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

FIRST APPEAL NO.1765 OF 2015

1. Shri Nitin s/o Kanaiyalal Gujarathi,
Age 49 years, Occu. Business,
R/o Dhule, Taluka and Dist. Dhule

2. Ramesh Rajaram Mali,
Age 58 years, Occu.Business
R/o Dhule, Taluka and Dist.Dhule

3. Shri Ashok s/o Chagan Phuldevre,
Age 55 years, Occu. Business,
R/o Dhule, Taluka and Dist. Dhule

4. Shri Panditrao s/o Narayan Marathe,
Age 73 years, Occu. Agriculture
R/o Kasare, Taluka Sakhari,
District Dhule

5. Shri Sanjay s/o Sham Patil,
Age 46 years, Occu. Service,
R/o Khanderao Park, Nandurbar,
Taluka and District Nandurbar

6. Shri Ashok s/o Sakharam Patil,
Age 50 years, Occu. Agriculture,
R/o Padalde (Bk), Taluka Shahada,
District Nandurbar

7. Shri Dinesh s/o Rajaram Patil,
Age 40 years, Occu. Business,
R/o Shahada, Dist. Nandurbar

8. Shri Ravindra s/o Dangal Pawar,
Age 48 years, Occu. Business,
R.o Shahada, Dist. Nandurbar

9. Shri Rameshchandra s/o Bhikaji Targe,
Age 65 years, Occu. Retired
R/o Saibaba Colony, Pimpalner,
Taluka Sakri, Dist. Dhule

10. Shri Pramod s/o Balkrushna Wani,
Age 48 years, Occu. Business,
R/o Dhule ..Appellants
(Orig.Intervenors)

Versus

1. The Joint Charity Commissioner,
   Nashik Region, Nashik

2. Shri Jaikumar s/o Kedu Wani,
   Age 40 years, Occu. Business
   R/o Kasare,Taluka Sakri,
   District Dhule

3. Shri Sadguru Bhau Atmanand Tapovan
   Trust, Kasare, through its Secretary,
   Shri Jaikumar s/o Kedu Wani,
   Age 40years, Occu. Business
   R/o Kasare,Taluka Sakri,
   District Dhule

4. Shri Shivaji Tanaji Bhavsar,
   Age 75 years, Occu. Business
   R/o Kasare,Taluka Sakri,
   District Dhule

5. Shri Dnyaneshwar Ukha Mali,
   Age 52 years, Occu. Business,
   R/o Pimpalner, Taluka Sakri,
   District Dhule

6. Sudhesh Murlidhar Mohane,
   Age 47 years, Occu. Business,
   R/o Nashik,
   Taluka and District Nashik

7. Shantaram Narayan Desale,
   Age 65 years, Occu. Agriculture,
   R/o Kasare,Taluka Sakri,
   District Dhule

8. Vinayak Uttam Sabale,
   Age 40 years, Occu. Service,
   R/o Kasare,Taluka Sakri,
   District Dhule

9. Amrutrao Jayawantrao Desale,
   Age 50 years, Occu. Agriculture
   R/o Kasare,Taluka Sakri,
   District Dhule

10. Mangesh Gangadhar Alai,
    Age 36 years, Occu. Business,
    R/o Om Medical & General Stores,
    Sharanpur road, Nashik

11. Ravindra Ramdas Musale,
Age 39 years, Occu. Business,
R/o Nana Chowk, Old Post Office,
Pimpalner, Taluka Sakri
District Dhule .. Respondents

Mr V.D. Hon, Senior Counsel I/b Mr D.S. Bagul, Advocate for appellants
Mr P.P. More, A.G.P. for respondent No.1
Mr R.N. Dhorde, Senior Counsel I/b Mr V.R. Dhorde, Advocate for respondents No.3, 4, 7 and 9

