IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2219 OF 2016

1. Danial Madhav Bhalerao,
   Age: 76 years, Occ.Agriculture,
   R/o. Old Poultry Farm
   Mission Compound, Shrigonda,
   District Ahmednagar

2. Jagannath Bandu Awle,
   Age: 83 years, Occ.Retired,
   R/o. Tilak Nagar, Chembur,
   Mumbai.

3. Nitish Haribhau Waghmode,
   Age: 61 years, Occ. Agriculture,
   R/o. Opp. Chandravijay Housing
   Society, T.C. College Road,
   Baramati, Dist. Pune

4. Shirish Haribhau Waghmode,
   Age: 65 years, Occ. Retired,
   R/o. Taware Colony, Sahakar
   Nagar, Swargate, Pune

5. Subhash S. Patil,
   Age: 72 years, Occ. Retired,
   R/o. Irrigation Colony,
   At and post. Daund,
   Dist. Pune

6. Stevan John Sathe,
   Age: 45 years, Occ.Service,
   R/o. 194-7479 Kannamwar Nagar,
   Vikroli (East), Mumbai 400 079

7. Jayprakash Ratnakar Gaikwad,
Age: 67 years, Occ. Retired,
R/o. Christian Colony,
Behind Shahu High School,
Baramati, Dist. Pune 413 102

8. Vaibhav Vasant Pardhe,
Age: 41 years, Occ. Unemployed,
R/o. Christian Colony,
Behind Shahu High School,
Baramati, Dist. Pune 413 102

9. Harish Aba Satpute,
Age: 53 years, Occ. Service,
R/o. 100/101,
Bombay Christain Center,
Cheddanagar, Chembur,
Mumbai

10. Balkrishna Chaimaji Bhosale,
Age: 87 years, Occ. Retired,
R/o. Near Railway Bridge Nagar,
Mori, Nazareth Niwas,
at and Post. Daund,
Dist. Pune

...APPELLANTS
(Ori. R.Nos. 1 to 9 & 12)

VERSUS

1. In the matter of the Conference
of Churches of Chriest in
Western India PTR
No.179 (ANR)

2. Robert Vasant Gaikwad
Age: 56 years, Occ. Service & Agri.
R/o. Boys Home,
Mission Compound, Patas Road,
Baramati, Dist. Pune

3. Sujit Bahiru Jadhav,
Age: 50 years, Occ. Agri & Business,
R/o. Usha Building, Vasantnagar,
Baramati, Dist. Pune

4. Rajan David Patole,
Age: 70 years, Occ. Retired,
R/o. Usha Building, Vasantnagar,
Baramati, Dist. Pune

5. Smt. Anita Sadanand Vipat,
Age: 51 years, Occ. Household,
R/o. Mission Compound
Baramati, Dist. Pune

6. Shantwan Bhaskar Randive,
Age: 85 years, Occ. Retired,
R/o. Veal Colony, Baramati,
Dist. Pune

7. Bhaskar D. Kakde,
Age: 80 years, Occ. Retired,
R/o. Nagar Mori, Near Railway
Bridge, Shamla Niwas Daund
Dist. Pune

8. Pavlus D. Pawar,
Age: 41 years, Occ. Business,
R/o. P.O. Bhangaon, Tq. Shrigonda,
Dist. Ahmednagar

9. Kanak Yallappa Waghmare,
Age: 76 years, Occ. Retired,
R/o. Mission Compound,
Shrigonda, Dist. Ahmednagar

10. Bapurao G. Gowandi,
Age: 76 years, Occ. Retired,
R/o. Christian Colony,
Baramati, Dist. Pune (Ori. Applicants)

11. Shankar Sahebrao Thawre,
Age: 51 years, Occ. Service,
R/o. 2130, V.P. Street,
Flat No.102, Thakkars Apartment
Pune 411 002

12. Shamwel Jaywat Mantode,
Age: 70 years, Occ. Retired,
R/o.100/101, Bombay Christain Center,
Cheddanagar, Chembur,
Mumbai

13. The Charity Commissioner
of State of Maharashtra
Mumbai, notice to be served on
Assistant Charity Commissioner,
Ganeshwadi, Swastik Chowk
Pune Road, Ahmednagar

...RESPONDENTS
(Ori.Resp. Nos.
10,11 and 13)

...

Shri. V.D. Hon, Senior Advocate for appellants;

Shri. S.K. Shinde, Advocate for resp. nos. 1 & 2.

