



**IN THE HIGH COURT OF JUDICATURE BOMBAY
AT AURANGABAD**

District: Aurangabad

WRIT PETITION NO.11821 OF 2024

1. Shivaji S/o Rangnath Sonwane,
Occu: Agriculturist & President of Kalimath Trust,
Upapla,
R/o Gurukunj, Plot No.89, Aadarsh Nagar, Hirapur
Road, Tq. Chalisgaon, Dist. Jalgaon.
2. Balbhim Sambhaji Ghavle,
Age: 71 years, Occu:
R/o Brahman Kuti, Ramnagar,
Ausa Road, Latur.
3. Mrs. Suchita Shivaji Sonwane,
Age: 49 years, Occu: Household,
R/o Kalimath, Tq. Kannad,
Dist. Chhatrapati Sambhajinagar.
4. Totala Guruprasad Jagdish,
Age: 46 years,
R/o Kalimath, Tq. Kannad,
Dist. Chhatrapati Sambhajinagar.
5. Dhananjay Narayan Nagre,
Age: 46 years,
R/o At Post Kathargaon,
Tq. Niphad, Dist. Nashik.
6. Mrs. Chitra Santosh Birajdar,
Age: 40 years,
R/o Arohi Building, Premnagar Society,
Plot No.4, Satara Road, Pune.
7. Kailas Babanrao Sonwane,
Age: 51 years,
R/o At post Patna, Tq. Chalisgaon,
Dist. Jalgaon

.....PETITIONERS
(Original Respondents)

VERSUS

1. Rajpalsingh Bhoj (Raju Maharaj)
Age: Major, Occ: Nil,
R/o Kalimath, Upala, Tq. Kannad,
Dist. Chhatrapati Sambhajnagar.
2. The Assistant Charity Commissioner,
Dist. Chhatrapati Sambhajnagar.

.....RESPONDENTS

(Respondent No.1-Original Defendant No.1.
Respondent No.2-Original Respondent no.1)

Mr. Rahul Joshi h/f Mr. Raviraj Wakale, Advocate for the petitioners
Ms. Madhaveshwari Mhase i/b Mr. Pravin V. Kavde, Advocate for
respondent no.1
Mr. S. N. Kendre, AGP for respondent no.2

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 13TH AUGUST, 2026
PRONOUNCED ON : 21ST AUGUST, 2026

JUDGMENT :- (Per Court)**1. Subject-matter :**

The Petitioner challenges legality and validity of the Judgment and Order dated 26.07.2024 passed by learned Joint Charity Commissioner, Chhatrapati Sambhajnagar in Revision Petition No.26 of 2023. A decision and order dated 27.01.2014 passed by the learned Assistant Charity Commissioner, Aurangabad in Inquiry Application No.69 of 2013 filed u/s 50A(1) of the Maharashtra Public Trusts Act 1950 [“the M.P.T. Act 1950” for brevity] is quashed and set aside vide the present imugned judgment and order.

2. Rule. Rule made returnable forthwith. By consent of the parties, heard the petition for final disposal.

3. **Brief Facts of the case:**

3.1 Kali Math Upla, Tk. Kannad, District Aurangabad is a Public Trust registered in the office of the learned Assistant Charity Commissioner, Aurangabad vide Registration Certificate dated 06.06.1988 [“the Trust” for brevity].

3.2 Petitioners are the managing trustees of the Trust. Respondent was also a managing trustee of the Trust, who on account of medical reason of his parents, voluntarily resigned of trusteeship. The resignation is accepted.

3.3 The Petitioners submitted an applicaiton within the meaning of Section 50(a) (1) of the Bombay Public Trusts Act 1950 for framing in a new scheme in substitution of the earlier one.

3.4 Vide Judgment and Order dated 27.01.2014, learned Assistant Charity Commissioner Aurangabad pleased to allow the application and approved the Scheme proposed by the Petitioners.

3.5 As against the Judgment and Order dated 27.01.2014 referred above, Respondent no.1 filed a Revision Petition No.26 of 2023 before the Learned Joint Charity Commissioner Chhatrapati Sambhajinagar.

3.6 After hearing the parties, learned Joint Charity Commissioner pleased the allow the Revision Petition vide Judgment and Order dated 26.07.2024, and set aside the Judgment and Order dated 27.01.2014 passed by the learned the then Assistant Charity Commissioner Aurangabad in Application No.69 of 2013, and disapproved the subsequent scheme.

3.7 It is against Judgment and Order dated 26.07.2024 delivered by the learned Joint Charity Commissioner Chhatrapati Sambhajinagar in Revision Petition No.26 of 2023, the Petitioners are before this Court.