- WITH -

FIRST APPEAL NO.1770 OF 2015

Shri Dnyaneshwar Ukha Mali,
Age 42 years, Occu. Agriculture,
R/o Pimpalner, Taluka Sakri,
District Dhule .. Appellant
(Orig.Applicant in
Inquiry Application
No.2/2014)

Versus

1. The Joint Charity Commissioner,
Nashik Region, Nashik

2. Shri Jaikumar s/o Kedu Wani,
Age 40 years, Occu. Business
R/o Kasare,Taluka Sakri,
District Dhule

3. Shri Sadguru Bhau Atmanand Tapovan
Trust, Kasare, through its Secretary,
Shri Jaikumar s/o Kedu Wani,
Age 40years, Occu. Business
R/o Kasare,Taluka Sakri,
District Dhule

4. Shri Shivaji Tanaji Bhavsar,
Age 75 years, Occu. Business
R/o Kasare,Taluka Sakri,
District Dhule

5. Sudhesh Murlidhar Mohane,
Age 47 years, Occu. Business,
R/o Nashik,
Taluka and District Nashik

6. Shantaram Narayan Desale,
Age 65 years, Occu. Agriculture,
R/o Kasare,Taluka Sakri,
District Dhule

7. Vinayak Uttam Sabale,
Age 40 years, Occu. Service,
R/o Kasare,Taluka Sakri,
District Dhule

8. Amrutrao Jayawantrao Desale,
Age 50 years, Occu. Agriculture
R/o Kasare,Taluka Sakri,
District Dhule

9. Mangesh Gangadhar Alai,
Age 36 years, Occu. Business,
R/o Om Medical & General Stores,
Sharanpur road, Nashik

10. Ravindra Ramdas Musale,
Age 39 years, Occu. Business,
R/o Nana Chowk, Old Post Office,
Pimpalner, Taluka Sakri
District Dhule .. Respondents

Mr V.D. Sapkal h/f Mr Umesh B. Shriram, Advocate for appellant
Mr P.P. More, A.G.P. for respondent No.1
Mr R.N. Dhorde, Senior Counsel I/b Mr V.R. Dhorde, Advocate for respondents No.3, 4, 6 and 8

CORAM : N.W. SAMBRE, J.

DATE : 27th July 2015

PER COURT

1. Both these appeals are under Section 47 (5) of the Maharashtra Public Trusts Act (hereinafter referred to as “MPT Act” for brevity) read with Section 96 of the Code of Civil Procedure. The appeals are preferred questioning the legality and validity of the order dated 6th July 2015 passed by the Joint Charity Commissioner, Nasik Division, Nasik in Inquiry Applications No.16/2013, 2/2014, 8/2014, 9/2014 and 26/2014, whereby the Joint Charity Commissioner in exercise of

powers under Section 47 of the MPT Act has appointed eleven trustees to Shri Sadguru Bhau Atmanand Tapovan Trust, Kasare, Taluka Sakri, District Dhule, for a period of one year or till disposal of Inquiry Nos.13/2014 and 312/2014 pending on the file of Assistant Charity Commissioner, Dhule Region, Dhule.

2. The facts as are necessary for deciding the appeals are as under:

3. The trust in question is a trust with religious activities which were admittedly authored by respondent No.4 viz. Dr. Shivaji Tanaji Bhavsar. On 11th February 1996, a meeting was convened for elections of new office bearers resulting into filing of two change reports No.56/1996 and 79/1996 under Section 22 of the Bombay Public Trusts Act. On 16th March 2004, learned Assistant Charity Commissioner rejected both the change reports resulting into filing of proceedings before the Joint Charity Commissioner under Section 70 of the MPT Act. The Joint Charity Commissioner, by an order dated 7th December 2005 allowed the appeal by setting aside the order dated 16th March 2004 passed by the Assistant Charity Commissioner and allowed the change reports No.56/1996 and 79/1996. The appeal before the District Judge, Dhule against the order of Joint Charity Commissioner dated 7th December 2005 suffered fate of dismissal on 26th August 2008. An appeal to the High Court also came to be dismissed.

