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

LETTERS PATENT APPEAL NO. 607 OF 2010
IN WRIT PETITION NO. 6184 OF 2004

1. Smt. Ragini w/o Ramesh Gupta,
aged about 62 years, Occ. Nil,
R/o C/o Shri Ramesh Gupta,
Ex. MLC, Narkhed, Tahsil Narkhed,
District Nagpur.

2. Shri Ramesh s/o Balmukund Gupta (dead),
thr. Lrs.

2(I) Dr. Sujata Gupta (maiden name as well as
after marriage name),
R/o C/o Gupta Nursing Home,
Mansa Road, Neemuch, Madhya Pradesh.

2(II) Sonali Gupta (maiden name) after marriage
Mrs. Sonali Piparsania,
R/o 4th Floor, Shivalik Residency,
Lawyers Colony, Khandari Agra.

2(III) Abhijit Ramesh Gupta,
R/o Narkhed, Tah. Narkhed,
District Nagpur.

2(IV) Vaishali Gupta (maiden name) after marriage
Mrs. Ayushi Deshmukh,
R/o Civil Lines, GPO Square, Nagpur.

...**APPELLANTS**

Versus

1. Shri Deorao Bhuraji Wasule,
aged about 68 years, Occ. Agriculturist,
R/o Division No.1, Narkhed, Tahsil Narkhed,
District Nagpur.

2. Shri Vishwanath s/o Ramaji Waghe,
aged about 78 years, Occ. Teacher and Agriculturist,
R/o Narkhed, Tahsil Narkhed,
District Nagpur.

3. Nagar Parishad, Narkhed,
   through its Chief Officer, Narkhed,
   District Nagpur.

4. Joint Charity Commissioner,
   Public Trust Office, Civil Lines,
   Nagpur.

5. State of Maharashtra,
   through Secretary, Law Department,
   Mantralaya, Mumbai-32.

...**RESPONDENTS**

Shri Rohit Joshi, Advocate for the appellants.
Shri A. Shelat, Advocate for respondent Nos.1 and 2.
Shri S.M. Nafde, Advocate for respondent No.3.
Mrs. S.S. Jachak, A.G.P. for respondent No.5.

.....

CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.
SEPTEMBER 08, 2021.

ORAL JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

The challenge in the instant Appeal is to the judgment and order dated 11/10/2010 passed by the learned Single Judge of this Court in Writ Petition No. 6184/2004, whereby the learned Single Judge has set-aside the order dated 22/08/1983 passed by the Deputy Charity Commissioner, Nagpur Region, Nagpur in Change Report Inquiry No. 612/1983 in the matter of public trust. Appellant No.1 is the original applicant in the said proceedings which was filed under Section 22A of the Bombay Public Trusts Act, 1950 ("**the Act**"), whereby the Deputy Charity Commissioner has held that the property in question, shown as property of public trust by name Gupta Dharamshala, deserves to be deleted from the Register of public trust, maintained by the office of the Joint Charity Commissioner, and has further observed that as there is no property of trust, the trust comes to an end. The entries of the trust made in the public trust register were also directed to be deleted.

The facts, necessary to decide the present Appeal, may be stated as under :

2. On 05/12/1961, Smt. Gauribai Dulau w/o Yadav Prasad Gupta had made an application under Section 18 of the Act for registering the property mentioned at Exh.1 in the proceeding No.1368/61 as public trust property under the provisions of the Act, and after the inquiry made under Section 19 of the Act, the trust was ordered to be registered as a public trust with the said property in that proceedings.

3. Appellant No.1 Ragini Gupta made an application under Section 22A of the Act bearing Change Report Inquiry No. 612/1983 contesting that the property, registered as a public trust (Gupta Dharm-Shala, Narkhed P.T.R.No. E-47 (N), belongs to her absolutely on the strength of the Will executed by one Gauri Dulau in her favour on 10/03/1970, and that the property has been wrongly registered as public trust property, and that in view of the Will, which is in her favour, the property which has already been registered as public trust property should be deleted from the register of the public trust.

4. There were no opponents before the Deputy Charity Commissioner in the aforesaid change report proceedings. The question for consideration of the Deputy Charity Commissioner was “whether the property belongs to the trust and whether the trust was properly constituted?”. The learned Deputy Charity Commissioner had recorded negative finding on these questions for the reasons that when the trust was registered in 1961, there were as many as seven persons as trustees, and out of them, only three trustees were alive, and in their statements,

which were recorded before the Deputy Charity Commissioner, they have categorically stated that they were not in possession of the trust property at all and they have never acted as trustees and that the property in question was never utilized as Dharamshala. The Deputy Charity Commissioner noted that the trust in question never came into existence though executed, there was no actual conveyance or assignment or delivery in favour of the trustees, and as such, the trustees were never in possession of the property in dispute, as they never acted as trustees. That they never used the property for the benefit of the travelers as Dharamshala. That no accounts were submitted to prove that the income of the trust have been received by them and they have utilized the same for the benefit of trust in question. It is further observed that contrary to this, there is an evidence that there are tenants in the property, and rent is being received by the Gupta family. The Deputy Charity Commissioner concluded that the property, which has already been registered as property belonging to the public trust, in fact, does not belong to the public trust in question, as the trust has not come into existence legally. It is further observed that the property, shown as public trust property by name Gupta

Dharamshala, deserves to be deleted from the register of public trust, and the trust comes to an end. The entries of the trust, made in the public trust register, were also directed to be deleted.

5. The aforesaid judgment of the Deputy Charity Commissioner was challenged initially before the Division Bench of this Court, and the petition was entertained as a Public Interest Litigation. However, thereafter, this Court found that the litigation was liable to be tried under the Bombay Public Trusts Act, and hence, vide order dated 07/07/2010, the matter was directed to be placed before the learned Single Judge of this Court.

6. The learned Single Judge of this Court meticulously considered the issues involved in the petition, vide order dated 11/10/2010, quashed and set-aside the order dated 22/08/1983 passed by the learned Deputy Charity Commissioner in Change Report Inquiry No. 612/1983. The learned Single Judge relied on the exposition of law

expounded by the Hon'ble Full Bench of this Court in the case of **Ketki Pestonji Jamadar and another Vs. Khodadad Merwan Irani and others, AIR 1973 BOMBAY 130**, and held that the entire consideration of controversy by Deputy Charity Commissioner runs counter to scheme of Section 22-A of the Act as explained by the Full Bench, and his application of mind as also approach, therefore, is unsustainable. It is further held that the Trust had already come into existence on 05/12/1961 and that it was registered only under the Bombay Public Trust Act. For ready reference, para 14 of the said judgment is reproduced below :

> *"14. The Trust had already come into existence on 05.12.1961. It was registered only under the Bombay Public Trust Act. In view of this position, Gauri Dullayabai as also Shamabai ceased to have any title to the property dedicated to charitable purpose. Shamabai the other party to document settling trust expired shortly thereafter i.e. on 28.10.1962. Thus, when two persons had created a public trust and it was accordingly registered, one fails to understand how because of Will executed by only one of them, the property has been held to devolve upon present respondent No.1. It is apparent that in view of the limited scope of enquiry available under Section 22A of the Act and also the finding that Deputy Charity Commissioner has*

exercised jurisdiction not available to him in the matter, this issue cannot be answered conclusively in present matter. However, this fact again has material bearing if the alleged claim of Respondent No. 1 is to enquired into."

The learned Single Judge has further held that once it is found that the order of Deputy Charity Commissioner of Trust is without jurisdiction, the other questions like locus and status of present petitioners and the delay or latches on their part in approaching this Court need not be looked into. This judgment of the learned Single Judge is impugned in this Appeal.

7. Shri Rohit Joshi, learned counsel for the appellants, has based his arguments mainly on the point of delay and latches and locus standi of respondent No.1 herein/ original petitioner No.1, to file the Writ Petition before the Single Bench of this Court. He submitted that after twenty years of the order passed by the Deputy Charity Commissioner, the Writ Petition came to be filed. According to the learned counsel, the petitioner does not fit in the definition of Section 2(10) of the Act - "person having interest". That the learned Single Judge

has failed to adjudicate on this issue. The learned counsel urged to quash and set-aside the impugned judgment, as it could not have sustained in the eyes of law. The learned counsel also raised preliminary objection about tenability of the Writ Petition. He points out that the order passed in 1983 was questioned after 21 years. That the Writ Petition was initially entertained as Public Interest Litigation, and after the order dated 07/07/2010, treating it as an individual grievance, there were no amendment/s made in it. That respondent Nos.1 and 2/ original petitioners, do not have any status and locus to challenge the impugned order, as they have not shown themselves as interested persons. The learned counsel further urged that there is no allegation of any deceit or fraud in the matter, and hence, in such Writ Petition, this Court should not have interfered after expiry of more than 21 years.

8. Per contra, Shri A. Shelat, learned counsel for respondent Nos.1 and 2/ original petitioners, on the ground of locus standi, drew attention of this Court to the pleadings of the petitioners in the Writ Petition, and submitted as under :

i. That petitioner No.1 is residing in Narkhed Town since his birth. His forefathers were also residing in this town. He is interested and concerned in the welfare of this town. If there is cheap accommodation available for residence of persons coming to Narkhed, the business of the town can increase. Petitioner No.2 is also residing in Narkhed town since the time of his forefathers. He is also interested in welfare of his own town.

ii. The property of the public trust was being claimed as personal property on the basis of an alleged Will dated 10/03/1970, while the trust was registered in 1961. It is stated that the Deputy Charity Commissioner should have seen that if the trustees, nominated in the instrument of trust, are not functioning, there are adequate provisions in the Act for taking action against them, particularly Section 41D of the Act. It is further submitted that the Act is enacted to regulate and make better provisions for the administration of public trust. The charity organization are conferred considerable power of supervision over the public trusts and the trustees. The authorities, created under the Act, are expected to carry out the objects of the Act.

iii. That the Deputy Charity Commissioner acted to defeat the purpose and object of the Act by causing the trust property to vanish, specially without giving the residents a fair opportunity of hearing. The order passed by the Deputy Charity Commissioner shows the ignorance of the nature and character of trust property. A trustee does not enjoy any proprietary right in the property. A trustee is holding the property in trust for beneficiary. In case of a trust property, the settler or the owner, who creates trust, divest himself of the legal ownership vested in him and vest it in another who is a trustee or he may transfer it to more than one trustee including himself. Thereby he ceases to be the beneficial owner thereof.

iv. That in case of declaration of trust, whereby the owner declares himself as a trustee to hold the property on trust, there is no actual divesting of the estate vested in him but there is a change in the nature of ownership namely he divests himself of the beneficial ownership and remains only as a legal owner for the benefit of somebody else. He submitted that the order passed by the Deputy Charity Commissioner is without jurisdiction. Section 18 casts a duty on the trustee of a public trust to make an application for registration of public trust. Section 19 of the Act obliges the Deputy Charity Commissioner to make an inquiry - whether a trust exists and whether it is public trust ? He is also required to inquire whether the property is of such trust ? Section 20 of the Act requires the Deputy Charity Commissioner to record his reasons. Under Section 21 of the Act, entries in accordance with the findings are required to be made in the register, which are final and conclusive. Section 22A of the Act confers a power to make further inquiry in respect of particulars, which were not the subject matter of the inquiry under Section 19 of the Act. This power does not include the power to delete entries which was the subject matter of the earlier inquiry and which has attained finality and which has become conclusive. The order of the Deputy Charity Commissioner is, therefore, wholly without jurisdiction.

v. It is further urged that the instrument of the trust and the registration of the public trust and public trust properties, divests the settler from the legal ownership of the property, incapable of being bequeathed, even assuming the existence of a Will.

vi. With regard to the subsequent events, the learned counsel submitted that after the purported release of the public property to the private property, a fire occurred which destroyed the tenanted property. The debris and material on the plot is cleared, and open plot was seen. However, the petitioners saw the commencement of construction activity on this open plot about fifteen days back, and after inquiry, it was revealed to them that the property of the public trust is fraudulently converted as private property. They gathered the relevant documents in order to preserve the property of the public trust and to prevent any third-party interest, they approached this Court.

9. We have considered the rival submissions put forth on behalf of both the sides.

10. At the outset, a perusal of the trust deed, executed by Gauri Dullayabai and Shamabai shows a dedication in presenti for Dharamshala. The execution or contents of this document dated 16/04/1961 are not in dispute between the

parties. The registration of Gupta Dharamshala as desired therein vide public trust registration No.P-47(A) on 05/12/1961 is also not in dispute. The death of Shamabai on 28/10/1962 and death of Gauri Dullayabai on 10/05/1971 is also not being questioned by anybody. The trust had already come into existence on 05/12/1961. In view of this position, as rightly held by the learned Judge that Gauri Dullayabai as also Shamabai ceased to have any title to the property dedicated to charitable purpose. The appellant No. 1 claims her title to the property on the strength of the Will which was executed much later than the creation of Trust in the year 1961. The application came to be filed under Section 22A of the BPT, Act. The learned counsel Shri. Shelat questioned the jurisdiction of the authority to grant any relief to the appellants under the said provision.

11. At this juncture, it would be relevant to refer to Section 22A of the Act, which reads thus :

"22A. Further inquiry by Deputy or Assistant Charity Commissioner

If at any time after the entries are made in the register under sections 21, 22 or 28 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not the subject-matter of the inquiry under section 19, or sub-section (3) of section 22 or section 28, as the case may be, has remained to be enquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make, further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of finding and the making of entries in the register under this section."

12. The bare text of section 22A would indicate that sections 19, 20, 21 and 22 are applicable to section 22A of the Act. These are allied provisions, found place in Chapter 4 of the Act, relating to the Registration of Public Trusts, comprising of Sections 14 to 31. We propose to discuss very briefly, the relevant provisions from this chapter.

Section 16 provides that the State Government may appoint a Deputy Charity Commissioner or Assistant Charity Commissioner to be in charge of one or more Public Trusts

Registration Offices or Joint Public Trusts Registration Offices.

Section 18 deals with registration of Public Trusts and the application for registration of Public Trusts is to be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust.

Section 19 deals with Inquiry for Registration. It provides that on the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining - (i) whether a trust exists and whether such trust is a public trust, (ii) whether any property is the property of such trust, (iii) whether the whole or any substantial portion of the subject – matter of the trust is situate within his jurisdiction, (iv) the names and addresses of the trustees and manager of such trust, (v) the mode of succession to the office of the trustee of such trust, (vi) the origin, nature and object of such trust, (vii) the amount of gross average annual income and expenditure of such trust, and (viii) any other particulars as may be prescribed under sub-section (5) of section 18.

Section 20 deals with findings of Deputy or Assistant Charity Commissioners. It provides that on completion of the inquiry provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefor as to the matters mentioned in the said section.

Section 21 deals with entries in register of which Section 21(1) provides that the Deputy or Assistant Charity Commissioner shall make entries in the register kept under section 17 in accordance with the findings recorded by him under section 20 or if appeals or applications are made as provided by this Act, in accordance with the final decision of the competent authority provided by this Act, and Section 21(2) provides that the entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive.

Section 22 deals with change occurs in any of the entries recorded in the register kept under Section 17 of the Act.

13. Having noted down the provisions relating to the registration of the trust, a holistic reading of these provisions, it is clear that Section 22A of the Act deals with further inquiry by the Deputy or Assistant Charity Commissioner, if at any time, after the entries are made in the register, it appears to the said authority that any particular relating to any public trust, has remained to be enquired into, the authority may make further inquiry in the prescribed manner, and record his finding in accordance with the decision arrived at.

14. In this context, the Full Bench of this Court in the case of **Ketki Pestonji Jamadar** (*supra*), in para 11, has held that the provisions of Sections 19, 20, 21 and 22 are made applicable to the inquiries held under Section 22-A. In para 12 of the said judgment, it is observed that remedies available to persons aggrieved by orders passed under the Act i.e. Section 70 provides, to the extent material, that an appeal may be filed to the Charity Commissioner against the finding or order of the Deputy or Assistant Charity Commissioner under Sections 20 and 22-A. That the Full Bench, in para 20, opined that the

purpose of the Act, the procedure prescribed in inquiries under Section 19, the absence of any remedy under the Act to those who were not parties to the inquiry under Section 19 but whose anterior or superior title would be concluded by the decision in that inquiry and the general scheme of the Act, all tend to show that questions of title to the trust property are outside the scope of the inquiry under Section 19.

That in para 22, the Full Bench has further held that the procedure prescribed by the Act for the conduct of inquiries under Section 19 is wholly unsuited to a proper and effective adjudication of disputed titles to the trust property. Under Section 19 the Deputy or Assistant Charity Commissioner has to conduct an inquiry "in the prescribed manner".

That in para 24, it is further noted by the Full Bench that Section 2(10) shows that the Deputy or Assistant Charity Commissioner is expected and required to decide questions raised at the instance of persons who are interested in the trust. It is no part of their function under Section 19 to decide claims which are adverse to the trust and which are made in assertion of titles which are hostile to the trust.

It is further held by the Full Bench, in para 25, that neither the Act nor the Rules contemplate that persons who claim adversely to the trust or who disputes the right or title of the author of the trust to the trust property must be heard in the inquiry under Section 19.

The Full Bench, in para 28, has further held that the pre-condition of Section 22A is that a particular relating to a public trust must have remained to be inquired into. This must mean that any particular which could have been inquired into by the Deputy or Assistant Charity Commissioner has remained to be inquired into. That takes one back to Section 19 which speaks of a trustee's application under Section 18, or an application by a "person having interest in the public trust". The Full Bench, in the same para, lastly observed that if the Act and the Rules thus contemplate in terms that the inquiry must be limited to the contentions of persons interested in the trust, there is no place in that inquiry for a person who wants to set up a title which is hostile to the trust. Such a claim is not a "particular relating to" the public trust, nor can it be said that it "has remained to be inquired into".

In para 29, the Full Bench has observed that Section 18(5) and Rule 6 prescribe the "particulars" which the application under Section 18(1) must contain. These provisions show that what has to be disclosed in the application is matters in which the trust is interested, matters which are necessary to know for the purpose of registration of the trust, so that its affairs can properly be regulated and administered. Section 18(5) provides that the application shall by way of particulars set out the name of the trust, the names and addresses of the trustees, the mode of succession to the office of the trustee, the list of property belonging to the trust, etc. Rule 6 provides that in addition to these particulars, the application shall also contain particulars regarding documents creating the trust, objects of the trust, sources of its income, incumbrances on the trust property and particulars as to title deeds pertaining to the trust property. All these are matters pertaining to the trust property in which the trust and the trustees are interested. Facts pertaining to the history of title to the trust property do not find a place in these provisions, because they do not constitute particulars in the sense in which that word is used in

Section 18(5) and Rule 6.

The use of the expression “any other particulars” in Section 19(viii) does not throw much light on this question, because what is mentioned in the preceding clauses of Section 19 is partly what is to be ascertained in the inquiry and every one of the preceding seven clauses cannot necessarily be deemed to be a “particular”.

15. After noticing the aforesaid observations of the Full Bench of this Court, it can very well be concluded that a person, who desires a declaration which is adverse to the interest of the public trust, cannot approach the authority under Section 22A of the Act. The authorities under the Trust Act are under obligation to protect the interest of the trust. The further inquiry as contemplated under section 22A as explained by the Hon’ble Full Bench ought to have been in accordance with the prescribed manner under section 19 of the Act.

16. In the instant case, the trust was already registered on 05/12/1961. The appellants claimed title on the basis of

Will, which was executed on 10/03/1970 by one Gouri Daulabai, which was certainly a subsequent event. As rightly observed by the learned Judge in the impugned judgment that such subsequent event cannot form a subject matter of inquiry under Section 22A of the Act at all, and the appellants, who wanted a finding adverse to the public trust could not have taken recourse to Section 22A of the Act, and in any case, the material was not a legal and valid material under the said provisions. The learned Judge has rightly noted that the entire consideration of controversy by the Deputy Charity Commissioner runs counter to the scheme of Section 22A of the Act as explained by the Full Bench and the application of mind and also the approach of the Deputy Charity Commissioner therefore is unsustainable. We are in complete agreement with the observation of the learned Judge that the instrument of the trust and the registration of the public trust and public trust properties, divests the settler from the legal ownership of the property, incapable of being bequeathed, even assuming the existence of a Will.

17. The learned judge considered ratio laid down in the case of **Ignatius Louis Vs. The C.B.E. and Trustees Co. Ltd., 1986 (1) Bom. C.R. 377,** wherein the Single Bench of this Court, while relying on the case of **Central Bank Executor & Trustee Co. Ltd. Vs. Hormusji Nusserwanji Madraswalla and others**, **AIR 1969 Bom 101,** has held that once a trust is created in respect of the a property, it was not possible for the settler to bequeath the same property which was the subject matter of the Trust to another party under any Will. The Will, therefore, in so far as it bequeaths the said property to the plaintiff will not confer any benefit on the plaintiff since the Settlor had no power to bequeath the said property by Will.

18. Having regard to the aforesaid discussion relating to scope of consideration for the charity authorities under section 22A of the Act, the basic contention of the learned counsel for the appellants with regard to locus and status of respondent Nos.1 and 2/ original petitioners, and the delay or latches on their part in approaching this Court, need not be looked into. We have reached the conclusion that the order of

de-registration of trust, passed by the Deputy Charity Commissioner, is without jurisdiction and contrary to the object and purpose of the Act. If we allow the Appeal, on the issue of delay and latches, the consequent result of our decision would be restoring the order passed by the Deputy Charity Commissioner on an application under Section 22A of the Act, which is already held to be without jurisdiction and not in accordance with the provisions of the Act. It is well settled principle of law that the issue of inherent lack of jurisdiction can be raised at any stage of the proceedings even without pleadings of the parties. As orders which are passed for want of subject matter jurisdiction, are illegal, void ab initio and non-est in the eyes of law. (See : **Zuari Cement Limited Vs. Regional Director, Employees' State Insurance Corporation, Hyderabad And Others, (2015) 7 SCC 690).**

19. In this context, the Hon'ble Supreme Court in the case of **Gadde Venkateswara Rao Vs. Government of Andhra Pradesh and others, AIR 1966 SC 828**, while confirming the order of the High Court of Andhra Pradesh observed that if the

High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. This judgment is further relied on by the Hon'ble Supreme Court in the case of **M.C. Mehta Vs. Union of India And Others Re: Inder Mohan Bensiwal Re: Bharat Petroleum Corporation Ltd., (1999) 6 SCC 237,** wherein it is held that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if as striking down will result restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law. Both of these judgments have been further followed in the case of **Raj Kumar Soni And Another Vs. State of U.P. And Another, (2007) 10 SCC 635**.

20. The judgment of the Hon'ble Supreme Court delivered in the case of **Vidya Devi Vs. State Of Himachal**

Pradesh And Others, (2020) 2 SCC 569, relied on by Shri Shelat, learned counsel, in para 12.12, it has been held that delay and latches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. That in para 12.13, relying on the case of **P. S. Sadasivaswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152,** the Hon'ble Surpeme Court has held that in a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it.

21. The Hon'ble Supreme Court in the case of **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad And Other, (2007) 2 SCC 355,** in para 22, has held that the principles of estoppel, waiver and acquiescence or even res judicata which are

procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. It has been further held that any order passed by a court without jurisdiction would be *coram non judice,* being a nullity, the same ordinarily should not be given effect to. In para 23, the Hon'ble Supreme Court has relied on its judgment delivered in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd., (2005) 7 SCC 791**, wherein the Hon'ble Supreme Court has held that where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

22. With regard to the submissions of Shri Joshi that the learned Single Judge has not delved upon "person having interest", in our considered view, undisputedly, the respondent Nos.1 and 2 herein are the resident of Narkhed. The trust was created for the purpose of Dharamshala to be used by the outsiders, who comes to the town for business purposes. The respondent Nos.1 and 2, being residents of Narkhed, certainly

have interest in the existence of the Dharamshala for their town, which is directly or indirectly beneficial to the residents of the town. In this way, the argument of the learned counsel about locus of the respondent Nos.1 and 2 in filing Writ Petition is without any substance. As already stated, once we have reached the conclusion that the authority has not jurisdiction to grant any relief to the appellants prejudicial to the interest of the trust, the question of locus is secondary and need not be looked into.

23. The judgment relied on by Shri Joshi, learned counsel, delivered by the Hon'ble Supreme Court in the case of **Dattaraj Nathuji Thaware Vs. State of Maharashtra And Others, (2005) 1 SCC 590**, would not lend any assistance to him, as in the said judgment, the Hon'ble Supreme Court has discussed at length about the Public Interest Litigation; its meaning, nature, scope and maintainability. In the instant case, as stated earlier, even though the original petition was filed as Public Interest Litigation, this Court had directed the same to be considered under the Act, and the same was heard by the learned Single Judge of this Court.

24. In the above conspectus, in our view, any interference with the impugned order of the learned Single Judge of this Court would result in restoration of order of the Deputy Charity Commissioner passed earlier in favour of the appellants, which is not otherwise in accordance with law.

25. The Appeal thus being bereft of any merit deserves to be dismissed and the same is accordingly dismissed with costs.

JUDGE **JUDGE**

******

Sumit