4. Petitioners' submissions:

Mr. Rahul Joshi, learned advocate h/f Mr. Raviraj Wakale, learned advocate for the Petitioners raised multiple objections to the findings recorded in the impugned Judgment and Order. For convenience of adjudication, those are summed up as follows since some of them are inter-related.

4.1 Admittedly, long back Respondent no.1 has voluntarily resigned from the trusteeship. Hence he can not be termed as a 'person having interest' within the meaning of Section 2(10) of the M.P.T. Act 1950.

4.2 Criminal prosecutions being faced by Respondent no.1 on the charges of illegal activities committed by him against the Trust and the Trustees demonstrate that those are detrimental to the interest of the Trust. Hence, he cannot be termed as a 'person having interest' in the wellbeing, welfare and interest of the trust.

4.3 The Judgment and Order dated 27.01.2014 in Inquiry Application No.69 of 2013 was passed under the pre-2017 amendment provisions of the Act. As such, learned Joint Charity Commissioner exercised jurisdiction not vested into his authority thereby entertaining revision u/s 70A of the M.P.T. Act 1950.

4.4 The Revision Petition itself was not maintainable before learned Joint Charity Commissioner, and hence the impugned Judgment and Order is bad on the point of jurisdiction and limitation.

4.5 Last but the not the least, it is against the spirit of the Act itself that a long standing 09 year old Scheme lawfully approved by the Competent Authority has been set aside by the impugned Judgment and Order without appreciating goodness and merit of scheme.

5. Respondent's submission

Ms. Madhaveshwari Mhase, learned advocate h/f Mr. Pravin Kavde – learned advocate representing Respondent no.1 would vehemently oppose the Writ Petition. She would also refer reply affidavit filed by Respondent no.1 together with its annexures. Ms. Mhase would meticulously answer each objection raised by the Petitioners. Her response could be summarized as below:

5.1 It is an undisputed fact that Respondent no.1 was an erstwhile member trustee. He resigned from the trusteeship on account of his then bonafide inability to contribute in the Trust work owing to his duty towards medical difficulty of his parents. His resignation in these peculiar facts does not mean that he has no interest in the Trust. It would be contrary to the Scheme of the Act itself, if only member trustees are held as 'persons having interest in the trust'. Resignation is one thing, whereas losing interest or adverse interest is another thing. Hence on account of resignation, Respondent no.1 doesn't incur disqualification to file proceeding in the interest of the Trust.

5.2 So far criminal prosecutions are concerned, those are at the behest of the Petitioners. There are criminal prosecutions against the Petitioners too, rather of serious nature including theft of the Deity's ornaments etc. for which criminal prosecution is pending before the competent Courts. Mere pendency of criminal prosecution shall not prevent Respondent no.1 from taking up a cause before a Competent Authority in the interest of the Trust.

5.3 The Revision u/s 70A is perfectly maintainable before learned Joint Charity Commissioner. The provision squarely covers an order passed u/s 50(A) of the Act. Wellbeing, better administration and interest of the Trust are the only paramount considerations for taking up cause before the Competent Authority. Hence, only because the Judgment and Order impugned in the Revision Petition was passed prior to 2017 amendment, it can not be said that learned Joint Charity Commissioner had no jurisdiction to examine its legality and validity. Once the amendment has become effective, Joint Charity Commissioner enjoys jurisdiction over the Judgment and Order impugned in the Revision Petition.

5.4 Even otherwise, considering the text of Section 70-A of the Act, learned Joint Charity Commissioner even could *suo moto* examine correctness of the order passed by learned Assistant Charity

Commissioner u/s 50(A) of the Act, since the said provision is covered in Section 70(1) of the Act. As such, it could be held that Respondent no.1 merely triggered the authority by mentioning the illegality committed by the petitioners and also the errors in the Judgment and Order dated 27.01.2014 passed by learned Assistant Charity Commissioner.

5.5 Ms. Mhase, learned advocate would submit that in these circumstances, it would be incorrect to say that learned Joint Charity Commissioner had no jurisdiction to prevail upon the Judgment and Order dd. 27.01.2014 passed by learned Assistant Charity Commissioner in Inquiry Application u/s 50(A) of the Act.

5.6 It is submitted that even the proceedings undertaken before learned Assistant Charity Commissioner in the year 2013 was also not bonafide. Initially the application was filed making other trustees as respondents, and later they were transposed as applicants. Some record was also fabricated which is evident from Exh.R-I at page no.207 of the compilation which forms part of the reply affidavit. There are restrictive orders against the Petitioners in the proceedings u/s 41D of the Act. All this abundantly show that the Petitioners have not approached any Court or any Authority with clean hands.

5.7 While concluding the submissions, Ms. Mhase advanced her last but not the least submission on the objection of delay. She would rely upon Section 70A of the Act, and submit that there is no rider of limitation. If so, the right of Respondent no.1 as also the authority of learned Joint Charity Commissioner to question correctness of an order passed by learned Assistant Charity Commissioner is unencumbered and not affected by any limitation. Ms. Mhase also points out that the Petitioners have not raised specific ground of delay in the Writ Petition pleadings, and hence scope of the Petition can not be enlarged.

With these submissions, learned advocate for respondent No.1 prays to dismiss the Writ Petition.

6. Discussion and consideration

I have extensively heard learned advocates for the respective parties. It is evident that the contra interests *inter-se* the parties resulted into various litigation including Trust proceedings and Criminal prosecutions. There are multiple rounds of litigation among the parties. I have taken on record rival submissions of the parties, however refrained myself from commenting upon those. I restrict my findings to the extent of correctness of the impugned Judgment and Order dated 26.07.2024 passed by learned Joint Charity

Commissioner, Chhatrapati Sambhajnagar in Revision Petition No.26 of 2023. Considering the rival arguments, I propose to adjudicate those as follows.

6.1 Maintainability of revision & issue of jurisdiction.

(a) Major legislative changes occurred in the Maharashtra Public Trusts Act 1950 in the year 2017, by enactment of Maharashtra Act 55 of 2017. A major effect of the amendment was elimination of Section 72 which provided appellate remedies against decisions and orders passed under some provisions. For the sake of convenience, Section 72 as it stood prior to 2017 amendment, is reproduced as below:

72. Application from Charity Commissioner's decision under section 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A, etc.—

(1) Any person aggrieved by the decision of the Charity Commissioner under section 40, 41, 41C and 43 (2)(a) and (c), 50A, 70 or 70A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the court to set aside the said decision.

(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence:

Provided that whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

(2) The court after taking evidence if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

(3) Pending the disposal of an application under sub-section (2), all proceedings for surcharge shall be stayed if the person aggrieved makes out a prima facie case for a stay order.

(4) An appeal shall be to the High Court, against the decision of the court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies. Explanation.— In this section, the expression “decision” shall include a scheme framed or modified under section 50A.

(b) While deleting Section 72, the amendment of 2017 conferred the appellate remedies on the Joint Charity Commissioner in respect of certain orders. The subject-matter order below Section 50(A) which place, stood restored in Section 70(1) at sub clause (c-2). The amended Section 70(1) reads thus:

70. Appeals from findings of Deputy or Assistant Charity Commissioner.—

(1) An appeal [against the finding or order] of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases :—

(a) the finding 3[and order, if any,] under section 20 ;

(b) the finding under section 22;

[(b-1) the finding under section 22A;]

(c) the finding under section 28 ;

[(c-1) the order under section 41C;]

[(c-2) the order under section 50A;]

(d) the order under sub-section (3) of section 54 ;

*[(d-1) an order under sub-section (1) of section 79;]
[(e) an order confirming or amending the record under section 79AA.]*

(2) No appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.

(3) The Charity Commissioner may, after hearing the appellant or any person appearing on his behalf for reasons to be recorded in writing either annul, reverse, modify or confirm the finding or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence.

(c) As such, the legislature did not leave an order passed u/s 50(A) of the Act without any appellate remedy. The appellate remedy continued, except change of the provision.

(d) Going back to 1954, a significant amendment we find to have taken place by introduction of Section 70-A. This amendment introduced an ultimate supervisory authority in Joint Charity Commissioner. Section 70 A was inserted in the Maharashtra Public Trusts Act 1950 vide Bombay amendment 59 of 1954 which is reproduced as follows:

[70A. Charity Commissioner to call for and examine records and proceeding before Deputy or Assistant Charity Commissioner.— (1) *The Charity Commissioner may in any of the cases mentioned in section 70, [either suo motu or on application] call for and examine the record and proceedings of such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of*

any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence :

Provided that the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case—

*(a) during the period in which an appeal under section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or
[(b) in which an order has been passed in an appeal made under section 70.]*

(e) At first instance, although it appears that the provisions u/s 70A and Section 70(1) are overlapping, but it is not so. Both operate independently and could be invoked in different scenarios. The legislature has very cautiously added sub sections (2) and (3) to the Section 70A which prevented authority granted to the Joint Charity Commissioner under sub section (1), from being a superseding, overlapping and a conflicting provision.

(f) Both the sub sections lay down that the revisional jurisdiction shall neither frustrate an appellate remedy nor would prevail over any order passed in appeal.

(g) The provision is carved out to examine correctness of any decision or order to the satisfaction of the Joint Charity Commissioner. As such, the Joint Charity Commissioner is amply powered to look into the procedural aspects, principles of natural justice and objectives of the procedure undertaken by the Assistant Charity Commissioner or Deputy Charity Commissioner, as the case may be, while passing orders in the matters mentioned at Section 70(1) of the Act.

(h) Turning to the objection on jurisdiction raised by Mr. Joshi, learned advocate for the Petitioners, it would be wholly misplaced contention that because the order u/s 50(A) of the Act was passed in 2013, the appeal ought to have been filed u/s 72 of the Act. Suffice to note, due to deletion of Section 72 of the Act vide 2017 amendment, no such appeal could be filed.

(i) True that Respondent no.1 did not avail the remedy u/s 70(1) (c-2), however he took recourse to Section 70-A thereby requesting learned Joint Charity Commissioner to undertake the impugned order under his scanner.

(j) This Court understands Petitioners' arguments that what Respondent no.1 could not do directly due to delay, is sought to be done indirectly. The said legal proposition may not apply in the peculiar facts and the contents of the Section 70-A. I have already

expressed my agreement over the findings of learned Joint Charity Commissioner that such power could be invoked *suo moto*.

(k) For the reasons recorded above, I am convinced that there is no jurisdictional error in the impugned Judgment and Order passed by learned Joint Charity Commissioner in Revision Petition, and the revision was absolutely maintainable.

6.2 Locus of Respondent no.1

(a) Looking to the rival averments, it is clear that the locus of Respondent no.1 is quite a debatable issue for them, and may not be concluded in the revision proceeding for the purpose of all the litigations pending among the parties at various levels. In my view, locus of Respondent no.1 has to be seen in the context of the revision u/s 70(A) of the Act. The provision neither specify a category of person entitle to take up proceeding under this provision nor prohibit any specific type of person from initiating proceeding under this provision.

(b) May it be, since the provision also empowers learned Joint Charity Commissioner to undertake revision *suo moto* as observed by the authority, as also argued by learned advocate for Respondent no.1, the impugned Judgment and Order can not be terminated only on account of status of Respondent no.1. It may be said that

Respondent no.1 merely invited learned Joint Charity Commissioner to look into the matter, and the authority found it indispensable.

Hence, I discard the objection on maintainability of the revision before learned Joint Charity Commissioner, with reference to locus of Respondent no.1.

6.3 Delay

(a) Mr. Rahul Joshi, learned advocate vehemently argued that the order u/s 50(A) of the Act was passed on 27.01.2014. Respondent no.1 didn't take recourse to the then Section 72 of the Act providing Appeal. The revision is filed in the year 2023 i.e. after a gap of 09 years.

(b) Ms. Mhase, learned advocate has submitted that there is no pleading specifically objecting the proceeding u/s 70(A) on the point of delay.

(c) May it be, it is a trite law that delay is a mix question of facts and law. Learned Joint Charity Commissioner has spelled down on the aspect of delay with elaborate reasoning at paragraph Nos.10 to 13 of the impugned Judgment and Order.

(d) I have gone through the reasoning rendered by learned Joint Charity Commissioner on delay. I find that there is no error in those reasoning.

(e) Section 70(A) does not contain any bar of limitation for exercising revisionary power. Mr. Joshi vehemently submits that where there is no provision of limitation, ordinarily the maximum limitation has to be 03 years, and hence the impugned Judgment and Order is liable to be struck down on the point of delay itself.

(f) This Court while deciding a case i.e. ***Writ Petition No.3134 of 2019 Deepak Lagad Vs. Joint Charity Commissioner and ors.***, which is absolutely identical to the case in hand, observed that,

13. It is true that, challenge to order dated 30.12.2008 passed by learned Assistant Charity Commissioner in Enquiry No.1884/2008 is raised after period of 9 years in Revision filed under Section 70-A of MPT Act, 1950 by respondent nos.3 and 4 contending that they were never served with notices of meeting of General Body alleged to have been held on 25.06.2008. Such notice is manipulated. Their signatures are fabricated. The camouflage of election of Managing Committee of Trust in meeting held on 25.06.2008 is created. The Assistant Charity Commissioner has never served notices of enquiry in Change Report to them, although they were shown as outgoing Trustees. Considering nature of allegations, which has semblance of fraud, so also gross violation of principles of natural justice at hands of learned Assistant Charity Commissioner in conduct of enquiry under Section 22 of MPT Act, 1950, exercise of revisional jurisdiction would be apposite.

*14. It is true that, powers under Section 70-A of MPT Act, 1950 are required to be exercised within reasonable period. In case of **Santoshkumar Shivgonda Patil & Ors. Vs. Balasaheb Tukaram Shevale and Ors.**, Division Bench of this Court observed that although period of limitation is not prescribed for invoking powers under Section 70-A of the Act, it does not mean that such powers can be*

*exercised at any time, rather it could be exercised within reasonable time. What should be reasonable period for exercise of powers always depends upon facts and circumstances of each case. Similar view is taken by this Court in case of **Subir Kumar Banerjee & Ors Vs. Neetu Singh & Ors (Writ Petition No.11994 of 2019** decided on **20.12.2019**). In para 13, the following observations are made :*

“13. Therefore, a Charity Commissioner may invoke jurisdiction under Section 70A in any of the cases mentioned in Section 70. While under Section 70 limitation period is prescribed, for invoking jurisdiction under Section 70A in any of the cases mentioned in Section 70, no limitation period is prescribed. It is trite that though there is no period of limitation prescribed for invoking jurisdiction under Section 70A, nonetheless such jurisdiction must be invoked or exercised within a reasonable period. There is no definition of reasonable period or what can be construed as reasonable period. What is reasonable period in one case may not be a reasonable period in another case. No fixed time frame can be prescribed to determine reasonability. Whether revisional jurisdiction under Section 70A has been invoked within reasonable time or not would have to be decided in the facts and circumstances of each case having regard to the 60 days limitation period prescribed for filing appeal under Section 70.”

15. In present case, respondent nos.3 and 4 have specifically contended that notice regarding meeting of General Body was not served upon them, when election of Managing Committee alleged to have took place. Similarly, they were not given notice by learned Assistant Charity Commissioner in Enquiry No.1884/2008. According to them, they could get knowledge of aforesaid order in the year 2017 i.e. just before they approached learned Joint Charity Commissioner in Revision Petition No.94/2017.

16. In aforesaid circumstances, learned Joint Charity Commissioner thought it fit to exercise jurisdiction under Section 70-A of MPT Act, 1950 and set aside order dated 30.12.2008 passed in Enquiry No.1884/2008 and remit matter back for enquiry to Assistant Charity Commissioner. Further, when there is prima facie material to infer possibility of fraud or manipulation of

records, learned Charity Commissioner is required to step in by exercising powers under Section 70-A of the MPT Act, 1950. In that view of matter, although there is delay of 9 years in filing Revision Application, in absence of material to demonstrate knowledge to respondent nos.3 and 4 regarding such change, cause put forth by them cannot be thrown away.

(g) In the cited case too, there was delay of 09 years. Observing that there were serious discrepancies in the reasoning recorded by learned Assistant Charity Commissioner while deciding a case mentioned in Section 70(1) of the Act, this Court upheld the power and authority of learned Joint Charity Commissioner in scanning the impugned order. It is further held that, the rider of delay would not frustrate the very object of the provision u/s 70A of the Act.

(h) The findings herein must not be mistaken that in any case, any order, decision could be dugged out merely because limitation is not provided for such delving by an authority. However, in the light of the scheme under the Act of 1950, an illegality can not be allowed to perpetuate on account of delay. This is particularly, where the authority has exercised its inherent power and authority to supervise the affairs of the business of office under its control, and the decisions rendered by such authorities. Learned Joint Charity Commissioner has given elaborate reasoning as to what gross violation of law and departure to mandatory provision has been

discovered while examining the record. An objection on delay and exclusion of appellate procedure, does not prevent the Revisional Authority from exercising its plenary powers u/s 70A of the Act and the Scheme of the Act itself. In no event a party can take benefit of its own wrong, citing a time gap of 09 years between the decision and the revision. This is governed by the basic legal maxim '*nullus commodum capere potest de injuria sua propria.*' Hence I discard Petitioners' last argument that a 09 year old trust scheme may not be dismayed atleast considering its age.

(i) Hence, I am in agreement with findings recorded by learned Joint Charity Commissioner, as also the arguments advanced by learned advocate for Respondent no.1, that the learned Joint Charity Commissioner has rightly placed authority u/s 70A into service and that the revision power is not defeated by any delay.