4. The change report No.539/2001, 220/2007, for the subsequent period i.e. 15th October 2006 to 15th October 2011 also came to be accepted by taking entry into Schedule I.

5. Some time in 2004, an application under Section 41D of the MPT Act came to be moved before the Joint Charity Commissioner for suspension, removal and dismissal of the trustees vide Application No.9/2004. The Joint Charity Commissioner on 26th December 2011 passed the following order dismissing the nine trustees from the board by only continuing the trustee deceased Uddhav Jeevan Chaudhari and Jaykumar Kedu Wani.

ORDER

> "1. All recorded trustees except deceased Shri Uddhav Jeevan Chaudhari and the incoming trustees Jaykumar Kedu Wani recorded as per ACC's order dated 29-7-2009 below Inquiry No.220/2007
>
> 1) Sau Smita S. Mhatre – Vice President
> 2) Shri Kedu Motiram Wani – Honourary Secretary
> 3) Shri Narayan Aatu Desale – Joint Secretary
> 4) Shri Mohanlal Babulal Jain – Trustee
> 5) Shri Govind Shankar Jadhav – Trustee
> 6) Shri Mahendra Shankar Patil – Trustee
> 7) Shri Eknath Bandu Khothawade – Trustee
> 8) Shri B.B. Aaglaman – Trustee
> 9) Shri Bhalchandra Vinayak Fadanvis – Trustee
>
> are dismissed from the board of trustees

2. In exercise of the powers conferred upon me I hereby appoint Shri Shivaji Tanaji Bhavsar who brought the trust 'Shri Sadgurubhau Aatmanand Tapowan Trust, Kasare, Taluka Sakri, District Dhule P.T.R. No.E-375/Dhule into being by virtue of trust deed duly executed by setting apart an amount of Rs.2100/- being founder president of the trust, as president of the trust. Shri Jaykumar Kedu Wani shall act as a honourary Secretary of the trust and to assist the President of the trust in looking after the management and administration of the trust as per the provisions of the trust-deed and as per the provisions of Bombay Public Trusts Act, 1950 until new trustees are appointed as per provisions of the said Act whichever happens earlier.

3. It is hereby directed to the opponents to handover the charge of the trust to the newly appointed President and honourary Secretary of the trust peacefully. If failed to do so, newly appointed President and Secretary shall take the charge of ex parte and start to manage administration of the trust according to the provisions of trust-deed and as per provisions of Bombay Public Trusts Act, 1950. They are at liberty to take recourse of law which includes Police help in doing so.

4. Applicants and opponents are left to bear their own respective costs.”

The Joint Charity Commissioner by the same order appointed the author of the trust Shivaji Tanaji Bhavsar as President of the trust and Jaykumar Kedu Wani as Honourary Secretary.

6. It is required to be taken note of the fact that the honourary Secretary who was appointed by the said order was recorded trustee.

7. The said order was confirmed up to Apex Court in SLP (Civil) Nos.31665-31666 of 2013.

8. After passing of the above referred order, the applications came to be moved under Section 47 of the MPT Act for appointment of the trustees on the trust in question. By the order impugned, the Joint Charity Commissioner has appointed the trustees, as such, the present appeals.

9. Mr Hon, learned Senior Counsel appearing for the appellants in First Appeal No.1765 of 2015 would urge that the appointment of the trustees under Section 47 of the Act ordered by the Joint Charity Commissioner is without conducting any inquiry or without looking into the qualifications of the trustees. The Joint Charity Commissioner out of his sweet will and pick and choose method has appointed them as trustees. According to him, the Joint Charity Commissioner ought not to have invoked the powers under Section 47 of the MPT Act when the inquiry under Section 22 of the Act was pending and the nominated trustees pursuant thereto were administering the trust. He would further urge that the Joint Charity Commissioner has acted contrary to the order passed by this Court in Writ Petition No.11327 of 2014 and other connected petitions, decided on 9th March 2015 wherein the Joint Charity Commissioner was ordered to consider the applications filed by the petitioners seeking framing of preliminary issue in paragraphs No.6A and 6B and same be decided along with the

pending application filed under Section 47 of the Act. He would further urge that the appointment of Mr Jaykumar Kedu Wani was pursuant to an order dated 26th December 2011 which was passed in Inquiry Application No.9/2004. He would further urge that the said trustees were required to manage the trust till the appointments of new trustees as per the provisions of instrument of the trust or as per the provisions of the Act. According to him, pursuant to the said observations, the said trustee Jaykumar Kedu Wani has nominated in all ten trustees vide Change Report No.13/2014 and has also elected the office bearers i.e. President, Vice President, Secretary and the Executive Member, which change is reported vide Inquiry Application No.16/2013. According to him, once the change has happened, the trustees are required to be continued in office and there is no necessity to invoke the provisions of Section 47 of the MPT Act for appointment of trustees.

10. Mr Sapkal, learned Counsel for the petitioner in First Appeal No.1770 of 2015 would urge that the appellant Dnayeshwar has preferred the Inquiry Application No.2/2014. According to him, the nature of selection as is done by the Joint Charity Commissioner in exercise of powers under Section 47 is *dehors* the scheme of said Section. He would further urge that the said action of the Joint Charity Commissioner is not sustainable in law, as the Joint Charity Commissioner has acted in most arbitrary manner by selecting the trustees under Section 47 of the MPT Act as per his choice without giving any considerations or without conducting any inquiry as contemplated. In addition to above, Mr Sapkal would urge that no

appropriate opportunity of hearing was given to the appellant, as his lawyer remained absent, he appeared in person and sought adjournment on the date of hearing of the matter. Apart from above, he would urge that when the Inquiry under Section 22 was pending, there was no occasion for the Joint Charity Commissioner to exercise powers under Section 47 of the Act. According to him, there is illegality in the order passed by the Joint Charity Commissioner, as the order speaks of appointment of trustees only for a period of one year and in case the proceedings before the Assistant Charity Commissioner qua Inquiry are not completed, again there will be a great chaotic situation. He would urge that said eventuality is not taken care of and on that count, the judgment of the Joint Charity Commissioner is liable to be set aside.

11. Mr Dhorde, learned Senior Counsel for the respondents, while opposing the contentions raised by learned Counsel for the appellants would urge that pursuant to the order passed by this Court in Writ Petition No.11327 of 2014 wherein this Court had directed to consider the objections raised by the petitioners therein by the Joint Charity Commissioner while deciding the application under Section 70 of the Act, the Joint Charity Commissioner has framed an issue as regards maintainability of the application under Section 47 of the MPT Act and has answered the same. He would further urge that the Joint Charity Commissioner, in his order has already held that the application under Section 47 of the Act was maintainable and has given appropriate reasons for giving a finding to that effect. He submits that the appointment of Jaykumar as Honourable Secretary was with restricted

power as the said Secretary was required to act strictly in accordance with the observations made by the Joint Charity Commissioner in his order dated 26th December 2011, wherein the Honourable Secretary was directed to assist the President i.e. his client for looking after the management and administration of the trust as per the trust-deed and as per the provisions of the Act until the new trustees are appointed as per the instrument of the trust or as per the provisions of the Act whichever occurs earlier. According to him, said Joint Charity Secretary has no authority to nominate the members and to file change report. Apart from above, he would urge that once the order of removal of trustees was upheld by the High Court, the said controversy as regards the appointment of trustees was already settled. According to him, on 27th September 2003, a letter was issued to the father of Jaykumar viz. Kedu to submit record pursuant to the order of Joint Charity Commissioner which request was refused by Kedu on 1st October 2013. The record was then handed over to Jaykumar on 6th October 2013. The application under Section 47 of the MPT Act came to be filed by his client on 6th December 2013 and subsequent thereto, Jaykumar on 12th December 2013 has appointed the trustees and has filed the change reports cited supra. According to him, the appointment of Dr. Bhavsar as a President is pursuant to the provisions of sub-section (4) of Section 41D of the MPT Act. He would further urge that the trustees who were nominated were not impleaded as parties and as such, the appeal is bad for non-joinder of necessary parties.

12. According to Mr Dhorde, the appeals are liable to be dismissed.

13. Civil Application No.8280 of 2015 in Civil Application No.8148 of 2015 is moved, wherein the interested persons have sought to canvass that they were not noticed or they were never informed about the appointments of trustees pursuant to Section 47 of the Act and they are also interested in getting appointed as adoptive trustees pursuant to Section 47 of the Act.

14. With the above submissions of the respective parties, in my opinion, the following point arises for consideration in these appeals :

> *“ Whether the Joint Charity Commissioner was right under the law in exercising powers under Section 47 of the Maharashtra Public Trusts Act in the matter of appointment of trustees ?”*

15. Perusal of the judgment delivered by the Joint Charity Commissioner reflects that the occasion for invoking the powers under Section 47 of the MPT Act for the Joint Charity Commissioner was that, in view of order passed under Section 41D of the Act on 26th December 2011, removing nine trustees and appointing Mr Shivaji Tanaji Bhavsar, an author of the trust as President and Jaykumar Kedu Wani as Honourary Secretary of the trust.

16. The Joint Charity Commissioner then noticed that all the recorded trustees, except Uddhav Jeevan Chaudhari and Jaykumar Kedu Wani came to be removed from the board of trustees and as

such, only two trustees remained namely Dr. Shivaji Tanaji Bhavsar as a President and Jaykumar Kedu Wani as an Honourary Secretary. The second consideration before the Joint Charity Commissioner was the steps taken by Jaykumar Kedu Wani for appointing the intervenor before him as a trustee and filing of Inquiry Application No.13/2014 on 7th January 2014 and 312/2014 on 6th May 2014 thereby appointing trustees and the office bearers. The said aspect as regards appointment of trustees by Jaykumar and objection to that effect by Dr.Bhavsar was gone into and the Joint Charity Commissioner by considering the trust-deed, has noticed that in case all the trustees are removed from the board of trustees under Section 41D of the Act, Clause 6 of the trust-deed does not provide for appointment of new trustees. The Joint Charity Commissioner then decided to fill in the vacancies occurred due to removal of the trustees, particularly in the light of the provisions of trust-deed and the provisions of the Act. The Joint Charity Commissioner then proceeded to analyse the evidence of each of the parties and has held that it is a fit case to invoke the provisions of Section 47 of the MPT Act, for appointment of the trustees. While doing so, it was noted by the Joint Charity Commissioner that the vacancy as is occurred in the trust will be required to be filled in as per the provisions of the Act.

17. The Joint Charity Commissioner has also considered the appointment of trustees by Jaykumar, who claims to be only one recorded trustee.

18. With above background, it is required to be seen as to whether the Joint Charity Commissioner invoked powers under Section 47 of the MPT Act. If we consider the factual background of the case herein, the order of removal of the trustees under Section 41D of the Act has attained finality up to the Apex Court as is apparent from the order of the Apex Court dated 3rd October 2013 passed in SLP (Civil) Nos.31665-31666 of 2013.

19. Now once the trustees were removed under Section 41D of the Act, what was the option available with trust as regards its management.

20. It is required to be noted that having regard to the order of removal of trustees under Section 41D of the Act, the Joint Charity Commissioner has already invoked the powers of appointing Dr.Shivaji Tanaji Bhavsar as a President and Jaykumar Kedu Wani as Honourary Secretary. Once these two persons were appointed, they were required to conduct themselves in accordance with the observations made by Joint Charity Commissioner, pursuant to the observations made in the said order. The above referred observations by this Court could be find support from the confirmation of the said findings up to the Apex Court in Special Leave Petitions.

21. As a consequence of above, the appointment of Mr Shivaji Tanaji Bhavsar being the author of the trust and founder President as a President of the trust and that of Jaykumar as an Honourary Secretary of the trust was upheld. Apart from above, said Jaykumar Kedu Wani was required to assist the President in tune with the

observations made by the Joint Charity Commissioner, which in express terms provides that he shall assist the President of the trust in looking after the management and administration of the trust as per the provisions of trust-deed and as per the provisions of BPT Act until the new trustees are appointed as per the instrument of the trust or as per the provisions of the Act, whichever happens earlier.

22. It is further required to be noted that the change reports at the behest of said Jaykumar, as according to him he has already nominated the trustees vide Inquiry Application Nos.13/2014 and 312/2014 are pending. The power of the said Jaykumar to nominate the persons will also be required to be looked into by the Assistant Charity Commissioner. Till then it is really unbelievable that trust could be left to the option of the President and Honourary Secretary to be ruled when the trust-deed provides to be administered by the total eleven trustees.

23. In view of above referred background, in my opinion, the satisfaction recorded by the Joint Charity Commissioner invoking the powers under Section 47 of the Act was just and proper.

24. So far as submission of the respective Counsel that once the inquiry report under Section 22 is pending, the Joint Charity Commissioner ought not to have invoked power under Section 47 of the Act is concerned, it is required to be noted that Section 47 does not put an embargo in exercising powers under the said Section when Section 22 inquiry is pending. It is further required to be noted that in the present case, the powers under Section 47 of the Act are

exercised as a consequence of the order passed under Section 41D (4) of the Act for better administration of the trust in question. In view of above, the said contention as is raised by the appellants, particularly in the light of the fact that the affairs of the trust would be administered until the vacancy in accordance with bye-laws is filled in, the trust will be administered by trustees. **as was nominated by the Joint Charity Commissioner.** In view of above, the support drawn from the judgment of this Court in the matter of **Shankarao Sakharamji Supare Vs. B.J. Loya, Joint Charity Commissioner & Ors.,** reported in **1997 (1) Mh.L.J. 193** and in the matter of **Gyandeo Tukaram Devre and ors. Vs. Ganpat Nathu Devre and ors.,** reported in **1994(4) Bom.C.R. 172** will be of hardly any assistance to the appellants.

25. The next contention of Mr Hon as regards the effect of change particularly in view of pendency of change report of 2014, the same will take effect from the date of resolution and not from the date of its approval is concerned, of course, the change if accepted from the date which will relegate back to the date of such change being brought into effect by a resolution. However, in the present case, what appears to be is the pendency of the change report and the authority of Jaykumar to appoint/nominate the trustees. The powers under Section 22 of the Act qua an inquiry as regards of change as occurred is lawful or not. In view thereof, in my opinion, merely reporting a change by lodging an inquiry before the Assistant Charity Commissioner, which was objected by the other members unless is

adjudicated and answered in favour of appellants, the same will be of hardly any assistance to the present appellants.

26. The next question that is required to be noted by this Court is whether the Joint Charity Commissioner was right in exercising the powers by nominating the persons, as were suggested by the parties to the proceedings. It is required to be noted that the said field is already governed by the judgment of this Court in the matter of **Avinash Vs. Jayawant** (cited supra)**.** This Court, in para 8, 9 and 10 of the said judgment has observed thus :

> 8. One has to first make the distinction between the fit person and the trustee appointed under Section 47 of the Act. The occasion to appoint a fit person arises where the Charity Commissioner suspends trustee or trustees and there is no person who can take care of the Trust and administer it. A fit person, in fact, for all purposes has to act as a trustee. He can, however, work or hold office until a new trustee is appointed. Thus, Section 41D takes care of the trust only as a stop gap arrangement. But when a person is sought to be appointed under Section 47, such an appointment in no case can be temporary or by way of only stop gap arrangement. The wording of Section 47 is clear enough. An application under Section 47 has been moved in this case on the ground that there is no trustee to administer the Trust since change reports are rejected. Therefore, new trustees are sought to be appointed. These trustees, therefore, can continue until elections are held and new persons are elected and appointed as trustees. Basically, this becomes an appointment of a person as a trustee as such and not as a fit person. Therefore, more care and caution is required to

be taken by the Charity Commissioner while making appointments under Section 47.

9. Shri Gordey and Shri Mishra, the learned counsel for the respondents, contended that the Charity Commissioner was satisfied about the fitness of respondents and there is nothing adverse against them. They submitted that an enquiry was made by the Charity Commissioner and then the order is passed. It is clear from the Section itself that before appointment is made an enquiry is required to be made. The word enquiry is not defined in the Act. However, word enquiry has been defined best in Ramnath Ayer's Law Lexicon as 'search for knowledge, investigating a question.' To me, the enquiry is something short of trial. Therefore, wherever an enquiry as required by law is to be held, the law expects the authority to do some kind of investigation and the consideration of material before it. Shri Mishra contended that the Charity Commissioner had considered the application and bio-data before him and he was not required to consider more than that. The submission cannot be accepted. The enquiry can never be so informal and it has, in fact, to be formal. The question is whether the Charity Commissioner was bound to consider the contents of the application and bio data alone or something more was expected of him while taking the decision. I find that the Charity Commissioner is expected to do something more than that. He is not supposed to accept as gospel truth what is stated in the application. It would also be necessary of him to enquire with few persons interested in Trust or even devotees. Ultimately, the Trust is to be run for benefit of the public. Therefore, consultation with a few would be mandatory. In the instant case, what has happened is that; one person filed

an application. He suggested certain names and the Charity Commissioner accepted the suggestion and made an appointment within a week's time. Shri Gordey had submitted that there is no provision to give any public notice or notices to anybody in Section 47. There is no specific provision in the said Section but then section certainly contemplates an enquiry and enquiry, as stated earlier, is nothing but an investigation and may be short of a trial. Such enquiry is with a view that the Charity Commissioner takes a decision after verifying the correctness of the allegations made in the application, suitability of persons and if any other suitable persons are available. The Charity Commissioner has to bear in mind the provisions of sub-section 3 of Section 47 also while holding an enquiry. Sub section 3 speaks of things which the Charity Commissioner is supposed to take into account while making an enquiry. Clause (d) of sub-section 3 would make it clear that the Charity Commissioner is supposed to consult the persons interested and also the public interested. The fact that the Charity Commissioner is to consider the interest of the public, who have interest in the Trust, shows that the consultation with such persons is absolutely necessary and this provision, to my mind, suggests that a public notice must be issued. The interest of the public can be protected only if a notice is issued and public is informed of such application having been made and such vacancies having arisen. The submission of Shri Mishra that the appellants should have come forward voluntarily before the Charity Commissioner and should have contested the application cannot be accepted. In fact, the expectation of Shri Mishra that the appellants should have voluntarily come forward cannot be accepted also, because the appellants were not in the knowledge of such application having been filed before the Charity Commissioner. How does he then expect the appellants to appear before the Charity Commissioner and contest the application ?. In fact, as pointed, the application was decided within a week's time and with great haste, leaving no scope for the appellants to participate. In fact, the respondent - Uttarwar should have fairly asked the Charity Commissioner, to issue notice to the present appellants and the public since the present appellants also have been fighting with him in the court of law since 1998. Even the Charity Commissioner knows that there are two factions. Inspite of this he chooses not to issue notice to any other party. If any enquiry has to be held, it would be incumbent to hear both the factions. Inspite of the knowledge, as stated earlier, the Charity Commissioner failed to issue any notice to the appellants or to the public in general. Such a notice could have been displayed in the temple itself. Had the Charity Commissioner given a notice or displayed it in the temple, a wider choice would have been available to him for selection of trustees and the information about all others which may have and could have been suppressed. The result of not issuing notice is that all others are deprived of being considered for the appointment as trustees. The Charity Commissioner was not bound to consider the names as mentioned in the application alone. If this kind of procedure is followed, then perhaps the Charity Commissioner will be left with no choice but to appoint only those whose names are to be found in the application. This certainly is not contemplated.