Shri. A.B. Gatne, Advocate for respondent no.3.

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CORAM: P.R. BORA, J.

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Date of reserving the judgment:13/10/2017

Date of pronouncing the judgment: 31/10/2017

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JUDGMENT:

1. The judgment rendered by the District Judge-IV, Ahmednagar, on 3rd of January, 2013, in Trust Application No.1/2011, is challenged in the present appeal by the original opponent Nos. 1 to 9 and 12.

2. The present respondent nos. 1 to 10 had filed the aforesaid Trust Application under Section 72(1) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the `Trust Act', taking exception to the judgment and order passed by the Assistant Charity Commissioner, Ahmednagar, in Scheme Application No.13/2001, decided on 4th of May, 2011.

3. The present appellant no.4, namely, Shirish Haribhau Waghmode and applicant no.10 Balkrishna Chimaji Bhosale had filed the Scheme Application No.13/2001 before the Assistant Charity Commissioner, Ahmednagar Region, Ahmednagar, for framing of a Scheme under Section 50-A(1) of the Bombay Public Trusts Act, 1950, for efficient management of the trust

known as the Conference of Churches of Christ in Western India having PTR No.F.179 (Ahmednagar). Previously, Scheme Application No.21/1997 was filed by the present appellant no.3, namely, Nitish Waghmode and one Dayanand Govindrao Bansode for framing of the scheme for the aforesaid trust. Both the aforesaid applications were placed before the Maha Lok Adalat held on 6th of February, 2011, for amicable settlement, however, since one of the applicant, namely, Dayanand Govindrao Bansode remained absent before the panel of Maha Lok Adalat, compromise could not take place and both the Scheme Applications were remitted back for their disposal in accordance with law before the Court wherein they were pending for adjudication. Subsequently, Scheme Application No.21/1997 was withdrawn by the applicants therein and the hearing took place only in respect of Scheme Application No.13/2001.

4. In Scheme Application No.13/2001, it was the contention of the applicants therein that though the trust was having its own rules and regulations, they were not sufficient for proper administration of the trust. It was

the further contention of the applicants that various change reports were pending before the Assistant Charity Commissioner in respect of change in trustees because of which the trust activities were slowed down. The applicants had, therefore, prayed for framing of an exhaustive scheme for better management of the said trust. The learned Assistant Charity Commissioner vide the order passed on 4th of May, 2011, allowed the said application and settled the scheme annexed to the said order as Annexure A for the management of the trust. The Assistant Charity Commissioner, after framing of the said scheme, appointed the first Board of Trustees for a period of five years i.e. from 4.5.2011 to 3.5.2016.

5. The order passed by the learned Assistant Charity Commissioner was assailed before the District Court at Ahmednagar vide Trust Application No.1/2011 by the present respondent nos. 1 to 10. It was the contention in the said application that when the Scheme for administration of trust was already in existence, there was no necessity of framing any new scheme. It was the

further contention that no opportunity of hearing was given to the members of the Committee of Management (COM) before settling the scheme vide order passed on 4.5.2011. The order passed by the Assistant Charity Commissioner was also criticized on the ground of non application of mind by the learned Assistant Charity Commissioner. According to the said applicants, in view of the provisions under Section 50-A(1) of the Trusts Act, it was mandatory for the learned Assistant Charity Commissioner to give opportunity of hearing to the existing trustees / or the members of the Committee of management before settling the new Scheme. The application before the District Judge was contested by the present appellants. The learned District Judge, vide impugned judgment and order set aside the order passed by the learned Assistant Charity Commissioner on 4.5.2011, and consequently, set aside the Scheme (Annexure A) appended to the order passed by the learned Assistant Charity Commissioner. Aggrieved thereby, the appellants have filed the present appeal.

6. Shri V.D.Hon, learned Senior Counsel appearing

for the appellants, assailed the impugned judgment and order on various grounds. The learned Senior Counsel submitted that due opportunity was given to all concerned by the learned Assistant Charity Commissioner before settling the Scheme. The learned Counsel submitted that since 1983, no audit was conducted of the subject trust and no change reports were filed in respect of the changes occurred in the management of the trust.The learned Senior Counsel further submitted that,one Robert Gaikwad had sold the properties of the trust without following due procedure of law and without obtaining prior permission for the same from the office of the Charity Commissioner. The learned Senior Counsel further submitted that both the parties in Scheme Application Nos.21/1997 and 13/2011 had jointly prayed for keeping the matter before the Maha Lok Adalat scheduled to be held on 6th February, 2011,however, on some technical ground, the compromise could not be recorded. The learned Senior Counsel further submitted that, however, the material on record would reveal that there was consensus amongst the parties for framing of a new exhaustive scheme for proper and better administration of the subject trust. The learned Senior

Counsel submitted that the learned Assistant Charity Commissioner had rightly allowed the scheme application and no interference was required in the scheme so framed by the learned Assistant Charity Commissioner. The learned Senior Counsel submitted that there was no proper application of the trust money and the properties of the trust were also not being properly looked after and, in such circumstances, it was the need of time to frame proper scheme for effective and better administration of the trust and the activities of the trust.

7. The learned Senior Counsel further submitted that the opponents have not explained as to what prejudice is caused to them because of the scheme framed by the Assistant Charity Commissioner. In such circumstances, according to the learned Senior Counsel, there was no reason for causing any interference in the order passed by the Assistant Charity Commissioner and the scheme accordingly framed by him under Section 50A(1) of the Trust Act.

8. Shri A.B.Gatne, the learned Counsel appearing

for respondent no.3 and Shri S.K.Shinde, learned Counsel appearing for respondent nos. 1 and 2, supported the impugned judgment and order. The learned Counsel submitted that without recording a finding that framing of scheme was needed for the administration of the subject trust, the Assistant Charity Commissioner has framed the Scheme. Shri A.B.Gatne, learned Counsel, appearing for respondent no.3, taking me through the constitution of the trust, submitted that an exhaustive scheme was already in existence for management of the trust activities and the trust property. In such circumstances, according to the learned Counsel, framing of new scheme was not at all required.

9. The learned Counsel further submitted that the learned Assistant Charity Commissioner did not give the due opportunity to the existing trustees to put forth their contentions in regard to the request made by the applicants for framing of the scheme for administration of the subject trust. The learned Counsel further submitted that giving of such an opportunity was mandatory in view of the provisions under Section 50A(1) of the Trust Act.

The learned Counsel submitted that on this count alone the order passed by the learned Assistant Charity Commissioner was liable to be set aside.

10. The learned Counsel further submitted that the subject trust was formed in the year 1923 and since then was efficiently carrying out its activities. The learned Counsel further submitted that after the subject trust was registered under the provisions of the Trust Act, after the Trust Act was enacted in the year 1950, till 1996, the subject trust was being governed by the Rules and Regulations framed under the provisions of the Societies Registration Act and was successfully carrying out its activities on the basis of the existing constitution. The learned Counsel further submitted that necessary changes / amendments were incorporated time to time for better management and smooth working of the trust. In such circumstances, according to the learned Counsel there was absolutely no reason for substituting the existing constitution with a new scheme as suggested by the opponents in the Scheme Application No.13/2001.

11. The learned Counsel further submitted that in the Scheme Application there was no such allegation of the applicants that the properties of the trust are being mismanaged by the existing trustees. The learned Counsel further submitted that the allegation made by the applicants that no audit has been conducted of the trust since 1983 is also incorrect. The learned Counsel further submitted that there is also no substance in the allegation raised against Shri Robert Gaikwad that he sold the properties of the trust without obtaining prior permission of the Charity Commissioner.

12. Learned Counsel further submitted that the learned Assistant Charity Commissioner, without verifying the record, merely on assumption that the parties to the Claim Application Nos. 21/1997 and 13/2001, jointly want that the scheme shall be framed, has allowed Scheme Application No.13/2001 and has accepted the scheme submitted by the applicants therein with some modifications. The learned Counsel submitted that the learned Assistant Charity Commissioner failed in appreciating that the existing trustees were not made

party to the aforesaid applications and without hearing the existing trustees, the new scheme could not have been framed under Section 50A(1) of the Trust Act.

13. The learned Counsel further submitted that the learned Assistant Charity Commissioner failed in appreciating that it was an attempt of the applicants of Scheme Application No.13/2001 to get the backdoor entry as the trustees of the subject trust by filing the said Scheme Application. The learned Counsel further submitted that the learned Assistant Charity Commissioner was not having any power to remove the existing trustees before they complete the tenure of their office and to appoint the new trustees in their place.

14. The learned Counsel submitted that for all the aforesaid reasons, the learned District Judge has rightly set aside the order passed by the learned Assistant Charity Commissioner and has also rightly set aside the scheme framed by the Assistant Charity Commissioner appended to the order as Annexure A. The learned Counsel submitted that no interference is warranted in the

impugned judgment and order. The learned Counsel, therefore, prayed for dismissal of the appeal.