6.4 Correctness of impugned judgment and order:

(a) The line between an appeal and a revision is broad and dark. While in the former Appellate Authority is engaged in re-appreciation of evidence, the latter entails examining correctness of the order/decision under revision by skimming the record. In a revision, the Revision Authority does not re-appreciate evidence; but has to scan the record corresponding to the procedure and the law.

Procedural aspect and application of law are the two prominent features of revision, to examine which, the Revision Authority can summon the record and proceedings of a case.

(b) In the context of these two concepts and the objection raised by the Petitioner, we look into Section 50-A of the Act which reads thus:

[50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.— (1) *Notwithstanding anything contained in section 50, where the 4[Assistant or Deputy Charity Commissioner] has reason to believe that, in the interest of the proper management or administration of public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the 5[Assistant or Deputy Charity Commissioner] may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.*

(2) *Where the [Assistant or Deputy Charity Commissioner] is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after—*

(a) *Publishing a notice in the Official Gazette 2[and also if necessary in any newspaper which in the opinion of the [Assistant or Deputy Charity Commissioner] is best calculated to bring to the notice of persons likely to be interested in the trust] with a wide circulation in the region in which the trust is registered, and*

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard, frame a common scheme for the same.

(3) The [Assistant or Deputy Charity Commissioner] may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the Charity Commissioner under section 70, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50.]

(c) If the Joint Charity Commissioner records a finding that the learned Assistant Charity Commissioner exercised authority u/s 50-A of the Act dehors the procedure and law, revision stands justified. For that assessment, looking to the record is not at par with looking into the evidence. If learned Joint Charity Commissioner maintains this discipline, neither it can be said that learned Joint Charity Commissioner has exercised the jurisdiction not vested into him nor it could be said that he exceeded the jurisdiction vested into him.

Now in the light of aforesaid discussion, I turn to the merits of the order passed by learned Joint Charity Commissioner.

(d) To maintain purity and sanctity of the proceedings under the Act of 1950, the legislature has thoughtfully legislated Section 70A. In terms of the Act, Charity Commissioner has the supreme authority

to supervise the business affairs in the Trust offices and to examine legality and validity of any order passed by the subordinate authorities.

(e) It would advantageous to look into the ***Statement of Objects and Reasons*** behind amendment in the Act of 1950 by incorporating Section 70A into it. It reads thus:

Clause 8 and sub-clause (1) of clause 9.- Experience has shown that the Charity Commissioner should have revisional power to call for and examine the record and proceedings before the Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding recorded or order passed by him and to annul, reverse, modify or confirm the finding or order recorded or passed by the Deputy or Assistant Charity Commissioner. No order annulling, reversing or modifying the order of the Deputy or Assistant Charity Commissioner should be passed by the Charity Commissioner without giving the party affected an opportunity of being heard. All the provisions that apply to an order passed by the Charity Commissioner under Section 70 will mutatis mutandis apply to an order passed by the Charity Commissioner under the proposed new section 70A.

It is not in dispute that the designation Charity Commissioner includes Joint Charity Commissioner within the meaning of the Act.

(f) In the instant case, learned Joint Charity Commissioner has recorded that the then authority did not consider the procedure while deciding the application, and bypassed the mandatory provisions of law.

(g) Learned Joint Charity Commissioner observed that the earlier application No.01 of 2005 filed by Respondent nos. 2 to 5 and 11 to 12 was rejected by the then learned Assistant Charity Commissioner in 2007 for want of prosecution. Hence subsequent application i.e. 69 of 2013 can not be termed as a good and appropriate proceeding without setting aside the order in application No. 1 of 2005.

(h) Substantial transposition of parties to the application was effected by a non speaking order, that too, behind the back of original Respondent nos. 10 to 12. Again a new application was filed without arraying earlier Respondent nos. 10 to 12 as party respondents.

(i) Learned Joint Charity Commissioner has further observed that neither notice was issued to the members whose names were on the Schedule-I nor a public notice was issued. It is also observed that there was suppression of material facts in the application No.69 of 2013.

(j) Although the Petitioners have objected these observations made by learned Joint Charity Commissioner, nothing is placed before me to counter the findings on facts recorded by learned Joint Charity Commissioner.

