemic. They have explained that there were similarly placed members in the Society, and the issue of entitlement of one or two votes was not cleared. Therefore, they explained that they were under the belief that the Assistant Registrar may require some more time to decide the issue at hand and decided to wait for such a decision, even though such a decision would be made after the elections.

13. Even the prayer clause in the original petition does not seek any relief in respect of the elections concluded on 10.10.2021. Mr Supekar explained that if the impugned order dated 28.10.2021 were not to be challenged by the Original Petitioners, the same would come in the way of the Original Petitioners pressing a claim for two votes in future elections.

14. The explanation offered by Mr Supekar is convincing and deserves to be accepted. This is not a case of suppression, particularly because it is not as if the Original Petitioners wanted to set aside the elections, which concluded on 10.10.2021. No relief to this effect was

prayed for. Besides, it is not as if the Original Petitioners have gained anything by suppressing the facts of the elections on 10.10.2021.

15. In any case, Mr Supekar, on instructions from the Original Petitioners who are present in the Court, has made it clear that they have no intention of questioning the results of the elections that concluded on 10.10.2021 even if the Assistant Registrar now holds that they were entitled to two votes and not one. Such a declaration, if at all granted, will be for future elections.

16. Mr De Sa's contention on merits as to whether parties who have two apartments are entitled to two votes or not or his contention about the review petition being placed in the same position as that of the Original Petitioners can be considered by the Assistant Registrar in the proceedings which have been remanded to the Assistant Registrar in terms of the first part of the order dated 13.04.2022. At this stage, it is not for this Court to go into such issues.

17. Further, without going into the question as to whether the Original Petitioners were required to implead all apartment holders as parties to the proceedings before the Assistant Registrar or not, Mr Supekar, on instructions from the Original Petitioners who are present in Court, states that they will not object to the Review Petitioners being heard by the Assistant Registrar of Cooperative Societies before any decision is taken on the Original Petitioners' application seeking two

votes instead of one. This statement is accepted. The Assistant Registrar is directed to hear not only the Original Petitioners but also the Review Petitioners, i.e. Mr Rohit Bras De Sa and Mrs Priti Bras De Sa before any decision is taken on the Original Petitioners' application, which is now remanded to the Assistant Registrar of Cooperative Societies for fresh hearing and fresh decision.

18. Further, it is clarified that all contentions of all parties on merits are specifically left open because these are matters that have to be decided by the Assistant Registrar in the first place.

19. The Original Petitioners and the Review Petitioners must now appear before the Assistant Registrar of Cooperative Societies on 15.02.2024 at 03:30 p.m. On this date, the Assistant Registrar of Cooperative Societies may either hear the parties present or, if this date is not convenient, fix another date on which the parties must be heard. The Original Petitioners' application seeking two votes must be disposed of by the Assistant Registrar as expeditiously as possible and, in any case, within three months from 15.02.2024. The Assistant Registrar must communicate the decision to the Original Petitioners and the Review Petitioners.

20. At this stage, Mr Rohit Bras De Sa states that even the Review Petitioners should be allowed to file an application before the Assistant Registrar seeking two votes without prejudice to their rights and

contentions. He says that such an application would be filed before 15.02.2024 and even a copy would be given to Mr Supekar. There is no need to grant such liberty because it is the right of the Review Petitioners to do so. However, in case such an application is indeed filed before 15.02.2024, it will be only appropriate that the Assistant Registrar of Cooperative Societies dispose of both applications together after giving a hearing to all the parties.

21. Mr Supekar states that additional documents, as referred to in paragraph 7(iii) of the order dated 13.04.2022, will also be filed on or before 15.02.2024. Mr Supekar states that copies of the Original Petitioners' application along with the additional documents will be given to Mr Rohit Bras De Sa before 15.02.2024.

22. This review petition is disposed of in terms of the above order by modifying the order dated 13.04.2022 to the above extent only. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA 