

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 600 OF 2016

1. Shri Chandrakant s/o Jaydevshankar
Thakar (deleted)
2. Shri Jagjeet Singh Gurusharan Singh
Aged about 51 years, Occ. Civil Engineer,
R/o. 5AF, Green Park Colony,
Tagore Road, Civil Lines, Nagpur-1
3. Shri Deepak Arora,
Aged about 50 years, Occ. Engineer,
R/o. 6AG, Green Park Colony,
Tagore Road, Civil Lines, Nagpur-1
4. Shri Amitabh Motiram Pawde,
Aged about 50 years, Occ. Engineer,
R/o. 149, Plot No. 15/1,
PR. Sathe Road, Dhantoli, Nagpur-12
5. Shri Ashok Mohta,
Aged about 60 years, Occ. Business,
R/o. Mohta Nikunj,
Plot No. 135, Ramdaspeth, Nagpur
6. Shri Chandrakant Ragit,
Aged about Major, Occ. Service,
R/o. Plot No. 35, Sita Nagar,
Wardha Road, Nagpur
7. Abhishek Mohta,
Aged about Major, Occ. Business,
R/o. Mohta Nikunj,
Plot No. 135, Ramdaspeth,
Nagpur

8. Madan Tiwari,
Aged Major, Occ. Business,
R/o. 8, Dhobi Nagar Housing Society,
Narendra Nagar, Nagpur-15
 9. Chandrakant Mantri
Aged Major, Occ. Business,
R/o. 203, Gulmohar Apartment,
Tilak Nagar, Amravati Road, Nagpur
 10. Mrs. Archana Chaudhary,
Aged Major, Occ. Retired,
R/o. B-002, Shree Apartment,
New Urvila Colony,
Kotwal Nagar, Nagpur
 11. Capt. K.M. Nandyal,
Aged Major, Occ. Retired,
R/o. 2/4, 82 HIG Colony,
Trimurti Nagar, Nagpur
 12. Shri Narendra s/o Kantilal Jha,
Aged about 61 years, Occ. Advocate,
R/o. D-103, Pritam Complex,
Near Harihar Mandir,
Bhandara Road, Nagpur-8
- ...APPELLANTS**

Versus

1. Smt. Alka Sahani,
(Original applicant No. 1)
Aged Major, Occ. Nil,
R/o. 22, Sagar Apartment,
Civil Lines, Nagpur, Dist. Nagpur
2. Dr. R.H. Limse,
(Original applicant No. 2)
Aged about Major,
R/o. 108, Lokmanya Nagar,
Hingna Road, Nagpur

3. Smt. Anubhuti Singh
(Original applicant No. 3)
Aged Major,
R/o. Flat No. 404, Amrut Monar,
Opp. Axix Bank, Civil Lines, Nagpur
4. Shri Amol Hansraj Khante
(Original applicant No. 4)
Aged Major,
R/o. 7, East High Court Road,
Ramdaspath, Nagpur
5. Shri R.H. Bhangu
(Original applicant No. 5)
Aged Major,
R/o. A-3/21, Forest Housing Society,
Opp. Katol Road, Nagpur
6. Shri Sanjay Anwane
(Original applicant No. 6)
Aged Major,
R/o. Vidisha Apartment,
Shivaji Complex, Near Mankapur,
Nagpur
7. Dr. Pramila Vyavahare
(Original applicant No. 7)
Aged Major,
R/o. Siddi Vinayak Narsing Home,
Jamburn Road, Buldhana,
Dist. Buldhana
8. Shri Ashwin Krushnarao Ghatate,
(Original Non-applicant No. 1)
Aged Major, Occ. Business,
R/o. Goku, V.I.P. Road,
Civil Lines, Nagpur
9. R.S. Pandit,
(Original Non-applicant No. 2)
Deceased

10. Swaraj Goel,
(Original Non-applicant No. 3)
Aged about Major, Occ. Not Known,
R/o. Winshaw Tower, Raj Nagar,
Nagpur
11. Indra Tripathi,
(Original Non-applicant No. 4)
Aged about Major, Occ. Not known,
R/o. Tilak Marg, Near Market Road,
New Delhi
12. Shailesh Sudhir Joglekar,
Aged about 49 years, Occ. Business,
R/o. 503, Govind Apartment,
Behind Shankar Nagar Post Office,
Shankar Nagar, Nagpur-10.
13. Sanjay Sudhir Joshi,
Aged about 49 years, Occ. Business,
R/o. Plot No. 3, Tilak Nagar, Nagpur-10.
14. Shri Satish Vasant Salpekar,
Aged about 62 years, Occ. Business,
R/o. A-2, Shri Gourinath, 86,
Shivaji Nagar, Nagpur-10
15. Col. Ash Bahadur Gurung
Aged about 68 years, Occ. Retired,
R/o. 279, Abhyankar Nagar,
Nagpur
16. Shri Prafulla Kumar Kale,
Aged about 63 years, Occ. Business,
R/o. 2, Vallabh Co-operative Society,
GM Chitnis Marg, Civil Lines, Nagpur
17. Shri Avinash Ganpatra Shegaonkar,
Aged about Major, Occ. Service,
R/o. Near Mehadia Square,
Dhantoli, Nagpur

18. Abhiram Padmakar Deshmukh,
Aged about Major, Occ. Business,
R/o. 145, Farmland,
Ramdaspath, Nagpur
19. Mrs. Malini Mangesh Joshi,
Aged about 46 years, Occ. Counselling,
R/o. Janki Niwas, Mama Road,
Dharampath, Nagpur-10
20. Dr. Ravindra Prabhakar Bhoyar,
Aged about Major, Occ. Not known,
R/o. R-113, Reshimbag,
Near Sarveshwar Hanuman Mandir,
Nagpur-9
21. Shri Rajendra R. Deshmukh,
Aged about Major, Occ. Not known,
R/o. Plot No. 18, MHADA Colony,
Narendra Nagar, Nagpur
22. Shri Nirbhay Shankarrao Bhandarkar,
Aged about Major, Occ. Not known,
R/o. 65/A, Navnirman Society,
Opposite Radhe Mangalam Hall,
Ring Road, Pratapnagar, Nagpur-22
23. Shri Rajendra Manohar Dandekar,
Aged about Major, Occ. Not known,
R/o. 285, Near Doctors Colony,
Chatrapati Nagar, Wardha Road,
Nagpur-15
24. Mrs. Shalini Sanjay Arora,
Aged about 49 years, Occ. Housewife,
R/o. 3-AG, Green Park Colony,
Tagore Road, Civil Lines,
Nagpur

25. Shri Rohit Prakash Somalwar,
Aged about Major, Occ. Not known,
R/o. Plot No. 44, Rajiv Nagar,
Behind Hotel Shivani,
Wardha Road, Nagpur
26. Shri Tarun Devsi Patel,
Aged Major, Occ. Business,
R/o. V.V. Traders, Near Sardar
Patel Square, Ghat Road, Nagpur
27. Shri Harshal Uddhav Aarvikar,
Aged about 44 years, Occ. Business,
R/o. 101, Sanket Apartment,
Dharampeth, Nagpur
28. Joint Charity Commissioner, Nagpur
Civil Lines, Nagpur
29. Joint Charity Commissioner, Mumbai
Near Worli Naka, Dr. Anni Bezan Road,
Mumbai

...RESPONDENTS

Shri R.L. Khapre, Senior Advocate assisted by
Shri M.M. Dhandekar, Advocate for the appellants.
Shri C.S. Kaptan, Senior Advocate assisted by
Shri U.A. Gosavi, Advocate for respondent Nos. 8 & 26.
Shri A.S. Jaiswal, Senior Advocate assisted by
Mrs. Radhika Bajaj, Advocate for respondent No. 18
Shri N.A. Gaikwad, Advocate for respondent No. 12.
Shri V.V. Bhangde, Advcoate for respondent No. 14.
Shri Anand Parchure, Advocate for respondent No. 13.
Shri S.Y. Deopujari, Advocate for respondent Nos. 19 & 27.
Shri A.P. Thakre, Advocate for respondent Nos. 20 to 23.
Shri S.P. Bhandarkar, Advocate for respondent No. 24.
Ms. T. Khan, A.G.P. for respondent Nos. 28 & 29.
None appeared for respondents Nos. 1 to 7, 9 to 11, 15 to 17
and 25, though duly served.

**CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, J.**

ARGUMENTS WERE HEARD ON : FEBRUARY 23, 2021

JUDGMENT IS PRONOUNCED ON : APRIL 27, 2021

JUDGMENT (Per Pushpa V. Ganediwala, J.)

This appeal is directed against the judgment and order dated 19/05/2016 passed by the Joint Charity Commissioner, Mumbai, in Application No. 74/2015 which was filed under Section 47 and Section 41-A of the Bombay Public Trust Act, 1950 (Now The Maharashtra Public Trusts Act) whereby the learned Joint Charity Commissioner allowed the application and appointed 10 (Ten) Trustees-Administrators and 9 (Nine) Co-opted Administrators of the Trust by the name Vishwa Punarnirman Sangha, Nagpur.

By an Order dated 19/10/2016, the learned Single Judge while hearing this appeal, relied on the Judgment in the Case of Vanmala Manoharrao Kamdi v. Deputy Charity Commissioner, 2012 SCC OnLine Bom 688 : (2012) 3 Mah LJ 594 which held that orders/directions under Section 41-A of the Act of 1950 are administrative in nature, hence directed to

place this matter before the Division Bench for appropriate orders on this point. Accordingly, this appeal came to be placed before the Division Bench.

The facts leading to filing of this appeal may be stated as under :

2. Vishwa Punarnirman Sangha, Nagpur (World-Reconstruction Society) is a Trust (hereinafter referred to as Sangha or Trust), registered under the provisions of the Societies Registration Act, 1860 and the Bombay Public Trusts Act (now Maharashtra Public Trusts Act)(for short “MPT Act”) vide Registration No. E-1344(N). The aims and objects of the Sangha is stated in its MEMORANDAM OF ASSOCIATION, and the administration of the Sangha is governed by its ARTICLES OF ASSOCIATION. In furtherance of its aims and objects, the Sangha runs a School by the name Bharti Krishna Vidya Vihar, Telankhedi, Nagpur, having a strength of around 2500 students and around 150 staff members.

3. As per Clause 11 of the Memorandum of Association, the administration of the Sangha is being carried

on by the Administrative Body constituted in accordance with the Articles of Association. It shall consists of (1) TRUSTEES-Administrators and (2) Co-opted Administrators, ordinarily totaling 19 persons (representing both sexes) as laid down in the Articles of Association.

4. As per Clause 12 of the Memorandum of Association, the supreme control, governance, superintendence, administration, management, investment, use, application, disbursement or other disposal of any property or funds of the Sangha shall -without prejudice to the trust and the rights of the Trustees-depend on, and be decided at the discretion of and be vested in the Administrative Body of the Sangha duly constituted under its Articles of Association.

5. Applicant No. 1 Smt. Alka Sahani in the application under Section 47 of the MPT Act before the learned Joint Charity Commissioner claimed to be the recorded Secretary of the Sangha and the other applicants claimed to be the persons interested in the Sangha. The non-applicant Nos. 1 to 4 in the said application are the recorded trustees of the Sangha.

6. It was the grievance of the applicants that as all the change reports which were filed before the Assistant Charity Commissioner came to be rejected, some outsiders were interfering into the administration of the Trust without having any locus. It was submitted that the Trust owns a huge movable and immovable properties and cash in lacs of rupees. To safeguard the said properties of the Trust and to streamline its administration, it is necessary to appoint the trustees in accordance with its bye-laws at the earliest. The applicants showed their inclination to be appointed as trustees and accordingly placed on record their bio-data and also prayed for the direction under Section 41-A of the MPT Act for the proper administration of the Sangha.

7. The non-applicant No. 1 in his reply denied all the adverse allegations and submitted that the change reports were rejected for want of compliance and the appeals against the said orders are pending. The non-applicant No. 1 questioned the maintainability of the application under Section 47 of the MPT Act as the Sangha has its own Constitution which provides

for its organization and the manner in which the administration of the Sangha shall be carried on. It was submitted that as per the Constitution, the election of the trustees of the Sangha was held and the necessary Change Reports were filed on 27/12/2012. The Change Reports were also filed as and when there was a change occurred due to death or resignation of the recorded trustees. It was submitted that there is a regular body for the administration of the Sangha and, therefore, it is not necessary to appoint any trustee as prayed in the application. The non-applicant No. 1 also alleged certain financial irregularities committed by applicant No. 1 Smt. Alka Sahani.

8. The hearing of this proceeding came to transferred to the file of Joint Charity Commissioner, Mumbai from the file of Joint Charity Commissioner, Nagpur. In the said proceeding, two applications under Section 73(A) of the MPT Act vide Exh. 23 and 24 came to be filed by the interveners (appellants herein) to implead them as party respondents. The learned Joint Charity Commissioner kept both these applications

pending to be decided along with Exh. 1. However, the same came to be disposed of, being rendered infructuous as Exh. 1 came to be decided finally.

9. The learned Joint Charity Commissioner heard the learned counsel appearing on behalf of both the sides and after considering the record and the Inspection Report (Exh.18) reached the conclusion that as of date, only three recorded Trustees are surviving, which included applicant No.1 and non-applicant Nos.1 and 4, and all the Change Reports filed by the persons claiming to be the trustees of the said Sangha had been rejected, and therefore, it is a fit case where the Joint Charity Commissioner could exercise his jurisdiction to appoint Trustees to bring the legal Administrative Body for governing the affairs of the Trust. The learned Joint Charity Commissioner also held that as per Clause 72 of Chapter XVII, the quorum for Administrative meeting is 9 (nine), and in the present case, the surviving Trustees did not form the requisite quorum. The learned Joint Charity Commissioner observed that once the strength of the legal Trustees comes down the figure of minimum number of Trustees, as laid down in the

Constitution, the Authority of the Joint Charity Commissioner assumes jurisdiction under Section 47 of the MPT Act to appoint Trustees. It is further observed that the administration of the said Sangha was not being carried out as per the provisions of the Constitution of the Sangha. The learned Joint Charity Commissioner placed reliance on the judgment of this Court delivered in the case of Nawalchand Champalal Chaudhari & Anr. Vs. Joint Charity Commissioner, Nagpur & Anr., reported in 2007(1) ALL MR 71. The learned Joint Charity Commissioner appointed 10 (ten) Trustees/Administrators, which included applicant No.1 Smt. Alka Sahani and respondent No.1 Ashwin Ghatate, the recorded trustees. The Joint Charity Commissioner appointed Trustee Administrators as under :

- 1) Smt. Alka Sahani
- 2) Shri Ashwin Krishnarao Ghatate
- 3) Dr. Mrs. Pratima Vyawahare
- 4) Shri Shailesh Sudhir Joglekar
- 5) Shri Sanjay Suresh Joshi
- 6) Shri Satish Vasant Salpekar
- 7) Col. Ash Bahadur Gurung
- 8) Shri Prafulla (kumar) Kale
- 9) Shri Avinash Ganpatra Shegaonkar
- 10) Shri Abhiram Deshmukh

Following persons were appointed as Co-opted Administrators :

- 1) Mrs. Malini Mangesh Joshi
- 2) Dr. Ravindra Prabhakar Bhoyar
- 3) Shri Rajendra R. Deshmukh
- 4) Shri Nirbhay Shankarrao Bhandarkar
- 5) Shri Rajendra Manohar Dandekar
- 6) Mrs. Shalini Sanjay Arora
- 7) Shri Rohit Prakash Somalwar
- 8) Shri Tarun Devsi Patel
- 9) Shri Harshal Uddhav Aarvikar

10. This judgment and order of the learned Charity Commissioner is impugned in this appeal.

11. It is to be noted that during the pendency of this appeal, the learned Single Judge vide Order dated 20/06/2016 prohibited the trustees-administrators and co-opted administrators appointed in the impugned judgment to take any decision having financial implications until further order. It is directed that if certain financial exigency to meet day to day affairs and expenses arises, the Principal may disburse the amount for that purpose and maintain the record to that effect.

12. During the pendency of this appeal the name of the appellant No. 1 was deleted by an order dated 05/12/2016 and the appeal against respondent Nos. 9 and 10 abated since they are reported to be dead.

13. Shri R.L. Khapre, learned Senior Counsel along with Advocate Shri. M.M. Dhandekar appearing for the appellants, at the outset, referred to Section 47 of the MPT Act and submitted that there was no occasion before the learned Joint Charity Commissioner to pass an order under Section 47 of the MPT Act. Learned Senior Counsel referred to various provisions in the Articles of Association of the Sangha alongside the provisions of the MPT Act and submitted that the present case does not fall in any of the categories as set out in Section 47 of the MPT Act. Learned Senior Counsel further brought to the notice of this Court, the order of learned Deputy Charity Commissioner dated 30/08/2007 in Change Report No. 1397/2005 and submitted that as per the operative part of this Order the Committee of three recorded trustees had been constituted and new members have been enrolled with

majority decision as per the rules and regulations of the Sangha. As per the directions, elections were held and the Administrative Body of 19 trustees as provided under Clause 49 of the Articles of Associations of the Sangha have been constituted. The trustees available were competent to fill in the vacancies.

14. Learned Senior Counsel further submitted that the aforesaid order of the learned Deputy Charity Commissioner in Change Report No. 1397/2005 came to be set aside to the extent of clause 3 to 9 of the operative part in the Appeal No. 34/2007 vide order dated 07/02/2008 by the learned Joint Charity Commissioner. However, the deletion of the names of Dr. Karansingh Harisingh, Smt. Manjula Trivedi and Rajabhau Kathote from Schedule-I have been confirmed.

15. This order of the learned Joint Charity Commissioner was challenged in RAC No. 04/2008 before the District Court, Nagpur. The point for consideration before the learned District Judge was 'whether Deputy Charity Commissioner has jurisdiction to issue directions in Change

Report proceedings under Section 22 of the MPT Act. The learned District Judge answered it in the affirmative and quashed and set aside the judgment and order of the learned Joint Charity Commissioner and restored the judgment and order of the learned Deputy Charity Commissioner.

16. It is further submitted that as per the directions of the learned Deputy Charity Commissioner in the order dated 30/08/2007, a meeting was held on 10/02/2009 and the committee of three members consisting of Shri Marwah, Shri Goel and Shri Ghatate was constituted. The further meeting was held on 17/02/2009 and the members were enrolled. As directed, the Administrative Body was constituted through the process of elections. Accordingly Change Report came to be submitted by the reported Secretary Shri Ashwin Ghatate.

17. Learned Senior Counsel Shri Khapre pointed out the relevant para of the impugned judgment and submitted that the observation of the learned Joint Charity Commissioner in Appeal No. 34/2007 as *defacto* president and *defacto*

trustee, relied on in the impugned judgement, has no force in law as the same came to be quashed and set aside by the learned District Court.

18. Learned Senior Counsel submitted that even though the change reports were rejected, the fact remains that the appellants are the trustees and their status as trustees cannot be taken away. The enquiry under Section 47 of the MPT Act results in a decree which decides the rights of the parties. The question before the Joint Charity Commissioner was whether the administration of the Sangha has rendered unworkable. It is submitted that there are sufficient number of General Body Members and administrator trustees and the same were appointed after holding elections.

19. The learned Senior Counsel has the grievance that the learned Joint Charity Commissioner in the impugned proceedings committed serious error in not allowing the appellants to lead evidence. The applications which were filed by the appellants from time to time were erroneously not

decided and deferred to be decided along with Exh. No. 1. Ultimately Exh. No. 1 was allowed and learned Joint Charity Commissioner disposed of the pending applications being rendered infructuous. The learned Senior Counsel also pointed out an order dated 11/03/2016 below Exh. 52 wherein the authority to manage the affairs of the Sangh including to operate bank accounts was conferred on Smt. Alka Sahani and Shri Ashwin Ghatate , which resulted in dislodging the rights of the other trustees. Learned Senior Counsel also pointed out the order below Exh. 57 whereby the learned Joint Charity Commissioner erroneously stayed the meeting called on 20/02/2016 for election of administrators until the interim order passed below the application Exh. 52.

20. Shri Khapre, learned Senior Counsel further raised objection on the issuance of public notice calling objections within 10 days. According to him, the public notice dated 05/04/2016 could not have been said to be a notice inviting applications from interested persons. In response, 153 applications were received showing inclination to become

trustees. Out of these applications the trustees and co-opted administrators came to be selected in gross violation of the provisions of Articles of Association. Learned Senior Counsel referred to provisions with regard to the Constitution of Administrative Body and submitted that there is no quorum provided as per Clause 79 and, therefore, the learned Joint Charity Commissioner returned an erroneous finding that the Sangha became unworkable. Learned Senior Counsel has a grievance that while selecting the members of the Administrative Body their credentials have not been verified. None of them claim to be admitted as members on probation. None of them say that they have completed probation. Entire process adopted by the learned Joint Charity Commissioner is against the bye-laws of the Sangha. It was also submitted that the learned Joint Charity Commissioner did not conduct the “enquiry” as contemplated by Rule 7 of the Maharashtra Public Trusts Rules. In conclusion, Shri Khapre, learned Senior Counsel submitted that the right to form an Association includes the right to not be associated with somebody.

21. In support of his arguments, the Senior Counsel relied on the following judgments :

(i) The Single Bench of this Court in the case of **Dr. R.P Kapoor & ors. Vs. The Charity Commissioner, M.S. & ors.** reported in **1988 SCC Online Bom 279** observed that “*the appointment of the new trustees has to be made objectively by finding the best suited public spirited persons and not just choose one or more of the applicants/complainants. Record clearly shows that the Charity Commissioner did not take any steps in this regard. He has simply referred to the brief bio-data of the applicants and appointed four of them as trustees. This is certainly not a satisfactory manner in which the trustees should be appointed.*”

(ii) The Single Bench of this Court in the case of **Nawalchand Champalal Chaudhari & anr. Vs. Joint Charity Commissioner, Nagpur & anr.** reported in **2007 (01) ALL MR 71,** observed that “-----the two rival groups were trying to gain the power in the administration of Selu Shikshan Mandal. The controversy, therefore, could not have been resolved under section 41-A by the Assistant Charity Commissioner.”

(iii) The judgment of the Single Bench of this Court in the case of Ramkrushna-Appa s/o Vishweshwar-Appa & ors. Vs. Krushna s/o Udaybhanji Ingale & ors. reported in 2005 (3) Mh.L.J. 729, the relevant paragraph is reproduced below :

37. "Insofar as the third question is concerned, from the record, it is clear that before the First Managing Committee was appointed by the Assistant Charity Commissioner, no bio-data or consent of the proposed Trustees was obtained. Though Shri Khapre, the learned counsel for the appellants, has tried to urge that before the First Managing Committee was appointed, there were deliberation and discussions about the names of the proposed Trustees, there is nothing on record to substantiate the same. On the contrary, it is clear from the operative part of the order passed by the learned Assistant Charity Commissioner that after appointment of the First Managing Committee, he has called for the bio-datas and consents of the persons who have been proposed to be appointed as members of the First Managing Committee. It is needless to state that while appointing the members of the First Managing Committee, the paramount consideration that should weigh with the learned Assistant Charity Commissioner, is safeguarding the interest of the trust. Fort that, it was necessary to appoint fit persons with honesty and integrity. For that, it is necessary for the learned Charity Commissioner to have first

obtained the bio-datas and consents and after examining the credentials of such persons, to have appointed the members of the First Managing Committee. However, I find that the course adopted by the learned Assistant Charity Commissioner in first appointing the members of the Committee and thereafter calling for their bio-datas and consents, is totally erroneous. In that view of the matter the third question as to whether the procedure adopted by the learned Assistant Charity Commissioner with respect to the appointment of the First Managing Committee, is in accordance with law, will have to be answered in the negative.”

(iv) The judgment of the Single Bench of this Court in the case of Avinash Ganpatrao Shegaonkar & ors. Vs. Jayawant @ Babasaheb s/o Vishwanath Uttarwar & ors. reported in 2010 (4) Mh.L.J. 253, the relevant paragraph is reproduced below :

9. “..... 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.”

22. Respondent Nos. 20 to 24 supported the appellants even though they have been appointed as co-opted administrators in the impugned judgment. It is their contention that the other persons have not been appointed by the learned Joint Charity Commissioner as per the Constitution of the Sangha. Shri A.P. Thakare, learned counsel appearing on behalf of respondent Nos. 20 to 23 adopted the arguments of Shri Khapre learned Senior Counsel.

23. Shri S.P. Bhandarkar, learned counsel appearing on behalf of respondent No. 24, while supporting the appellants referred to Section 47 of the MPT Act, submitted that it is not a general provision for the appointment of the trustees and the

appointments must be made in specific circumstances. Learned Counsel construed the provision in a singular sense, as and when the vacancy arises and it could not have been misconstrued as to appoint a complete Administrative Body. In the application under Section 47 of the MPT Act, there is absolutely nothing as to how the circumstances as mentioned under Section 47 of the MPT Act are present to invoke Section 47 of the MPT Act. It is further submitted that the learned Joint Charity Commissioner ought to have examined the history and the credentials of the members while making appointments. In support of learned Senior Counsel relied on the judgments of Single Bench of this Court in the case of Pankaj Yashwant Chaudhari & ors. Vs. Joint Charity Commissioner, Nashik reported in 2014 (4) Mh.L.J., wherein it is held that upliftment and well being of the trust is paramount consideration while making appointment of trustees and Joint Charity Commissioner is expected to take care and to safeguard interest of the trust. The relevant paras in the said judgment are reproduced below :

20. Section 47(2) contemplate a hearing to be given to the parties and making such enquiry as the Jt.C.C. may deem fit, then he may appoint

any person as trustee. Sub-clause (3) of section 47 contemplate precautionary measures to be taken for such exercise. Clause (a) deals with wishes of the authors of that trust; clause (b) speaks of wishes of the persons, if any, empowered to appoint new trust; clause (c) contemplate to the question, whether appointment will promote or impede the execution of the trust; clause (d), to the interest of the public or section of public, who have interest in the trust; clause (e), to the custom and usage of the trust.

21. The Jt.C.C. did not advert and ponder upon as to what made him to ensure that appointment of new trustees was to promote execution of the trust or that, it was in the interest of the public or section of public, who have interest in the trust. The persons to whom he has nominated as trustees, brazenly indicate that they are resident of Dhule, away from Chimthane and they have no social linkage to the trust or any sentimental attachment or any past activity to promote the trust. Merely branding by Arun to be a social worker would not qualify him to gag rights of others in militant manner.

25. The Jt.C.C. basically did not bother to associate himself in tune with compliance of section 47. He did not make requisite enquiry, nor heard the parties. It was alleged Shri Sandeep Dattatraya Mahale resides at Dhule and a Municipal Corporator, he has no direct or indirect association with trust. This has been ignored from consideration. He wrongly interpreted intervention application, to be not maintainable and then went on appointing two members from the said group as a forensic bonanza. He did not assign any reasons for appointment, even as President or Vice President or Secretary or Executive members. (Respective

respondents in the appeal).

26. Taking stock of events, the order under challenge brazenly demonstrate no efforts whatsoever were made by the learned Jt.C.C. to identify suitable persons for appointment as trustees to avoid a frozen situation and stale-mate.

The judgments i.e. 1) Shankarrao Sakharamji Supare Vs. B.J. Loya, Joint Charity Commissioner & ors. reported in 1997 (1) Mh.L.J. 193, and 2) Waman Vyankatesh Deshpande (deceased) Y.S. Mashankar & ors. Vs. Atul Pandurang Alshi (Dr.) & ors. reported in 2005(1) Mh.L.J., relied on by the learned Counsel Shri Bhandarkar are distinguishable on facts and, therefore, we do not find it necessary to take note of these judgments.

24. Shri C.S. Kaptan, learned Senior Counsel alongwith Shri. U. A. Gosawi, the learned Counsel appearing on behalf of respondent Nos. 8 and 26, at the outset, submitted that the Change Reports filed were never accepted by the competent Authority. There is nothing on record to show that the Sangha was functioning in accordance with the Constitution of the Sangha. The Administrative Body allegedly appointed as per

Order dated 30/08/2007 in C.R. No. 1397/2005 came to be rejected vide Order dated 16/02/2019 in C.R. No. 219/2009.

25. Shri Kaptan, learned Senior Counsel further submitted that as per alleged meeting held on 10/02/2009 and 17/02/2009, members were enrolled for three years, however, whether they continued or not, the record for it is silent. Therefore, at the time of filing of application under Section 47 of the MPT Act there were no trustees who were managing the trust. It is further submitted that the directions under Section 47 of the MPT Act were necessary as Mr. Marwah, the alleged President was not found suitable. It is further submitted that when C.R. No. 219/2009 was rejected; the subsequent Change Reports have to be rejected and, therefore, there cannot be vacuum in the Sangha. In such circumstances, the learned Joint Charity Commissioner has rightly exercised jurisdiction under Section 47 of the MPT Act. It is his main contention that as per meeting dated 17/02/2009, the body was constituted for three years and thereafter there were no elections. While exercising jurisdiction under Section 47 of the MPT Act, the prevailing

position has to be seen. On 30/04/2015, at the time of filing application under Section 47 of the MPT Act, nothing was pending before the Court. Learned Senior Counsel also referred the report of the Inspector.

26. With regard to verification of the credentials, Shri Kaptan, learned Senior Counsel submitted that at the fag end of the proceedings, the applications for police verification was filed and the same was rejected and there was no prayer for leading evidence. Learned Senior Counsel also argued on scope of Section 47 of the MPT Act and read out relevant provisions from Articles of Association. In support of his submission learned Senior Counsel relied on the judgment of the Single Bench of this Court in the case of **Jagatnarayansingh Swarupsingh Chithere & ors. Vs. Swarupsingh Education Society & anr.** reported in **1980 Mh.L.J. 372**. Learned Counsel pointed out paragraph No. 11 of the said judgment wherein it is held that the Court cannot ignore relevant subsequent developments occurring during the pendency of appeal and must, in the ends of justice, mould its order in the light thereof.

It was also submitted that as the appellants had given up their challenge to the main proceedings as recorded in the roznama dated 11/05/2015 that they had waived their right to challenge the impugned order. Similarly it was urged that respondent Nos. 20 to 24 could not be permitted to accept the order insofar as they were appointed as co-opted Administrators and challenge rest of the order.

27. Shri S.Y. Deopujari, learned Counsel appearing for respondent Nos. 19 and 27 and Shri N.A. Gaikwad, learned Counsel appearing for respondent No. 12 adopted the arguments of Shri Kaptan, the learned Senior Counsel.