(k) My findings are enthralled by the observations made by this court in the case of ***Mallikarjun & ors. Vs. Shri Dattatraya Wadane and ors.*** reported at **2005 (4) ALL MR 296**. This citation was beneficially placed on record by learned advocate for Respondent no.1. At paragraph No. 14 to 16, this Court has elaborated the test to undertake an exercise u/s 50(A) of the Act. Those findings read thus:

14. *In the light of above discussion regarding scope and ambit of the powers conferred by Section 50-A of the Act upon Charity Commissioner to settle scheme/new scheme in lieu of existing one, grounds at sr. nos.(iii), (iv), (vi) and (vii) in para 2 ante can hardly provide reason, much less necessity or expediency to settle a scheme, although those may provide a reason for action against erring trustee/s. Instead of taking action against the erring trustees, removing them by framing a new scheme, in fact would be against the interest of trust, in view of the fact that not only mismanagement but even misappropriation is alleged against them and they may go scot free after removal as trustees. What is term necessary or expedient is borrowed in para 15 of the judgment in the matter of Dr. R. P. Kapoor from commentary on The Bombay Public Trusts Act, 1950, which reads as follows: "Necessary" and 'Expedient' meaning: This is a power conferred under the Act in a special contingency, when it is necessary or expedient to frame a scheme in the interest of a public trust. Recently the Gujarat High Court explained the words 'necessary' and 'expedient'. The 'necessary' means what is indispensable, needful and essential. The term has a precise meaning and a connotation and there is nothing vague or nebulous about it. The term 'expedient' has no doubt a wider ambit and gives much scope to the exercise of power. But this expression has also a recognised connection in the eye of law. The dictionary meaning of the term 'expedient' that what in the context it is used and which is most fitting is 'useful for effecting a desired result, fit or suitable for the purpose.'*

(emphasis added) Even taking into consideration the wider meaning of the term expedient, the Court ought to come to a conclusion that it is desirable for achieving the necessary result i.e. safeguarding the charity, to settle a new scheme and, therefore, unless the learned Charity Commissioner can arrive at a conclusion that existing scheme is insufficient for the purpose, or that even after amendment to the existing scheme the purpose of the trust would not be served, the Charity Commissioner would not be in a position to record a finding that it is expedient in the interest of trust to settle a new scheme.

15. Having gone through the judgment of the Charity Commissioner, the only sentence in the judgment which touches to the issue of inadequacy of the existing scheme reads as follows: "There is no adequate provisions made in the old constitution to cope up with the day-to-day administration of the trust." It must be said that the observation is too general and vague. It does not illustrate as to how the old scheme is inadequate, nor it demonstrates as to how new scheme has coped up with this aspect and bettered over the shortcomings in the old scheme. In fact it was necessary for the Charity Commissioner to demonstrate that even amendment of the old scheme would not serve the purpose, before embarking upon the exercise to substitute the same by a totally new scheme. We may refer to a paragraph in the internal pages 8 and 9 of the judgment (Paper Book Pages 54 and 55). Learned Judge has referred to the changes or rather provisions of the new scheme. On comparison of this discussion with the old scheme, it can be seen that all the the provisions in the new scheme were already there in the old scheme. The membership of two types i.e. life member and ordinary member was in existence under old Rule 6. By new scheme, only membership fee is increased to Rs.1001/- and Rs.101/- p.a. for life members and ordinary members respectively, instead of Rs.501/- and 51/-under the old scheme. Although a form is prescribed for applying to be a member, even under the old Rule 5(1) and (2), an individual was required to apply for membership and he could be granted membership only by resolution of majority in the meeting of Board of Trustees as in the

new scheme. So far as cancellation of membership is concerned, old Rule 9 did make a provision for the same. Only addition in the new scheme is of a new ground i.e. regarding removal from membership in case the member acted against the interest of the Trust. Procedure for filing in the vacancies was provided in old Rule 15(2) and total Rule 15 spoke about rights and duties of the Board of Trustees. There is some discussion about new provisions also in the last paragraph of the judgment. The provisions for meetings of the trustees, notice, quorum etc., which are incorporated in the new scheme were also in existence in Rule 14 of - the old scheme. Rule 7 under the old scheme - provided for general body meeting, although there was no provision for special general meeting. Although it is said that new rule regarding election is incorporated, the same was in existence also in the old scheme (Rule 12). Rights and duties of the office bearers i.e. Board of Trustees were in Rule 15. In fact the contention that there was no provision for amendment of the scheme in the old rules, is patently false, because Rule 21 of the old scheme did make a provision for the same. The discussion hereinabove will demonstrate that all the provisions referred by learned Charity Commissioner as making new provision were already in existence in the old scheme and couple of new provisions, which are also indicated hereinabove could have been added by a simple amendment. The argument of learned Advocate Shri. Dhorde to that effect deserves to be upheld. As directed by this Court, Advocate Shri. Dhorde has provided a chart indicating the comparison of the provisions of new scheme and old scheme, which is taken on record and marked EXHIBIT 'A' for the purpose of identification. Senior Counsel Shri. Shah has also provided some another table, which to according which did not exist in the old scheme. The respondents 2 and 3, are the new provisions, which did not exist in the old scheme. The same is also taken on record and marked EXHIBIT 'B' for the purpose of identification. On referring to Exhibit 'B', following can be said to be new additions in the scheme. Some more objects of the trust incorporated, such as holding gatherings, conferences, industrial and agricultural exhibitions. By new scheme,