15. After having heard the learned Counsel appearing for the parties and on perusal of the impugned judgment and other material on record, a question which falls for my consideration is whether the learned District Judge has committed any error in setting aside the scheme framed by the learned Assistant Charity Commissioner in Scheme Application No.13/2001. Perusal of the impugned judgment reveals that the learned District Judge has set aside the order passed and the scheme framed by the learned Assistant Charity Commissioner mainly on two grounds; first that before framing the Scheme, the Assistant Charity Commissioner did not give due opportunity of hearing to the existing trustees of the subject trust and the other that without recording any reason, necessitating framing of the scheme, the same has been framed by the Assistant Charity Commissioner.

16. Section 50-A of the Trust Act empowers the Charity Commissioner to frame, amalgamate or modify the

Schemes. Sub-clause (1) of it reads thus:

> "50A. Power of Charity Commissioner to frame, amalgamate or modify schemes:
>
> (1) Notwithstanding anything contained in section 50, where the 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 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."

Reading of the aforesaid provision makes it clear that the Charity Commissioner may, suo motu, frame a scheme for administration of the public trusts, if he has reason to believe that in the interest of proper management or administration of the public trusts, a scheme should be settled. Such a scheme can also be settled if two or more persons having interest in the public trust make an application in that regard in the prescribed manner. However, while framing a scheme on such an application being made, the Charity Commissioner is expected to give due opportunity of hearing to the trustees of the said trust and, secondly, the Charity Commissioner must record his satisfaction that it is necessary or expedient to frame a scheme for management or administration of the public trust.

17. While deciding Scheme Application No.13/2001, the learned Assistant Charity Commissioner had, therefore, framed an issue whether it is expedient to frame a scheme and had answered the said issue in affirmative. I deem it appropriate to reproduce hereinbelow the discussion made by the learned Assistant Charity Commissioner in paragraph no.9 of his order in regard to the said point no.2 which reads thus:

> "9. As the opponents have consented for the present scheme application then, the foremost important question which needs to be considered is whether it is expedient and necessary to settle a scheme for the trust in question. It is settled law that, for better administration or management of the trust, there must be a scheme framed. As already discussed above, in the interest of the trust, compromise took place between both the parties hence : I hold that it is expedient and necessary to settle a scheme for the trust for its better administration or management. Accordingly, this point is answered in affirmative. "

From the discussion made as above by the learned

Assistant Charity Commissioner, it is quite clear that the Assistant Charity Commissioner did not independently apply his mind to reach to the conclusion whether it was really necessary to frame a scheme. It is discernible that the conclusion so recorded by the Assistant Charity Commissioner is based on an assumption that there was a compromise between the applicants of the said application and the opponents therein for framing of the scheme.

18. Such an approach adopted by the Assistant Charity Commissioner was wholly erroneous. What is required under the relevant statute is the objective satisfaction of the Charity Commissioner that it is necessary or expedient to frame a scheme for management or administration of a public trust. The parties to the application may agree or disagree on the issue of framing a scheme and there may be several reasons for such agreement or disagreement but the Assistant Charity Commissioner was under an obligation to independently record his reasons for reaching to the conclusion that it was necessary to frame a scheme for management or administration of the subject public trust.

The learned Assistant Charity Commissioner has not recorded any such reasons. This was one of the reason for the learned District Judge to set aside the order passed by the learned Assistant Charity Commissioner in Scheme Application No.13/2001. I do not see any infirmity in recording such conclusion by the learned District Judge.

19. As noted hereinabove, another ground on which the order passed by the learned Assistant Charity Commissioner has been set aside by the learned District Judge is that the Assistant Charity Commissioner did not give due opportunity of hearing to the existing trustees of the subject trust before framing the new scheme. The material on record reveals that present applicant nos. 2 to 10 are the members of the Committee of Management of the subject trust. In Scheme Application No.13/2001, admittedly, most of them were not made party and, obviously therefore, they were not heard by the learned Assistant Charity Commissioner before framing the scheme. In view of the provision under Section 50A(1) of the trust Act, it was incumbent on the part of the learned Assistant Charity Commissioner to give notice to the

existing trustees before framing any such scheme and due opportunity must have been given to the said trustees to make their submissions on the request made by the applicants to frame a scheme for administration of the subject trust.

20. As has been held by this Court in the case of Taher Alimohommad Poonawala Vs. Quizar Shaikh Nomanbhoy and others (1995 (1) Bom.C.R. 1984), issuance of notice to the existing trustees of the trust before framing of the scheme and providing them an opportunity of hearing is not an empty formality. As further held in the aforesaid judgment, such an opportunity must be reasonable, effective and real. In view of the fact that such an opportunity was not given to the majority of the existing trustees, the learned District Judge has held the order passed by the learned Assistant Charity Commissioner to be unsustainable. I see no reason to disagree with the conclusion so recorded by the learned District Judge.

21. Similar points as are involved in the present

appeal were raised in the case of Vasantrao Vishwanathrao Mane and others Vs. Apparao Baibanna Sidore and others (2008(2) Bom.C.R. 662, and while deciding the said controversy, this Court (V.R.Kingaonkar, J.) has observed thus:

> "28. There cannot be duality of opinion that the Charity Commissioner may exercise power available under Section 50A in appropriate case where, he is of opinion that in the interest of proper management or administration of a public trust, such scheme should be settled. He may act suo motu or may act upon application filed by two or more persons, who have interest in the public trust. A plain reading of Section 50A (1) reveals that after giving the trustees due opportunity to be heard, the Charity Commissioner must be satisfied that it is necessary or expedient to frame a scheme for the management or administration of such trust. Thus, the criteria, which is required to be complied with, before a new scheme is framed, maybe stated thus :
>
> > (a) That, there must be some material available, which if considered objectively, would furnish the Charity Commissioner to reach conclusion that there exists reason to believe that in the interest of the proper management or administration of a public trust, a scheme should be settled;
> >
> > (b) That, the Charity Commissioner is required to give the trustees of such trust due opportunity to be heard;
> >
> > (c) That, he ought to record his satisfaction, on strength of material available before him, that it is necessary or expedient to frame a scheme for the proper management or administration of such a trust; and

(d) That, his opinion regarding necessity of the scheme ought to be supported by written reasons.

29. Obviously, the discretionary power conferred under the B.P.T. Act is required to be exercised in a special contingency. The words "necessary" and "expedient" would mean existence of a situation occasioned, which makes it necessary or indispensable to frame a new scheme, if already there exists a scheme, to ensure proper administration of such a trust. In "Dr.R.P.Kapoor vs. Charity Commissioner" (AIR 1989 SC 274), the expression "expedient" and "necessary" is succinctly made clear. It is held that recourse cannot be had to Section 50A for the mere purpose of filling any of the vacancies of trustees. In such a case, resort can be had to Section 41D and 47 rather than Section 50A. Therefore, a new scheme cannot be framed only on the ground that the trustees were not managing the trust properly. This is what appears to have occurred in the instant case. The members of the Managing Committee of the trust were removed. Therefore, the Assistant Charity Commissioner decided to frame the new scheme without ascribing adequate reasons. It is difficult to see as to how he formed opinion that "it was expedient and necessary" to frame a new scheme for better management of the trust in question. The 1st Ad-hoc Additional District Judge also did not properly appreciate the said requirements of law."

22. The order passed by the learned Assistant Charity Commissioner in Scheme Application No.13/2001, in no case, would sustain in the light of the observations made and the conclusions recorded by this Court in the aforesaid judgment. The order passed by the learned Assistant Charity Commissioner, nowhere, reveal as to what was the material available and was considered by it to reach to the conclusion that there exists reasons to

believe that in the interest of proper management or administration of the subject trust, it was necessary to settle the scheme. On going through the order passed by the learned Assistant Charity Commissioner one can hardly see any specific reason for framing of a new scheme.

23. As noted earlier, the Assistant Charity Commissioner has vaguely observed in paragraph no.9 of his order that since the compromise had arrived at between the parties, it is expedient and necessary to settle the scheme for its better administration or management. The order passed by the learned Assistant Charity Commissioner does not show which of the present needs of the trust are not taken care of by the existing scheme and which were the inadequacies that did not match with the present needs of the trust. No such particulars are given by the Assistant Charity Commissioner in his order. There is no discussion of reasons to justify the framing of a new scheme. The mere fact that the parties to the said Scheme Application had arrived at compromise, cannot be regarded as substantial reason to prepare the new scheme. Moreover, as has been pointed out by the

learned Counsel Shri A.B.Gatne, it also cannot be certainly said that any compromise was arrived at between the parties. The material on record shows that some of the signatoriies to the alleged compromise have complained that their signatures were forged and they had not signed the said compromise. In the aforesaid circumstances, the learned District Judge was fully justified in setting aside the scheme framed by the learned Assistant Charity Commissioner.

24. The order passed by the learned Assistant Charity Commissioner was liable to be set aside for one more reason that he exceeded his powers in appointing completely new managing committee as per his will. As has been held by this Court in the case of Vasantrao Vishwanathrao Mane and others Vs. Apparao Baibanna Sidore and others (cited supra), if the existing scheme does not include a clause empowering the appointment of the trustees by the Charity Commissioner, no such appointments can be made by the Assistant Charity Commissioner on his own. As has been further observed by this Court in the said judgment, the Assistant Charity

Commissioner cannot accelerate, assist and encourage the denting process by depriving the members of the trust from their right to elect their own panel of managing committee and make appointment of a completely new managing committee as per his sweet will. The Assistant Charity Commissioner cannot usurp powers which are not expressly available under Section 50-A of the Trust Act. It was rightly submitted by Shri Gatne, learned Counsel for the respondents that the Assistant Charity Commissioner illegally removed the existing trustees by allowing the Scheme Application No.13/2001 and consequently gave backdoor entry to the applicants of the said application to become the members of the committee of management.

25. It is not in dispute that there exists Rules and Regulations of the Conference of Churches of Christ in Western India i.e. the subject trust. No doubt, the said Rules and Regulations are framed under Section 12 of the Societies Registration Act. However, it is also a matter of record that the said Rules continued to govern the management of the subject trust even after the Trust Act

was enacted in the year 1950 and there was no complaint at least till the year 1996 that the existing Rules and Regulations are insufficient and inadequate to safeguard the interests of the subject trust. It was also not the case of the applicants that the interests of the trust cannot be safeguarded by the existing Rules and Regulations even by making variations, alterations and amendment in the same and hence the existing rules and regulations were liable to be substituted with a entire new scheme.

26. Further, as was submitted by Shri Gatne, learned Counsel appearing for the contesting the respondents, no specific instances were brought on record to show that the existing trustees i.e. the members of the Committee of Management neglected in performing their duties or committed any malfeasance or misfeasance or breach of the trust in respect of the trust. No such case was also made out by the applicants that the existing Rules and Regulations were inadequate for proper management of the subject trust. Non filing of Change Reports or pendency of Change Reports or not conducting the Audit may provide a cause of action for an action

under the relevant provision of the Trust Act but the same cannot be a ground for a prayer to settle a New Scheme. In the circumstances, as held by this Court in the case of Mallikarjun Basvanappa Masute & another vs. Dattatraya Krushnath Wadane and others (2005 (4) Bom.C.R. 806), there was no reason for the Assistant Charity Commissioner to frame an entire new Scheme.

27. This Court, in the aforesaid matter, has observed that the powers under Section 50-A of the Trust Act ordinarily cannot be exercised to frame a new scheme and substitute the same for the existing one. Such an exercise would be in a very exceptional circumstances and only upon arriving at a conclusion that the existing scheme proves to be inadequate to safeguard the interests of the public trust and cannot operate in the interest of trust even by making variations, alterations and amendments therein. As further held by this Court in the said judgment, a finding that settlement of a scheme for proper management of the public trust is necessary or expedient without finding inadequacies in the existing scheme would be illogical and, therefore, unsustainable.

28. In the foregoing circumstances and for the reasons discussed hereinabove, I do not see any reason for causing any interference in the order passed by the learned District Judge. I reiterate that since the Assistant Charity Commissioner has not recorded any reason for arriving at conclusion that it is necessary or expedient to settle a scheme for proper management of the trust and as because no opportunity of hearing was given to the existing trustees before settling the scheme, the order passed by the learned Assistant Charity Commissioner was liable to be set aside and has been rightly set aside by the District Judge.

29. It has to be further stated that while setting aside the order passed by the Assistant Charity Commissioner, the learned District Judge has sufficiently safeguarded the interest of the trust and has kept the legal options open of making needed amendments in the existing constitution of the trust by issuing necessary further directions. The learned District Judge has issued the directions to the present members of the managing

committee to call the meeting and collect views of the trustees about the constitution adopted under the provisions of Section 12 of the Societies Registration Act, 1816, as afresh and to take the decision by passing a resolution in that regard whether there is any need to submit an application for replacing the constitution by a new scheme to meet the new challenges of the subject trust.

The First Appeal (No.2219/2016) being devoid of substance deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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