28. Shri Anand Jaiswal, the learned Senior Counsel alongwith Mrs. Radhika Bajaj, learned Counsel appearing for the respondent No. 18 referred to Section 47 of the MPT Act and the provisions with regard to organization in the Articles of Association and submitted that previous approval of the President of the Sangha is necessary for filling the vacancies of the trustees. For the administrative meeting, a quoram of 9

administrators is necessary. Learned Deputy Charity Commissioner in his order dated 30/07/2007 has rightly observed that there is no legally appointed President of the Sangha. Learned Deputy Charity Commissioner rejected the Presidentship of Dr. Marwah, as not being appointed in accordance with the Rules and Regulations of the Sangha and in the absence of the President no action for the appointment of the Administrative Body could have been taken. Section 47 of MPT Act is the only remedy. He referred to various Articles of Association to urge that administration of the Trust was not possible for want of requisite quorum. Lastly, Shri Jaiswal, learned Senior Counsel submitted that proceedings under Section 47 of the MPT Act are in the nature of an enquiry and not a complete trial requiring evidence to be led. It does not decide the inter se rights of the parties. The ultimate aim is to see the interest of the Trust.

Two points arise for the determination of this Court:

“(a) Whether the Joint Charity Commissioner is justified in passing the order under Section 47 of The Maharashtra Public Trusts Act, 1950?”

(b) If yes, whether the administrative body, constituted by the Joint Charity Commissioner, is in accordance with law and the bye-laws of the Trust?”

29. We have carefully considered the submissions made by learned Senior Counsel Shri Khapre, learned Counsel Shri Thakre and Shri Bhandarkar on one side and the learned Senior Counsel Shri Kaptan and Shri Anand Jaiswal as well as Shri. Anand Parchure, Shri S.Y. Deopujari, Shri. V. V. Bhandade, Shri. Gaikwad, learned Counsel and the learned AGP Ms. Khan on the other side. We have also scrutinized the record minutely. Though learned Counsel for the parties have referred to various decisions reference is being made to those decisions that are found relevant to the facts of the present case.

Before proceeding to discuss the justifiability of the exercise of jurisdiction under Section 47 of the MPT Act, it would be advantageous to look into the said provision. For ready reference, it is reproduced below:

“47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees

(1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is not trustee for such trust or the trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust, -

(a) disclaims or dies;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;

(c) leaves India for the purpose of residing abroad;

(d) is declared as insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the position as trustee;

(h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or

(i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard -

- (a) to the wishes of the author of that trust;*
- (b) to the wishes of the persons, if any, empowered to appoint a new trustee;*
- (c) to the question whether the appointment will promote or impede the execution of the trust;*
- (d) to the interest of the public or the section of the public who have interest in the trust; and*
- (e) to the custom and usage of the trust.*

(4) It shall be lawful for the Charity Commissioner upon making any order appointing to a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) An appeal shall lie to the Court against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.”

30. A plain reading of the aforesaid provision would reveal that it is applicable in the specific circumstances set out therein. Sub-Section (1) of Section 47 relates to the filing of an application by any person interested in the trust for the appointment of a new trustee when there is no trustee for such

trust or to fill up the vacancy in a situation the trust cannot be administered until the vacancy is filled up, or for the suspension, removal or discharge of a trustee for any of the reasons specified therein.

Sub-section (2) of Section 47 relates to the powers of the Charity Commissioner to appoint any person as a trustee, or discharge or remove any trustee for any of the reasons specified in sub-section (1). While doing so, it enjoins duty upon the Charity Commissioner to hear the parties and make such an enquiry as he deems fit.

Sub-section (3) of Section 47 further requires the Charity Commissioner, while appointing a Trustee, to take into consideration the wishes of the author of that Trust, and also the wishes of the persons, if any, empowered to appoint a new Trustee and to consider other factors as mentioned in clauses (c), (d) and (e).

Sub-section (4) of Section 47 empowers the Charity Commissioner to issue directions with regard to vesting of property of the trust in the person so appointed.

Sub-section (5) of Section 47 provides for appeal against the order of the Charity Commissioner, as if such order was a decree of a District Court, within sixty days from the date of order.

Section 47 of the MPT Act is a complete code in itself which provides for the filing of the application, hearing of the parties, conducting enquiry, passing of order, appeal against the order, appellate authority and the period of limitation for filing the appeal. Order is elevated to the status of a decree. The term 'decree' as per Section 2(2) the Code of Civil Procedure, 1908 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.

31. A learned Single Judge in the case of **Gyandeo Tukaram Devre & ors. Vs. Ganpat Nathu Devre and ors.** in **1995 (1) Mh.L.J. 99**, while considering the scope of power of the Charity Commissioner, has held that Section 47 of the MPT Act does not confer any general power on the Charity

Commissioner to appoint new trustees. Power under Section 47 of the MPT Act can be exercised only in cases specifically covered under the section.

So also another learned Single Judge in the case of **Douglas Memorial Children Home, Nagpur and ors. Vs. Joint Charity Commissioner, Nagpur** decided on 17/06/2013 in First Appeal No. 1202/2012, while considering the scope of Section 47 of the MPT Act held that Section 47 is an independent proceeding and with a definite object of not allowing the trust to go without being administered properly and in accordance with law and in the peculiar circumstances mentioned in the said section.

32. There is absolutely no dispute with respect to the aforesaid propositions of the law. In the instant case, as per the inspection report of the Enquiry Officer, in Enquiry No. 6/2015, the names of following Trustees were found recorded on Schedule-I on the record of the office of the Joint Charity Commissioner, Nagpur vide order of Assistant Charity Commissioner dated 28/01/1992 in Enquiry No. 926/1991.

- 1) Dr. Karansingh Harisingh, President
- 2) Shri Indra Tripathi, Vice-President
- 3) Manjula C. Trivedi, Honorary Chief Minister
- 4) Smt. Alka Sahani, Honorary Assistant Minister
- 5) Shri Harigopal Goel, Member
- 6) Smt. Swaraj Goel, Member
- 7) Smt. Kusum Sutariya, Member
- 8) Shri Ashwin K. Ghatate, Member
- 9) Shri Rajabhau Kachhote, Member
- 10) Shri R.S. Pandit, Member
- 11) Dr. Vikram Marwah, Member

33. In the present case, as per record, the Trust is registered under the MPT Act in the year 1992, and the Joint Charity Commissioner in the impugned judgment has observed that there is no clarification as to what was the position of the Board of Trustees from 1992-2009.

34. The learned Deputy Charity Commissioner while rejecting Change Report No. 1397/2005 which was filed by Dr. Vikram Marwah, to the extent of induction of co-opted administrators from Sr. Nos. 9 to 18 as per meeting held on 02/10/2005, in para 67 of the judgment dated 30/08/2007 observed that in the absence of original record in respect of the election of the President, it cannot be said that Dr. Marwah

was elected as the President of the Sangha. It is further observed that the erstwhile founder President Dr. Karan Singh tendered his resignation in the year 2004, then how could Dr. Marwah was elected as a President in the year 2001, as there was no vacancy. In para 80, it is further observed that since the election for the post of the President has been held contrary to the provisions of the bye-laws, his further activities i.e. to appoint co-opted administrators at Sr. Nos. 9 to 18, in the absence of conferring them general membership in terms of the bye-laws and in the absence of issuing valid notice of the meeting to the recorded trustees, are bad in law. The learned Deputy Charity Commissioner in the operative part of his judgment issued certain directions which are reproduced below:

“(i) The names of outgoing trustees 1) Dr. Karan Singh Hari Singh 2) Smt. Manjula Trivedi 3) Shri Rambhau Kachote be deleted from the Schedule-I.

(ii) The rest of the Change reported is hereby rejected. The entries in Schedule-I except deletion of the names of above recorded trustees/outgoing trustees shall be intact.

(iii) The Recorded Trustees on Schedule-I are directed, to enroll new members in the

trust/society as per existing Rules and Regulations of the trust/society by majority decision.

(iv) The Recorded Trustees may constitute committee of three members from the recorded trustees on Schedule-I including recorded trustee Dr. Vikram Marwah and may enroll new members with majority decision as per Rules and Regulation of the Trust/Society.

(v) The recorded Trustees are hereby directed to hold the election of executive body/administrative body of 19 trustees of the trust/society, after enrollment of new members as early as possible, as provided under clause no. 49 of the Article of Association at Page No. 28 of the Trust/Society.

(vi) The elected executive body of the trust/society is directed to file scheme proceedings for proper Rules and Regulations of the Trust/Society without changing the Aims and Objects of the trust/society as the present Rules and Regulations are not providing proper procedure and not useful in various aspects and not workable.

(vii) The Recorded Trustees shall not take policy decision, without prior permission of this Authority till election of new executive body is held, which will affect the Aims and Objects of the Trust/Society.

(viii) The Recorded Trustees on Schedule-I or if committee is constituted for enrollment of new members as per directions No. 4 of this order may preferably consider the application of membership of persons namely -

- 1) Shri K.N. Nandiyal*
- 2) Dr. Radhika Marwah*
- 3) Shri Chandrakant Ragit*
- 4) Dr. Sanjay Dachewar*

- 5) *Shri Jagjit Singh*
- 6) *Shri Deepak Arora*
- 7) *Shri S.P. Singh*
- 8) *Shri Ravi Bhargaw*
- 9) *Shri Ashok Mohata*
- 10) *Shri Madan Kapare*

If at all they submitted the application for enrollment of membership, with majority decision. Since the above named persons are the devotees and helpers of the trust/society and sufficient material is placed on record in that respect in the present Change Report.

(ix) Parties to bear their own costs.”

It is not in dispute that this judgment of the learned Deputy Charity Commissioner reached finality.

35. Admittedly, presently the surviving recorded trustees-administrators are Smt. Alka Sahani, Shri Ashwin Ghatate and Shri Indra Tripathi. As per record Shri Indra Tripathi has lost interest in the activities of the Sangha. In the present proceeding he preferred not to appear despite due service to him. There are allegations of mismanagement and misappropriation of funds of the Sangha against both the aforesaid surviving recorded trustees-administrators.

In addition, the selection of Mr. Marwah as a President in the meeting of 2001, as stated above, has been held to be illegal. Since the order passed by the learned Deputy Charity Commissioner dated 30/08/2007 directed the recorded trustees to enroll new members and undertake further steps on the basis of the existing Rules and Regulations of the Trust, the provisions of the unamended Constitution of the Trust will have to be taken into consideration. A perusal of the Articles of Association would reflect that the President of the Trust is the Supreme Authority followed by the trustees. In some matters, the President has been conferred with the veto powers. The relevant provisions are quoted hereunder :

As per Clause “3(d)(II) “President” shall mean the Founder-President, and subsequently, the person nominated by him for the succession to himself or, in the absence of such nomination, the person who is occupying that position by virtue of selection thereto by the Administrative Body of the Society or otherwise, in accordance with the provisions contained in the Articles of Association.”

Clause 10 (VIII) provides for CLASSES OF MEMBERS of the Sangha -

- (1) Ordinary members;
- (2) Fellows and Probationers; and
- (3) Trustees and co-opted Administrators.

Clause 11(IX) is with regard to eligibility for ORDINARY MEMBERS -

“Every adult person, who believes in and accepts the Aims and Objects and the methods of work of the Sangha, desires to co-operate and serve towards their achievement and signs the Sangha’s ordinary pledge shall be eligible for ordinary membership in and of the Sangha.”

Article XIII – FELLOWS AND PROBATIONERS -

29. *“Those members who dedicate and consecrate themselves for the rest of their lives or for a period not less than years to the single-minded service of Dharma and Bharata Varsha under the guidance and control of the Sangha, sign the special pledge prescribed for the purpose and take only such subsistence allowance and other conveniences and may be allowed by the Society, shall be FELLOWS of the Sangha.*

30. XXXX

31. *Every member who has been accepted for Fellowship shall be required to undergo a course of special training for 2 years. During this period, he will be known as a PROBATIONER of the Sangha.*

32. XXXX

33. *When a Probationer has completed his two years’ discipline **to the satisfaction of the President**, he shall be styled a FELLOW of the Sangha.”*

Article XIV – THE ADMINISTRATIVE BODY -

40. *The Administrative Body of the Sangha shall consist of two classes of Administrators:-*

(1) The Trustee-Administrators for the time-being; and

(2) The Co-opted Administrators for the time-

being.

41. The first Trustees of the Sangha shall be those who figure as such hereunder and as the signatories to the Memorandum of Association.

42. Every person whom the Trustee-Administrators may co-opt for the purpose shall be co-opted Administrator for the period which they have co-opted him for, provided that, for the purposes of the Sangha's record, he gives his consent in writing to act as such for the period so fixed by the Trustees as aforesaid.

43. Every person, who, under these Articles, becomes a Trustee of the Sangha shall be and is hereinafter called a Trustee-Administrator or simply a trustee; and every person who becomes an Administrator by virtue of co-option by the Trustees shall be and is hereinafter called a co-opted Administrator.

44. And the whole body (including both kinds of Administrators) shall be and is hereinafter called the Administrative Body or the Board of Administrators or simply the Administrators.

45. The Administrative Body shall, normally, consist of 19 Administrators (including the Trustees) and shall include representatives of both sexes.

Article XV – MODE OF NOMINATION, SELECTION ETC. -

46. "All eminent Helpers and Workers who are otherwise eligible for membership and are actual members and who evince special fitness for Administrator ship by virtue of their spiritual and other qualifications and by their actual service of Humanity shall be eligible for co-option as Administrators and also for Selection as Trustees.

47. The first Members thereof shall be those who have been mentioned as such in the Memorandum of Association.

48. *The Administrators shall, ordinarily, hold office for 3 years, after which they shall be eligible for re-nomination.*

49. *At every fourth Annual General Meeting, the non-Trustee Administrators shall retire; and the vacancies thus caused shall be filled up – by re-nominations or by fresh nominations or both – by the President and the other Trustees from amongst the Fellows or Probationers or other members of the Sangha.*

50. *Any vacancy caused in the Administrative Body otherwise than by triennial retirement (under the immediately preceding clause No. 49) shall be filled up by the remaining members of the Administrative Body by co-option, with the President's previous approval from amongst the fellows, probationers or other members of the Sangha.*

51. *Any Administration who has resigned from Administrator ship shall continue in office until his resignation is accepted and his successor is appointed and actually takes over charge.*

52. *If an Administrator be absent from four consecutive Meetings of the Administrative Board without sufficient cause and without the President's leave, he shall cease to be an Administrator. His cessation from Administrator ship shall, however, be formally recorded by means of a Resolution for the purposes of the Sangha's Record.*

53. *And his place shall be filled up by the remaining Administrators **with the approval and consent of the President.***

54. *In case of death or resignation of any Administrator, the vacancy so caused shall similarly be **filled up by the remaining Administrators with the President's approval and consent.***

55. *If, at any ordinary or special general meeting summoned by the Administrative Body itself (or by the required number of requisitionists (under clauses No. 20 & 21), any resolution is moved by*

way of disapproval or condemnation of any act or conduct of anyone or more of the Administrators and for his or their expulsion, it shall be passed only by a majority consisting of three-fourths of the members present (personally or by proxy) at such meeting and voting on the question in question.

56. In case of such condemnation and dismissal from office, such member or members shall immediately cease to hold office.

*57. **And the President and** other Administrators present at such meeting shall nominate a new member or members in his or their place.*

58. In all these cases, other qualifications being equal, priority at such meeting shall nominate a new member or members in his or their place.

59. The number of Administrators shall never be less than ten (including both sexes)."

Article XVIII – TRUSTEES -

77. "XXXX

*78. **The Founder-President shall be competent** to fill up any vacancy caused by death, resignation, retirement or incapacity etc. of any trustee-administrator.*

*79. Subsequent appointments of trustees shall be made by the **then President and the other trustees** by a majority of votes at a meeting specially convened for this purpose.*

*80. **The opinion, discretion and direction of the Trustee Administrators** for the time being shall prevail over the resolutions of the Administrative Body when such opinion, discretion and direction is recorded by the hands and over the signatures of the trustee-administrators."*

36. Perusal of the Articles of Association of the Trust indicates that as per Article VII the work of the Sangha has to

be carried out by the general body, the Fellows and Probationers, the Administrative Body comprising of the President, other trustees and co-opted Administrators. As per Article XIV the Administrative Body shall consist of Trustee-Administrators and co-opted Administrators. As per clause 45 thereof, the Administrative Body shall normally consist of nineteen Administrators. Under Article XV clause 48, the Administrators shall hold office for a period of three years. The vacancies occurring thereafter have to be filled in under clause 49 by the President and other trustees. As per clause 59 the number of Administrators can never be less than ten. By virtue of clause 66 the Sangha, its properties and its affairs shall be under the full administrative control and management of the Administrative Body. Under Article XVII clause 68, the Administrators have to hold their meetings atleast once a month. As per clause 72, nine members of the Administrative Body including the President shall form the quorum for its meetings. Pertinently, as per Article XVIII clause 78 the Founder President is competent to fill up any vacancy caused by death, resignation, etc. of any trustee-Administrator. Under clause 79, all subsequent appointments of trustees are to

be made by the then President and other trustees by a majority of votes at a meeting constituted for this purpose.

The aforesaid provisions thus indicate the necessity of a validly constituted Administrative Body for properly administering the Trust. The properties of the Trust vest with the Administrative Body and it also exercises full administrative control over the Trust. A quorum of nine members of the Administrative Body has been prescribed for its meetings. The facts on record however indicate that presently there are only three trustee-Administrators, out of whom Shri Indra Tripathi appears to have lost interest in the affairs of the Trust. There is also a cloud over the appointment/selection of Dr. Vikram Marwah as the President as held by the learned Deputy Charity Commissioner, the same not being in accordance with the Articles of Association. These aspects have been taken into consideration by the learned Joint Charity Commissioner while answering Point No.1 in the impugned order. The report of the Inspector at Exhibit 18 indicates the prevailing position as regards the affairs of the Trust and it also indicates the fact that in the absence of a valid and properly constituted

Administrative Body, the affairs of the Trust cannot be smoothly conducted.

In this backdrop, therefore, we are satisfied that in the absence of a validly constituted Administrative Body as contemplated by the Articles of Association the exercise of jurisdiction under Section 47(1) and (2) of the MPT Act by the learned Joint Charity Commissioner was warranted. In the facts of the present case such jurisdiction has been rightly exercised by the learned Joint Charity Commissioner.

37. The learned Counsel appearing on behalf of both the sides tried to persuade this court the interpretation of Section 47 of the MPT Act in diverse ways. From a plain reading of Section 47, it is clear that any interested person in a Public Trust may apply to the Charity Commissioner for the appointment of a new Trustee, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled. The Bombay High Court in the case of **Gyandeo Tukaram Devre** (*supra*) held that Section 47 is not a general provision and has to be invoked in the specific circumstances.

In the instant case, in our considered view, the occasion has arisen for the Joint Charity Commissioner to exercise jurisdiction. Evidently, Schedule-I in the office of Joint Charity Commissioner reflects the names of Trustees and co-opted Administrators who were appointed in the year 1992. The record is absolutely silent with regard to the position from 1992 to 2005. The Change Report which was filed by Dr. Marwah in 2005, came to be rejected in C.R. No. 1397/2005 vide order dated 30/08/2007 and the same reached finality. The selection of Shri Marwah as a President was held to be invalid. Certain directions were issued in the operative part (*supra*) of the said Judgment. The appellants state that, as per the said directions, the Administrative Body was constituted and the Change Report No. 219/2009 came to be submitted. However, as per record, Change Report No. 219/2009 also came to be rejected by the Assistant Charity Commissioner, Nagpur on the ground that the appointments were not made as per directions in the order dated 30/08/2007 in Change Report No.1397/2005. Subsequent Change Reports also came to be rejected. In such circumstances, it was indispensable for the learned Joint Charity Commissioner to invoke Section 47 and

to appoint a regular body for the proper functioning of the Sangha in accordance with its Articles of Association. The provision cannot be read in a singular sense, as suggested by Shri Bhandarkar, learned Counsel. The central idea is to see that the administration of the Trust shall not become unworkable.

38. To consider this aspect from another angle, with regard to the role of the Charity Commissioner in discharging the duties, powers and functions under the M.P.T. Act, the Apex Court in the case of Saiyad Mohammad Bakar El-Edroos (Dead) By LRs. Vs. Abdulhabib Hasan Arab, reported in (1998) 4 SCC 343 held that the object of the Bombay Public Trusts Act, 1950 as revealed through its preamble is to regulate and make better provisions of the administration of public, religious and charitable trusts within the State of Maharashtra. The Charity Commissioner is appointed through a notification under Section 3 having very wide powers and duties conferred primarily under Section 69 Chapter VII and other provisions of the Act. It has been the concern of legislatures to provide with

such laws and entrust officers with such power to regulate, supervise the management and functioning of a public trust and endowment in a manner so as to give optimum benefit to the public at large. Section 41-A empowers him to issue directions for proper administration of the trust and institute inquiries on receipt of complaints under Section 41-B. He can suspend, remove or dismiss any trustee of a public trust on receipt of report under Section 41-B. Any person interested in a public trust may apply to the Charity Commissioner under Section 47 for the appointment of a new trustee etc. The Charity Commissioner is crowned with very wide powers to check and control the irregularities, malpractices and misconduct in the functioning of any public trust. Also, to supervise, regulate, settle a scheme for the proper management or administration of a public trust, in fact involved in almost every step of the functioning of a public trust.

39. The Division Bench of this Court after considering the scheme of the MPT Act and the role assigned to the Charity Commissioner, in the case of Vanmala Manoharrao Kamdi

(*supra*) held that the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial as well as quasi-judicial and even that he acts as a watchdog and a delegate of the Government for superintendence and control over the Public Trusts.

40. A Full Bench of this Court in the case of **Sailesh Developers Vs. Joint Charity Commissioner, 2007 SCC OnLine Bom 124** while interpreting scope of the powers of the Charity Commissioner under Section 36 of the Act, considered the whole gamut of the powers of the Charity Commissioner to act in the interest, for the benefit, and to protect the Trust property held that while exercising powers under Section 36 of the Act, the Charity Commissioner has to safeguard the interests of the Trust as well as the interests of beneficiaries.

41. Considering the dictum as expounded in the aforesaid judgments with regard to the role assigned to the Charity Commissioner and the extent of his powers, duties and responsibilities, being the watchdog and *parens patriae*

Authority, in our considered view, in the case in hand, the learned Authority has correctly invoked jurisdiction under Section 47 of the MPT Act, in the circumstances discussed above keeping in view the interests of the Trust. Though it was urged by Shri Kaptan, learned Senior Counsel that the appellants had refused to contest the main proceedings on merit in view of what was recorded in the roznama on 18/05/2016, we are not in a position to accept that contention in the light of contents of pursis dated 17/05/2016 filed by the appellants. The appellants did not give up their right to contest the main proceedings. The first point stands answered accordingly.

42. With regard to the applicability of the modified Articles of Association of the Sangha, as urged by the appellants, it is significant to note here that the alleged modifications ought not to have been taken into consideration and the Sangha could not have been governed as per the modified Articles in the absence of its sanctity, not being amended by the validly appointed body. Moreover, as per the

order passed by the learned Deputy Charity Commissioner on 30/08/2007 further exercise was directed to be undertaken as per the existing Rules and Regulations of the Trust.

43. Now, the next question before us is whether the Administrative Body as constituted under the impugned judgment is valid as per the Articles of Association. For exercising jurisdiction under Section 47 of the MPT Act it is expected that the learned Joint Charity Commissioner shall conduct an enquiry and shall extend proper opportunity of hearing to the parties, especially when the issue is seriously contested by the rival parties. A perusal of the impugned judgment does not reflect as to what kind of enquiry, the learned Joint Charity Commissioner has conducted. It is the grievance of the appellants and which appears to be valid that the applications which were filed on behalf of the appellants during the proceeding before the learned Joint Charity Commissioner were not decided and kept pending to be decided along with main application below Exh. 1 and ultimately all the applications were disposed of being rendered

infructuous. Furthermore, in the enquiry wherein the decision to appoint or to remove a trustee is to be taken, in cases wherein disputed questions of facts have been pleaded, it is incumbent on the part of the adjudicating Authority to give an opportunity to the parties to lead an evidence, if they so desire.

44. A careful reading of Section 47(2) of the MPT Act would indicate that the provision is mandatory. This is in view of the nature of decision which is required to be taken after considering the disputed questions of facts involved. Moreover, the adjudication after such exercise is construed as an appealable decree and hence an enquiry in the nature of an adjudication which decides the rights of the parties, wherever necessary shall be conducted while appointing, removing or discharging the trustee. The prime object is to safeguard the interest of the trust.

45. Notably, a perusal of the rules and regulations of the Sangha for the appointment of Trustees and co-opted Administrators would indicate that, the trustees and the co-

opted administrators have to be appointed from amongst members, probationers and fellow-members. The eligibility criteria for ordinary membership of the Sangha is provided in Clause 11 (*supra*) in the Articles. There is absolutely nothing in the impugned judgment as to whether the members who have been selected as Trustees and co-opted Administrators, are eligible as per the rules and regulations. Clause 58 (*supra*) of the Article XV specifically provides that for nomination and selection of Trustees and co-opted Administrators, the priority and preference shall normally be given to the Classes of Members described in Clause No. 39 and 46 (*supra*). Clause 39 states that other qualifications being equal, the Fellows of the Sangha shall have natural priority and shall receive preference in respect of selection to administratorship, trusteeship and so on. Clause 46 provides that *“All eminent Helpers and Workers who are otherwise eligible for membership and are actual members and who evince special fitness for Administratorship by virtue of their spiritual and other qualifications and by their actual service of Humanity shall be eligible for co-option as Administrators and also for Selection as Trustees.”*

46. Clause 50 (*supra*) of Article XV provides that any vacancy caused in the Administrative Body otherwise than by triennial retirement shall be filled up by the remaining members of the Administrative Body by co-option, **with the President's previous approval** from amongst the fellows, probationers or other members of the Sangha. As stated above, many of the clauses in the Articles mandate for approval of the President especially for filling up the vacancies of Trustees and co-opted Administrators. In the absence of the President of the Sangha, the Administrative Body is handicapped to take the final decisions for the nomination and selection of Trustees and co-opted Administrators in case of vacancies.

47. Furthermore, Section 47(3) of the MPT Act necessitates the Charity Commissioner, while appointing a Trustee under sub-section (2), to have regard to -

- (a) to the wishes of the author of that trust;*
- (b) to the wishes of the persons, if any, empowered to appoint a new trustee;*
- (c) to the question whether the appointment will promote or impede the execution of the trust;*
- (d) to the interest of the public or the section of the*

*public who have interest in the trust; and
(e) to the custom and usage of the trust.*

48. There is nothing in the impugned judgment which would demonstrate that the learned Joint Charity Commissioner did consider the factors mentioned in Section 47(3) of the MPT Act. In para 19 of the impugned judgment, the learned Joint Charity Commissioner recorded reasons for appointment of original recorded Trustees Smt. Alka Sahani (original applicant No. 1/respondent No. 1) and Shri Ashwin Ghatate (original non-applicant No. 1/respondent No. 8). However, for the other appointees, there is absolutely nothing in the impugned judgment as to the consideration of the eligibility criteria as per the bye-laws and the verification of the credentials of the proposed members of the Administrative Body. Learned Authority without considering the objections raised by the appellants from time to time during the proceedings, adopted a short cut method and without application of mind postponed the decision on the said applications to be decided along with Exh. 1. Had it been considered at the relevant time, the irregularities which we

could notice in the impugned judgment could have been avoided.

49. Section 47 of the MPT Act enjoins powers on the Charity Commissioner to appoint Trustees whenever there is a vacancy in the circumstances provided therein. With great power comes greater responsibility. It is highly expected to respect the power conferred. It appears that the learned Joint Charity Commissioner without realizing the nature and gravity of the responsibility involved in appointing the Administrative Body, without verifying the credentials and without recording sufficient reasons in the judgment with regard to the appointment of each of the members of the Administrative Body, in a cryptic, inexplicable and incomprehensible way constituted the Administrative Body. This part of the order of the learned Joint Charity Commissioner cannot be sustained and is liable to be set aside. The judgment relied on by Shri Khapre, learned Senior Counsel and Shri Bhandarkar, learned counsel, in the case of R.P. Kapoor (*supra*) is squarely applicable to the facts of this case i.e. “*the appointment of the*

new trustees has to be made objectively by finding the best suited public spirited persons and not just choose one or more of the applicants/complainants. Record clearly shows that the Charity Commissioner did not take any steps in this regard. He has simply referred to the brief bio-data of the applicants and appointed four of them as trustees. This is certainly not a satisfactory manner in which the trustees should be appointed.”

50. Furthermore, in the case of **Swaran Lata Ghosh Vs. H.K. Banerjee** reported in **(1969) 1 SCC 709 at page 711**, the Hon’ble Apex Court while considering the issue of importance of recording reasons in the judgment which is appealable, in para 6 has held as under :

“6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in

controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.”

51. As stated earlier, Section 47 of the MPT Act is a complete code in itself which provides for the filing of the application, hearing of the parties, conducting enquiry, passing of order, appeal against the order and the period of limitation for filing the appeal. Order is elevated to the status of a decree. The term 'decree' as per Section 2(2) the Code of Civil Procedure, 1908 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.

52. In the instant case, the text and the context of Section 47 contemplate the learned Authority to adjudicate the rights and status of the parties before it. It must hear the parties fully and adjudicate the lis between the parties by recording sufficient reasons, the order being appealable.

53. There is absolutely no discussion in the impugned judgment that the learned Joint Charity Commissioner has examined the eligibility criteria for the membership as stated in

the bye-laws of the Sangha. The learned Authority has failed to follow the procedure as contemplated under Section 47 of the MPT Act. The impugned judgment does not demonstrate that the Authority has followed the provisions of either Section 47(2) or Section 47(3) of the MPT Act in letter and spirit. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. **(Dhanajaya Reddy v. State of Karnataka, (2001) 4 SCC 9)**. The second point is answered accordingly.

54. For the foregoing reasons, in our considered view while upholding the exercise of jurisdiction by the learned Joint Charity Commissioner under Section 47 of the MPT Act, the matter needs to be remanded back for re-consideration of the question with regard to constitution of the Administrative Body strictly in accordance with the Articles of Association of the Sangha by complying with the mandate of Sections 47(2) and (3) of the MPT Act. To that extent the impugned order deserves to be interfered with.

ORDER

1. The First Appeal is partly allowed.
2. The judgment dated 19/05/2016 in Application No. 74/2015 passed by the learned Joint Charity Commissioner to the extent the Administrative Body has been constituted and further directions that have been issued is quashed and set aside.
3. While upholding the judgment to the extent jurisdiction under Section 47 is invoked, the proceedings are remanded for re-constitution of the Administrative Body in accordance with the mandate of the Articles of Association of the Sangha by calling fresh applications (not objections) from the public by issuing a valid and widely circulated public notice and after conducting fresh enquiry as contemplated under Section 47(2) of the MPT Act and having due regards to the factors as provided under Section 47(3) of the MPT Act.

4. In the meantime, the present interim arrangement in terms of the orders dated 20/06/2016 and 05/12/2019 passed in the First Appeal shall continue to operate.
5. The proceedings be disposed of expeditiously preferably within a period of six months from the date of appearance of parties before the learned Joint Charity Commissioner, Nagpur which shall be 07/06/2021.
6. In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE

Sumit/*DB