membership is restricted to the citizens of Osmanabad district instead of to any Indian citizen as under the old scheme. As already discussed hereinabove, increase in the membership fee and additional ground for removal i.e. acting against the interest of trust, are new additions. Clauses 9 and 10 in the new scheme regarding eligibility for being appointed as trustee and disqualification are certainly new addition. Power of the Board of Trustees under clause 12 of the new scheme are in more details. So far as election is concerned, appointment of an officer as Election Officer as nominated by the Charity Commissioner is certainly welcome improvement. Special General meeting is provided by the new scheme. Under the new scheme, a post of Joint Secretary is provided. Clauses 18, 19 and 20 under the new scheme although are new provisions, as rightly pointed out by Advocate Shri. Dhorde, those are just borrowings of Sections 36-B, 35 and 36 from the Act and, therefore, cannot be said to be new additions in the real sense. In spite of some new additions, I am unable to appreciate as to why these additions could not be incorporated either by proposing an amendment under existing Rule 21 by procedure prescribed therein or by an application to the Charity Commissioner under Section 50-A(3) of the Act. I am also unable to appreciate as to how these new additions are capable of making better provision for day-to-day working of the trust than provisions under old scheme.

16. For the reasons discussed hereinabove, it is evident that the learned Charity Commissioner could not have arrived at a conclusion of necessity or expediency for settlement of a new scheme for the trust in question, on the face of existing scheme and without arriving at a conclusion that the same scheme could not have been used by amendments. In fact this observation should stand confirmed by taking into consideration the nature of provisions which are new and not in existence in the old scheme. Some of the new provisions are borrowings from legal provisions such as Sections of the Act and all are of such a nature that those could have been incorporated by amendment. The finding of Charity Commissioner, confirmed by the District Court, that it

was necessary and expedient to have a totally new scheme, is, therefore, not sustainable. In fact on reference to grounds (i), (ii), (v), (viii) to (xiii), in the light of new provisions, it can be said that there is hardly anything in the new provisions touching the aspects covered by those grounds.

(l) Thus, I find that the impugned Judgment and Order neither suffer jurisdictional error nor the learned Joint Charity Commissioner has erred in exercising revision jurisdiction in warranting circumstances.

7. Conclusion:

From the aforesaid discussion I conclude that,

(a) The Charity Commissioner carries plenary power to call and examine record of any case and any order passed by the Deputy or Assistant Charity Commissioner on any subject mentioned in Section 70(1) of the Act. The plenary power and authority conferred upon the Charity Commissioner u/s 70A of the Act justifies him to pass appropriate order even annulling, reverting, modifying, sustaining the order under revision, as he deems fit;

(b) In the case in hand, learned Joint Charity Commissioner did not commit any error in invoking the power u/s 70A of the Act;

(c) Any delay is not fatal to the proceeding u/s 70A in the given set of facts;

(d) An Appeal u/s 70(1) and a Revision u/s 70-A of the Act are two independent proceedings which are neither mutually exclusive nor overlapping to each others.

(e) Date of passing an order u/s 50(A) of the Act- whether pre-2017 amendment or post-2017 amendment, does not affect the authority of Joint Charity Commissioner u/s 70-A of the Act;

(f) This Court has not recorded any finding upholding or disapproving locus of Respondent no.1 or his status as a 'person having interest' in terms of Section 2 (10) of the Act.

8. For the reasons recorded above, I find that the impugned Judgment and Order could hardly be disturbed. Resultantly, the Writ Petition fails. Hence I pass following order.

ORDER

- I. Writ Petition stands dismissed.
- II. Rule stands discharged.
- III. No costs.

(AJIT B. KADETHANKAR, J)

. After pronouncement of the judgment, learned Advocate for the petitioners seeks stay to the judgment and order passed by this Court. Since I have held that the Joint Charity Commissioner has exercised his powers under Section 70-A of the 1950 Act, observing

serious illegality in the order passed by the then learned Charity Commissioner in a proceeding under Section 50A of the Act, I do not find the request to be accorded. Hence, the request is rejected.

(AJIT B. KADETHANKAR, J)

Rushikesh/2026