10. There is yet another reason why proper enquiry and investigation is necessary in the matter under this Section. This, to my mind, is clear from the provisions of sub-section 5 of Section 47. Sub-section 5 says that an

order passed on the enquiry shall be deemed to be a decree and an appeal shall lie against such an order. Use of word decree is very significant. Decree is defined in Civil Procedure Code as follows -

“Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

27. In the light of above referred observations, it is required to be analysed that whether the Joint Charity Commissioner, while nominating the trustees had made appropriate inquiry in the matter and has followed the mandate of Section 47 of the Act or not. It is required to be noted here that the Joint Charity Commissioner, while dealing with aspect as regards nominating the trustees, has restricted

himself to the numbers of trustees to be nominated without conducting any enquiry, which were suggested by the President of the trust Dr.Bhavsar and other applications in the inquiry applications. It is required to be noted that the Joint Charity Commissioner has nominated five persons from the group of Dr.Shivaji Tanaji Bhavsar, one from the Inquiry Application No.2/2014, two from Inquiry Application No.8/14, two from Inquiry Application No.9/2014, one from Inquiry Application No.26/2014, as is apparent from the observations made in para 27 of the order.

28. While nominating the persons as trustees under Section 47 of the Act, whether the Joint Charity Commissioner has followed the mandate of Section 47, Sub-section (2) of the Act or not. What is contemplated under Section 47 (2) is that the Joint Charity Commissioner must conduct an inquiry as is mentioned therein. It is required to be noted that the inquiry as is contemplated under the said Section is not informal but has to be formal inquiry. Mere collection of details of concerned person to be nominated is not sufficient but their qualification, their details and their interest in the trust is also required to be looked into and appreciated by the Joint Charity Commissioner.

29. In the present case, what is noted that the Joint Charity Commissioner though was alive of the above observations made in para 8 and 9, without conducting any inquiry and without following any procedure has nominated the persons. Apart from above, the least that was expected of Joint Charity Commissioner was to give

public notice and also a notice in the trust office for nominating the trustees under Section 47 of the MPT Act. The Joint Charity Commissioner has lost sight of the said provisions and in an arbitrary manner has taken recourse to the pick and choose method by nominating the persons from the applications, which were moved before the Joint Charity Commissioner.

30. As such, in my opinion, as the said order of the Joint Charity Commissioner to the extent of choosing and nominating the ten trustees is not sustainable, as same is contrary to the provisions of Section 47 of the MPT Act and also not in tune with the directions of this Court in the judgment of **Avinash Vs. Jayawant** (cited supra).

31. As such, both these appeals are partly allowed. The order impugned passed by the Joint Charity Commissioner, Nasik Division Nasik challenged in this appeal is set aside to the extent of nominating the trustees. The matter is remanded to the Joint Charity Commissioner, Nasik Division, Nasik, who shall start the proceedings from the stage of selection and nomination of the trustees in the background of observations made herein above, in tune with the provisions of Section 47 of the Maharashtra Public Trusts Act and the judgment of this Court in the matter of **Avinash Vs. Jayawant** reported in **2010 B.C.I. 4.**

(N.W. SAMBRE, J.)

At this stage, parties are in agreement that status quo as on today will be maintained for a period of four weeks from today. Statement accepted.

(N.W. SAMBRE, J.)

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